

IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT BRAAMFONTEIN)

Case Number: JR 1418/05

In the matter between

BRIDGETTE STRINGFELLOW

Applicant

And

**SOUTHERN CAPE CONDO'S CC t/a
LODGE RONDA**

First Respondent

ADV. G.S. JANSE VAN VUUREN N.O.

Second Respondent

**THE COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

Third Respondent

JUDGMENT

Freund A.J.:

INTRODUCTION:

1. The Applicant alleges that she was dismissed by the First Respondent. She referred a dispute concerning her dismissal to the Third Respondent ("the CCMA"). The matter was set down for conciliation on 14 April 2005. The Second Respondent was appointed as the conciliating commissioner. The First

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Respondent took the point before the Second Respondent that it disputed that it had dismissed the Applicant. It contended that, since the Applicant had not been dismissed, the CCMA and the Second Respondent had no jurisdiction to conciliate the relevant dispute. The Second Respondent considered affidavits submitted by the Applicant and the First Respondent in respect of the dismissal issue, considered legal representations made on behalf of the parties and after giving detailed and thoughtful reasons in which he reviewed the applicable case-law, ruled as follows:

“(1) The Commission does not have jurisdiction to conciliate the dispute through conciliation.

(2) No certificate as contemplated in Section 135(5) of the Act is issued.

(3) No order is made as to costs.”

2. The Applicant commenced review proceedings before this Court in which she seeks an order in the following terms:

“1. Reviewing and setting aside the award handed down by the Second Respondent, Commissioner J.S.

Janse van Vuuren on the 13th day of May 2005, which award came to the attention of the Applicant on the 19th day of May 2005 under case number: GAPT 2772/05.

2. *Substituting the ruling of the Second Respondent for one which the Honourable Court deems fit and proper, alternatively directing that the matter be referred back to the CCMA for conciliation before a senior commissioner other than the Second Respondent.*

3. *Costs of this application, if opposed.*

Further and/or alternative relief.”

3. The application comes before me as an unopposed review.

GROUND OF REVIEW:

4. The Applicant relies on two grounds of review. The first ground alleged is that the Second Respondent committed a gross irregularity in that he failed properly to apply his mind to the relevant facts and/ or misdirected himself as to the facts. The second ground alleged is that the Second Respondent committed

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a gross irregularity in that his analysis of the legal position, with specific reference to the issue that he had to decide, was so flawed that it prevented a fair adjudication of the issues.

5. Mr. Geldenhuys, who appeared on behalf of the Applicant, drew attention to the affidavits which had been placed before the Second Respondent and submitted that it was apparent from the Second Respondent's ruling that he had failed properly to apply his mind to the evidence placed before him on behalf of the Applicant. He pointed out that the Applicant had placed an affidavit before the Second Respondent in which she had pertinently disputed the First Respondent's contention that she had not been dismissed and in which she had stated:

“I confirm that I was employed by the Respondent as an Assistant Manager and dismissed on the 4th of March 2005 after a confrontation with Mr. Johannes Michiel Erasmus.”

6. He pointed out that he had also placed before the Second Respondent an affidavit by one Mandy de Ridder who said the following in respect of a conversation which she had with the aforementioned Mr. Erasmus on the 5th of March 2005:

“He never stated that Bridgette resigned, but indicated that he had to dismiss her in order to ensure that all the other staff, including myself will

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sleep in and to prevent the other staff from following Bridgette's decision to question the correctness of the instruction that we should stay for longer hours on duty and to sleep on the premises when instructed to do so by Mr. Erasmus."

7. The Second Respondent's ruling does not make mention of Miss de Ridder's affidavit and it appears to me that the Second Respondent completely overlooked this affidavit. In my view this was such a fundamental error as to show that the Second Respondent did not properly apply his mind to the issue before him.
8. I think it necessary to point out, however, that in a review of a jurisdictional ruling by a conciliating commissioner appointed by the CCMA, the question is not whether the commissioner properly applied his or her mind to the evidence but whether, objectively considered, on the affidavits before this Court, it has been shown that the commissioner concerned had jurisdiction. (Zeuna-Stärker Bop (Pty) Ltd vs National Union of Metalworkers of SA (1999) 20 ILJ 108 (LAC) at 110 B – D).

9. The Founding Affidavit in the application before me alleges that the Applicant was dismissed by the First Respondent. That allegation is not denied in any affidavit placed before me by any of the Respondents. That, in my view, is a sufficient basis to review and set aside the First Respondent's ruling. In my view this is so notwithstanding the fact that, in the proceedings before the Second Respondent, affidavits were filed by the First Respondent denying that it had dismissed the Applicant. The First Respondent has not opposed this application and has not attempted to deal with the allegations made in the Founding Affidavit before me to the effect that the Applicant was indeed dismissed. In my view I am entitled to regard these allegations as uncontested before me and therefore to set aside the Second Respondent's ruling that he did not have jurisdiction.

10. I should make clear, however, that this is not to be taken as binding a commissioner who is appointed to arbitrate the dismissed dispute to find that the Applicant was indeed dismissed. That is a matter to be decided by him or her on the basis of the evidence received at the arbitration. See SABC vs CCMA (2003) 24 ILJ 211 (LC) at Paragraphs [19] and [20].

RELIEF:

11. For the reasons set out above, I accept that the Applicant is entitled to an order reviewing and setting aside the ruling handed down by the Second Respondent on the question as to his own jurisdiction and I accordingly make such an order. Costs were

only sought in the event of ⁷ opposition and there was no opposition.

FREUND, A.J.

APPEARANCES:

FOR THE APPLICANT: C.J. Geldenhuys of J.W. Wessels &
Partners Inc.

DATE OF ARGUMENT: 2 May 2006
DATE OF JUDGMENT: 26 May 2006