

NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE NO: 5807/2010

DATE: 19/10/2010

IN THE MATTER BETWEEN:

TRADE NOW 193 BK

APPLICANT

AND

BALJU: PRETORIA OOS

RESPONDENT

JUDGMENT

BAM. AJ

[1] The applicant was the former employer of the intervening party, Ms. Fredah Mabusela.

[2] On 29 July 2008, as a result of a disciplinary enquiry, the intervening party was dismissed from her employment with the applicant.

[3] The dispute was referred for arbitration, on award, by default, was granted to the intervening party on 9 October 2008 and made an order of court on 4 March 2009 in terms of the provisions of section 143 of the Labour Relations Act.

[4] A warrant for execution was subsequently issued, on 17 September 2009, and served upon the applicant on 15 December 2009.

[5] On 2 February 2009 the applicant brought an application against the sheriff, Pretoria East, for the suspension of the warrant for execution pending an application for the rescission of the arbitration award in favour of the intervening party. The application was granted, on an urgent basis by this court and a *rule nisi* issued with return date 23 February 2010. The court order reads as follows:

“(2) Dat ‘n tussentydse bevel verleen word met keerdag 23 Februarie 2010 waar enige party kan kom antwoord waarom die volgende bevel nie ‘n finale bevel gemaak word nie.

2.1 dat die werking van die lasbrief wat gemagtig is, opgehef word om geleentheid aan die applikant te bied om sy aansoek om tersydestelling van die arbitrasie wat

gemaak is in terme van artikel 144 van die Wet op Arbeidsverhoudinge met die Kommissie vir Bemiddeling, Mediasie en Arbitrasie op 9 Oktober 2009 ingedien.

2.2 Dat die applikant voor of op die keerdag na behore moet aansoek doen vir die tersydestelling en/of wysiging van die toekenning wat gemaak is onder saaknommer PC2471/2008.

2.3 Indien gemelde aansoek om tersydestelling en wysiging nie voor of op 16 Februarie ingedien is nie sal hierdie bevel outomaties verval. ”

[6] On the 23rd of February 2010 the *rule nisi* was extended to the opposed role of the 20th of September 2010; subject to prove of compliance with pleas 2.3 of the order granted on 2 February 2010. The order of 20 September 2010 further reads as follows:

“(2) The intervening party shall file her application for leave to intervene, if any, and her opposing affidavit in the main application, if any, on or before 9 March 2010.

(3) The applicant and the respondent shall file their answering affidavits to the intervening parties’ applications for leave to intervene, if any, on or before 25 March 2010.

(4) The applicant and the respondent will insure that the goods will remain under attachment, pending the withdrawal and/or finalisation of this application.

(5) *Costs reserved.*”

[7] Today, on behalf of the intervening party, Ms. Swart took a point *in limine*, that this court has no jurisdiction. It was submitted by Ms. Swart that the provisions of section 157 of the Labour Relations Act provides that the Labour Court alone would have jurisdiction in the circumstances. It was further contended by Ms. Swart that the intervening party should originally have been joined as a party to the proceedings. In this regard the applicant failed to join the intervening party.

[8] Neither the applicant nor the respondent filed any replying affidavits pertaining to the founding affidavit of the intervening party.

[9] The applicants apparently do not intend to pursue the matter. No practice note, and no heads of argument were filed on behalf of the applicant.

[10] Mr Uys appearing for the respondent submitted that the intervening party had already intervened on 23 February 2010. Mr Uys further submitted that the applicant kept the respondent in the dark regarding any further intended steps, including the decision of the warrant for execution, contemplated by the applicant. Mr Uys further submitted to the court that in the supplementary affidavit of the intervening party dated 8 September 2010, mention was made of actions taken by the intervening party pertaining to the issue whether the applicant has taken any further steps for the rescission of the

warrant of execution. The intervening party however failed to notify the respondent of the situation. According to Mr Uys's submissions the intervening party failed to comply with the provisions of the court order dated 23 February 2010.

[11] As a result of the applicant failing to pursue the matter, to my mind the *rule nisi* should in the circumstances be dismissed.

[12] Regarding costs it was contended by Mr Uys that the intervening party should be penalised to pay the costs of the respondent on a basis that the intervening party, in failing to file a proper affidavit in that regard, did not ask for any relief and did further not suggest any remedy for her predicament.

[13] Ms Swart seems to be correct in submitting that right from the start this court did not have jurisdiction in applying for the suspension for the warrant of execution issued by the Labour Relations Court. I am further in agreement with Ms. Swart that the intervening party should have been joined initially when the applicant lodged the application in this court. Accordingly make the following order:

1. The *rule nisi* is dismissed.
2. The applicant is ordered to pay the costs of the application including the costs of the intervening party.

AJ BAM

ACTING JUDGE OF THE HIGH COURT

FOR THE APPLICANT: UNKNOWN

FOR THE INTERVENING PARTY: ADV. L SWART

FOR THE RESPONDENT: ADV. UYS