



Not reportable

**THE LABOUR COURT OF SOUTH AFRICA,  
HELD AT CAPE TOWN**

**Case no: C472/2021**

In the matter between:

**TONY MCKENZIE**

Applicant

and

**SIMON JANTJIES**

Second Respondent

In Re:

**TONY MCKENZIE**

Applicant

and

**TRANSNET SOC LTD**

Respondent

Heard: 20 June 2023

**Date of Judgment:** This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 10h00 on 21 June 2023

**Summary:** application for joinder – no justifiable reason advanced for joinder – application for joinder dismissed

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## JUDGMENT

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**DE KOCK, AJ**

### Introduction

- [1] This matter concerns an application by the applicant ('McKenzie') for the joinder of the Second Respondent ("Jantjies"). Jantjies did not file any opposing papers but appeared in Court on 20 June 2023. I allowed Jantjies to address the Court in respect of the application for him to be joined.
- [2] Mr A Walters ("Walters"), an advocate duly instructed by Smit & Hugo Attorneys, presented arguments in support of the application in which the Court was requested to join Jantjies as a Second Respondent.

### **LEGAL FRAMEWORK OF APPLICATIONS FOR JOINDER**

- [3] Applications for joinder of parties are dealt with in Rule 22 of the Labour Court Rules. Rule 22(1) provides that the court may join any person as parties in proceedings if the right to relief depends on the determination of substantially the same question of law or facts. Rule 22(2)(a) provides that the court may make such an order if the party to be joined has a substantial interest in the subject matter of the proceedings.
- [4] I will therefore consider the application for the joinder of Jantjies in terms of Rule 22(1) and (2)(a) of the Labour Court Rules.

## **REASONS ADVANCED FOR JOINDER**

- [5] Walters argued in court that Jantjies represented the Respondent during the arbitration proceedings and that Jantjies, during the course of the arbitration proceedings, handed McKenzie a written offer and told him that it was already signed on behalf of the Respondent by Mr Velile Dube. McKenzie, on 21 November 2018, accepted the offer and as a result thereof withdrew the arbitration proceedings.
- [6] The argument advanced was that, based on the Respondent pleading that the settlement agreement was a forgery, and should this defence be upheld, Jantjies would have fraudulently represented to McKenzie that the written offer was duly made by the Respondent. The intention of joining Jantjies is thus to institute an alternative claim against Jantjies for the damages suffered by McKenzie.
- [7] Walters further argued that the joinder of Jantjies would dispose of an issue that is germane in McKenzie's claim against the Respondent and his alternative claim against Jantjies. It was argued that Jantjies has a direct interest in the matter seeing that he represented the Respondent during the arbitration proceedings and presented the offer to McKenzie.

## **RIGHT TO RELIEF (RULE 22(1))**

- [8] I am not convinced that McKenzie has shown that the right to relief against Jantjies depends on the determination of substantially the same questions of law or facts. McKenzie seeks to have a purported settlement agreement made an order of court. The right to relief sought against the Respondent is different to the right of relief sought against Jantjies in that McKenzie intends claiming damages from Jantjies, in the

event of the court finding that the agreement was a forgery, for fraudulent misrepresentation and damages.

- [9] The questions of law or facts to be determined in the claims against the Respondent and against Jantjies are completely different and as such the requirement, as stated in Rule 22(1) has not been satisfied. I also raised the issue with Walters in respect of the Labour Court's jurisdiction to entertain a claim for damages based on fraudulent misrepresentation and Walters submitted that he could not find any case law for or against this issue of jurisdiction.
- [10] I am of the view that, should the court find that the settlement agreement was a forgery as part of the application to have the settlement agreement made an order of court, the Labour Court will not have jurisdiction, in the application for the agreement to be made an order of court, to entertain a claim for damages based on fraudulent misrepresentation. Such a claim falls to be determined by the civil courts and not by the Labour Court.

#### **SUBSTANTIAL INTERESTS (RULE 22(2)(a))**

- [11] I am similarly not convinced that Jantjies has a substantial interest in the subject matter of proceedings. The subject matter of the proceedings is to seek that a settlement agreement be made an order of court. On McKenzie's own version, Jantjies did not sign the agreement and was merely a facilitator in allegedly handing the agreement to McKenzie and receiving the agreement from McKenzie. The document was allegedly signed by a Mr Dube. No explanation was provided why Mr Dube was not sought to be joined, as one would have expected given that Mr Dube allegedly signed the agreement.

- [12] Having found that Jantjies, on McKenzie's own version, does not have a substantial interest in the subject matter of the proceedings other than being a facilitator of handing over and receiving an agreement, the application for joinder of Jantjies must fail.

### **CAUTION TO LEGAL REPRESENTATIVES**

- [13] I have, after perusing the pleadings, advised Walters that there are numerous concerns regarding the application for the settlement agreement to be made an order of court. I also advised Walters that he should discuss these concerns with his instructing attorneys, as on the face of the application, there appears to be no prospects of success. Legal representatives are officers of this court, and they are expected to advise their client(s) in respect of whether there are reasonable prospects in referring a matter to court.
- [14] I pointed out numerous concerns to Walters with the application to make a settlement agreement an order of court. I will briefly mention a few concerns:
1. If the agreement was handed over to McKenzie on 9 November 2018, why does the agreement contain the date of 21 November 2018 as the date on which employment will be terminated?
  2. Why does McKenzie state that Jantjies represented the Respondent when on the attendance register it states that Mr Moolman was the representative?
  3. Why does the case withdrawal notice not refer to any settlement and why was the Council not asked to certify the settlement agreement?

4. On what basis would an employer settle an alleged unfair dismissal for incapacity for some 156 months' salary?
5. Why did McKenzie never seek to enforce such agreement for nearly 3 years?

[15] The aforesaid questions raise serious doubts as to the validity of the settlement agreement which McKenzie now seeks to be made an order of court and McKenzie's legal representatives, as officers of this court, must advise their client as to the prospects of success, or clearly the lack thereof based on the pleadings, in pursuing the application to have the settlement agreement made an order of court.

[16] I therefore make the following order in respect of the application for joinder:

#### **ORDER**

1. The application for Jantjies to be joined as a Second Respondent is dismissed.
2. No order is made as to costs.



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**C de Kock**

**Acting Judge of the Labour Court of South Africa**

Representatives:

**For the Applicant:**

Andre Walters (instructed by Smit &  
Hugo Attorneys)

**For the Second Respondent:**

In Person

LABOUR COURT