1 **IN THE LABOUR COURT OF SOUTH AFRICA**

HELD IN JOHANNESBURG

CASE NO: JR 1232/06

In the matter between

MORGAN SIBANDE **APPLICANT**

And

DEPARTMENT OF LABOUR
(JOHANNESBURG LABOUR CENTRE) **FIRST RESPONDENT**

ALVIN DERRICK
NICHOLAS PHILLIPS **SECOND RESPONDENT**

DUNWELL PROPERTY SERVICES CC **THIRD RESPONDENT**

JUDGMENT

MOLAHLEHI AJ

INTRODUCTION

[1] This is an unopposed review application in terms of which the applicant, Mr. Sibande sought to review and set aside the decision or

ruling of the first respondent, the Department of Labour (the DoL). The applicant brought his application in terms of s145 of the Labour Relations Act 66 of 1995 (LRA).

BACKGROUND FACTS

[2] The applicant is a former employee of the third respondent who was dismissed on the 24th June 2003, after it was found that he was an illegal immigrant who did not qualify to be employed in South Africa.

[3] As a result of the dismissal, the applicant referred his dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). The CCMA arbitrated the dispute and issued an award under Case No GA 21845 – 03 on the 16th August 2004. The commissioner who arbitrated the dispute found the dismissal to have been substantively and procedurally fair. The commissioner agreed with the third respondent that the applicant was a foreigner and an illegal immigrant who did not qualify to be employed in South Africa.

[4] In addition to challenging his unfair dismissal, the applicant also lodged a complaint with the DoL regarding the non-payment of his salary for the month June 2003. He also, at the same time lodged an application

for the unemployment benefits under the Unemployed Insurance Fund (UIF).

[5] As part of the prerequisite to accessing the UIF benefits the applicant was required to produce a valid copy of a South African Identity Document (ID). It would appear that the DoL may have been suspicious of the applicant's identity or his citizens' status and may have requested the Department of Home Affairs (the DHA) to intervene. It is apparent that the intervention of the DHA resulted in the applicant's identity document being impounded by Mr. Chivase, an immigration officer of the DHA.

[6] Apparently during October 2002, the applicant obtained an interim order in the High Court of South Africa restraining the Minister of the Department of Home Affairs from instituting and or causing the applicant to be arrested, including his release from the Hillbrow Police Station where he was incarcerated.

[7] The essence of the applicant's case, on the return day of the rule nisi as summarized in the judgment of Stegman J issued under Case Number 11267 – 02, on 30 October 2002, was that he was a South

African citizen who is quite wrongly suspected of being an alien and not entitled to be in this country.

[8] The Court dismissed the applicant's application and held that the DHA was entitled to arrest him and that there was no ground to interfere with the exercise of the discretionary powers of the immigration officer.

[9] The applicant persisted with his demand for the payment of his salary by the third respondent and payment of his UIF benefits by the DoL.

[10] It is apparent from the bundle of documents filed in this court that the applicant was reissued with an ID No 590802 5832089 on the 6th March 2006, which he produced during argument. He apparently obtained the new ID on his return from Zimbabwe. The current status of this document is however not clear.

[11] On 30 June 2006, Mr Adams of the DoL Johannesburg Centre IRS issued a memorandum indicating that the third respondent has supplied a copy of their wage record reflecting that applicant's salary was R 1400 – 00 at the time of his dismissal in June 2003.

[12] During July 2006, Mr Adams issued another memorandum in terms of which he indicated that the applicant was informed about payment into the DoL's account by the third respondent of the amount due to him. The applicant rejected the payment and demanded that an investigation be conducted into how the amount was calculated.

[13] The applicant contended that the amount of R1400-00 was incorrect because his monthly salary was R10 000-00 per month and that was the basis upon which the DoL should have calculated his UIF benefits and the unpaid salary for the month of June.

[14] As indicated above the applicant brought this application in terms of s 145 of the LRA which reads as follows:

> *"Any party to a dispute who alleges a defect in any arbitration proceedings under the auspice of the commission may apply to the Labour Court for an order setting aside the arbitration award ..."*

The section also deals with the period within which a review application must be brought and grounds thereof.

[15] The decision that the applicant sought to challenge in this case is clearly not an arbitration award issued by the Commission. What the

applicant seeks to challenge it would appear, is a decision of an official of the DoL.

[16] Accordingly, this court does not have jurisdiction to review the decision of an official of the UIF, under s145 of the LRA. Even if this review was to be entertained for whatever reason under any Chapter of the LRA, this court would still lack jurisdiction for the reasons set out below.

[17] In addition to setting out the procedure to be followed in claiming the unemployment benefits, the Unemployment Insurance Act 63 of 2001 (the Act), also provides for a procedure to be followed in the event that a beneficiary is aggrieved by a decision of an administrator. Thus the question that arises is whether, the applicant has exhausted the procedures and remedies provided for under the Act.

[18] The principle that a party should utilize his or her domestic remedies and procedures before approaching the court is, in our law well established. See *Reckitt & Colman (SA) (Pty) Ltd v Chemical Workers Industrial Union & others* (1991) 12 ILJ 806 (LAC). I see no reason why this principle should not apply in the present case.

[19] The procedure to be followed in the event of a party not being satisfied with the decision of claims officer is set out in section 37 of the Act. The relevant part of s 37 of the Act provides as follows:

> *"A person who is entitled to benefits in terms of the Act may appeal to a regional appeals committee if that person is aggrieved by a decision of -*
>
> *(a)* **...**
>
> *(b)* *a claims officer's decision relating to the payment or non-payment of the benefits."*

[20] If a party is dissatisfied with the decision of regional committee, that party may refer the matter to the National Appeals Committee in terms of s37(2) of the Act. The decision of the National Appeals Committee is final, subject only to a judicial review.

[21] The powers of both the regional and national appeals include the confirmation or varying of the decision in question. The two committees, at their respective levels, also have the powers to rescind or substitute the decision in question.

[22] It is apparent in his case that the applicant did not utilize any of the above avenues to challenge the decision of the claims officer which he was clearly not satisfies with. As stated earlier, the application would have been dismissed on this ground, even if it was brought under an appropriate provision of the LRA.

ORDER

[23] In the premises it is ordered that:

(a) The application is dismissed for lack of jurisdiction.

(b) There is no order as to costs.

MOLAHLEHI AJ

DATE OF HEARING : 17 JANUARY 2007

DATE OF JUDGMENT : 26 APRIL 2007

APPEARANCES: THE APPLICANT APPEARED IN PERSON