

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO: JA 56/98

In the matter between:

A. RAHLOGO & ANOTHER

Appellant

and

AVENTURA LOSKOPDAM

Respondent

JUDGMENT

MOGOENG AJA

[1] This is an appeal against the determination made by the Industrial Court in terms of the Labour Relations Act No. 28 of 1956 ('the old Act').

[2] The Appellant's representatives received the Respondent's heads of argument on 15 June 1999. On 18 June 1999 they filed their notice of withdrawal with the office of the Registrar of this Court. At the time the Appellant's heads of argument, which ought to have been filed on 4 June 1999, had not yet been filed.

[3] On the date of hearing of this appeal, neither the Appellants nor their representatives were in Court. Furthermore, the notice of appeal was not filed in time with the result that the appeal is not properly before us.

[4] For these reasons, the appeal stands to be struck off the roll.

[5] The only outstanding issue is costs. The Respondent has asked for costs against the Appellants' representatives *de bonis propriis*. In principle there is merit in that request and I would have been inclined to grant such an order but for the reasons which follow.

[6] This appeal is governed by the provisions of the Labour Relations Act No. 66 of 1995 ('the Act'). Section 179(3) of the Act provides that this Court '*may order costs against a party to the dispute or against any person who represented that party in those proceedings before the court.*' This Court is therefore empowered to grant costs against a party's representative *de bonis propriis*. The question then is who may represent a party to the proceedings before this Court.

[7] The answer to this question can be found in s178 read with s161 of the Act. Section 178 provides that any person who, in terms of s161, may appear before the Labour Court has the right to appear before the Labour Appeal Court. Section 161 in turn provides as follows:-

“ In any proceedings before the Labour Court, a party to the proceedings may appear in person or be represented only by a *legal practitioner*, a co-employee or by a *member*, an *office-bearer* or *official* of that party's *trade union* or *employers' organisation* and, if the party is a juristic person, by a director or *employee*.”

[8] The Appellants' abovementioned representatives were Tshidi and Associates who are labour and industrial relations consultants. Their representatives are not a firm of attorneys. Section 213 of the Act defines a legal practitioner as '*any person admitted to practise as an advocate or an attorney in the Republic*'.

[9] It follows, therefore, that a labour and industrial relations consultant is neither a legal practitioner nor any of the persons who have a right to appear on behalf of a party to the proceedings before this Court. Consequently he or she cannot be a representative envisaged by the provisions of s179(3) of the Act against whom costs may be ordered.

[10] The Appellants' representatives are, as I said, consultants and this Court cannot, therefore, order costs against them prayed for by the Respondent. In this matter costs can, therefore, only be ordered against the Appellants.

In the result, the appeal is struck off the roll with costs.

MOGOENG AJA

I agree

CONRADIE JA

I agree

NICHOLSON JA

Appearances:

Appearing for the Appellant: No Appearance

Appearing for the Respondent: Ms H Strydom of Pienaar Swart & Nkaiseng
Attorneys

Date of hearing: 15 September 1999

Date of judgment: 3 October 1999