

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG**

CASE NO : JR270/06

In the matter between:

TELESAFE (PTY) LTD

APPLICANT

And

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

FIRST RESPONDENT

T MOODLEY N O

SECOND RESPONDENT

PROTECTORS WORKERS UNION

THIRD RESPONDENT

JUDGEMENT

LEEuw AJ:

- [1] The Applicant approached this Court seeking an order setting aside the Certificate of Outcome issued by the Second Respondent (the Commissioner) on 26 January 2006.

- [2] The Third Respondent (the Union) referred a dispute to the First Respondent (CCMA) for the purpose of Conciliation on matters of mutual interest between the Applicant and the Union.
- [3] The parties hereto were granted an opportunity to resolve the issues and when they could not reach consensus, the Commissioner issued the certificate and granted the Union leave to embark on a strike-action.
- [4] The Applicant avers that the Certificate of Outcome was issued in their absence despite the fact that they were assured on 24 January 2006 by an officer of the CCMA that same would not be issued as Applicant intended raising two points *in limine*: Firstly that the Applicants were not served with the Referral of Dispute form (LRA 7.11 form) and Secondly, that the CCMA did not have jurisdiction to conciliate over the dispute because the employment conditions of employees are regulated by a Sectoral Determination in the Private Security Sector.
- [5] With regard to the first point *in limine* raised, I find no merit therein in view of the fact that the Applicants participated in the deliberations which were conducted as a result of a directive issued by the Commissioner. They participated in an effort to resolve the dispute.
- [6] With regard to the second point *in limine*, a Memorandum of Agreement was handed up by the Applicant's Attorney, which

indicated that the Union as well as other several Trade Unions entered into an agreement with the Employees' Organizations wherein consensus was reached that matters of mutual interest will be dealt with at national level.

- [7] At the time of issuing of the Certificate of Outcome, the Commissioner was not seized of the Memorandum of Agreement and thus did not make an informed decision.
- [8] I am of the view that the Applicants ought to have been given an opportunity to argue this point *in limine* for the purpose of determining jurisdiction.

I accordingly make the following order:

- (1) The Certificate of Outcome dated 26 January 2006 is set aside;
- (2) The matter is referred to the CCMA for the purpose of determining the jurisdictional issue.
- (3) The CCMA is to notify and enroll the matter on an urgent basis.
- (4) Each party is ordered to pay its own costs.

M M LEEUW

ACTING JUDGE OF THE LABOUR COURT

APPEARANCES

**For the applicant: Adv S Benharou
 (instructed by Yusuf Nagdee Attorneys)**

**For the respondent: T Magidi
 (instructed by Protectors Workers Union)**

Date of hearing: 30 November 2006

Date of judgment: 01 February 2007