

IN THE LABOUR COURT OF SOUTH AFRICAHELD AT DURBANCASE NO :D635/05DATE:11 AUGUST 2008

5 In the matter between:

THE NATIONAL UNION OF PUBLIC SERVICEAND ALLIED WORKERS

Applicant

And

THE PUBLIC SERVANTS' UNION

Respondent

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JUDGMENT

11 August 2008

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Pillay D, J This trial is preceded by three points *in limine*. The first relates to the jurisdiction of the Court, the second to prescription and the third is an objection to the applicant launching proceedings by way of action instead of motion.

With regard to **jurisdiction**, the applicant relies on section 102(5) of the Labour Relations Act No 66 of 1995. In terms of section 202(5) read with section 157(1) and section 158(1)(j) of the Labour Relations Act, the Court has jurisdiction to determine disputes that arise concerning the assets of amalgamating trade unions. However, the respondent is not a trade union but a section 21 association registered in terms of the Companies Act No 61 of 1973. It had registered as a trade union; it deregistered after it amalgamated with the applicant. As the respondent is not the entity party to the amalgamation, the Court derives no jurisdiction under section 102(5) of

the LRA. The position might have been otherwise if the respondent was cited jointly with the Public Servants' Union in its capacity as a trade union for purposes of execution. That is not the case here and the Public Servants Union no longer exists as a union.

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With regard to **prescription**, in terms of section 12(3) of the Prescription Act No 68 of 1969, a debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises. The applicant was aware of the facts that gave rise to its claim for a declarator as at the 13th of August 1998 because it had directed the respondent to deliver its assets.

The parties had recorded the facts from which the debt arose in the amalgamation agreement. The preamble recorded that prior to amalgamation, each union had acquired certain movable and immovable properties and assets. Paragraph 5 of the agreement recorded that all assets acquired by the parties prior to the signing of the agreement, should be the property of that party, to deal with in terms of its constitution. By inference, therefore, all assets acquired after the amalgamation vested in the applicant.

The agreement was dated 30 March 1998. It is common cause that the period of prescription is three years under the Prescription Act. Hence, the applicant had to launch its claim before 1 April 2001. The applicant's complaint that it was not aware of the amount of the debt, is not the basis on

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which prescription can be suspended or interrupted. It was aware that the Public Servants' Union, as a union, was indebted to it.

With regard to the third point, in the light of the Court's findings on the first two points, the third objection falls away and is academic in the circumstances.

ORDER

The Court grants an order in the following terms:

1. The Court has no jurisdiction to determine this dispute.
- 10 2. Insofar as the Court is wrong with regard to its first ruling, the Court also finds that the claim has prescribed.
3. The applicant must pay the respondent's costs.

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Pillay D, J

Date Edited: 12 November 2008

Appearances:

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For the Applicant: Adv A Jeffrey SC – instructed by Russell Sobey
Attorneys

25 For the Respondent Advocate B Pitman – instructed by Masipa Inc