

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no JR 538/23

In the matter between

EVANS NTSABADI MAHLO

Applicant

and

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

First Respondent

COMMISSIONER SHUMANI SYDNEY TSHAKAFA

Second Respondent

UNILEC SA (PTY) LTD

Third Respondent

Date of hearing: 31 January 2024

Date of judgment: 8 February 2024

JUDGMENT

EDWARDS AJ

[1] This review application was set down for hearing on the unopposed roll on 31 January 2024.

[2] After hearing argument from the applicant's representative both on service and the merits, judgment was reserved.

[3] On the face of it, the application was not opposed by the respondents, however, on thorough perusal of the file and the service affidavit in respect of the

founding papers which was filed by the applicant's attorneys of record, ¹ I am not satisfied that proper service was effected on the respondents.

[4] According to the service affidavit, the founding papers in the review application were served on the third respondent by email.

[5] In terms of the directive issued by the then Judge President of this court on 5 January 2022, the requirements which must be met when pleadings are served by email are as follows: the person who effected service must file an affidavit of service which must state that, firstly, the address to which the email was sent was the correct email address of the addressee and confirm which document/s was/were attached to the email. Secondly, the service affidavit must state that the party to whom the email was addressed telephonically confirmed receipt of the email and attachment/s and further give the name of the person who confirmed receipt of the transmission, alternatively, an email from the party to whom it was addressed confirming receipt of the email must be attached to the affidavit.

[6] In this case, the service affidavit states that the application was served on the third respondent by email and that the deponent believes that the address to which it was emailed is the correct email address for the third respondent.

[7] It does not give any basis for this belief. In fact, the email address to which it was sent² is not the email which is recorded on the notice of motion as the email address for the third respondent.³

[8] It also does not deal with the requirement of telephonic confirmation of receipt. In fact, a paragraph to that effect is crossed out on the affidavit and it is instead written in manuscript that the application "*will be hand delivered in the following weeks as well.*"

[9] There is no indication that this was indeed done.

¹ Pleadings bundle, pp 45 to 47.

² enquiries@unilecsa.co.za.

³ Pleadings bundle, p 4.

[10] Insofar as service on the first and second respondents is concerned, all that the service affidavit states is that “*and email to Johannesburg@ccma.org.za*”.

[11] Even if one accepts that what is meant by this is that the review application was served by the applicant on the first and second respondents by email to this address, when one considers the annexure to the service affidavit which purports to be proof of this,⁴ it is clear that the email was in fact sent to “johannesburg@ccma.orh.za”.

[12] Again, there is no indication in the service affidavit that receipt of the review application was confirmed telephonically with the first or second respondent.

[13] The service affidavit quite clearly does not meet the requirements of the 5 January 2022 directive.

[14] This is sufficient reason for this court not to further consider the matter, however, it is also noted that service of the further pleadings in this application is similarly defective.

[15] Although it appears that the applicant’s notice in terms of Rules 7A(6) and (8) were served on the third respondent by hand,⁵ the address recorded for the third respondent in the notice of motion is not the address recorded on the stamp evidencing service of the notices. There is no explanation provided for this.

[16] Furthermore, the service affidavit filed by the applicant’s attorneys of record in respect of these notices⁶ is deficient in that reference is made to the service of these notices by email, but again there is no indication of who these email addresses belong to or that receipt was confirmed telephonically with a representative of the third respondent.

⁴ Pleadings bundle, p 47.

⁵ Pleadings bundle, p 50 and 119 respectively.

⁶ Pleadings bundle, pp 123 to 135.

[17] In the premises, I am not satisfied that there has been proper service of the review application on any of the respondents or indeed of the Rule 7A(6) and (8) notices on the third respondent.⁷ In such circumstances, it would be inappropriate for this court to make a determination on the merits.

I make the following order:

1 The matter is struck from the roll due to non-compliance with the Judge President's directive dated 5 January 2022 regarding the service of pleadings by email.

M Edwards
Acting Judge of the Labour Court

⁷ An email from a representative of the first and second respondents confirming receipt of the notices and their attachments is annexed to the service affidavit at Pleadings bundle, p132.