

IN THE LABOUR COURT OF SOUTH AFRICA
(HELD IN JOHANNESBURG)

J1990 -07

MOFOKENG & 12 Others

Applicants

V

JAC Pallets Africa CC

1st Respondent

JAC Pallets

2nd Respondent

International Estate Wines

(Taiwan) CC

3rd Respondent

International Estate Wines

4th Respondent

International Estate Wines (Taiwan)

CC t/a Jac Pallets

5th Respondent

Mr JG Koekemoer

6th Respondent

Commissioner Bonge Masote

7th Respondent

Commissioner for Conciliation,

Mediation and Arbitration

8th Respondent

JUDGEMENT

AC BASSON J.

[1] This was an application for joinder of companies other than those cited in the writ of execution; for an order for contempt of court in terms of section 143(4) of the LRA and for an order compelling the sixth Respondent *“to ensure that the first to fifth Respondents pay the Applicant the salaries they would have earned from the 15th Day of January 2007 until they are allowed to tender their services in line with the certified award.”* In essence there were three applications before this court: (i) A joinder application; (ii) An application for contempt; and (iii) An application for payment.

[2] On 19 June 2008 this Court, after having heard argument and after having considered the matter made the following order:

- “1. The matter is postponed sine die to allow the Applicant to join the liquidator as an interested party in these proceedings.*
- 2. The Applicant is ordered to amend its papers and serve an amended copy on this Court and the Respondents within 10 Court days of the date of this order.*
- 3. The Applicant is ordered to pay the Respondents’ wasted costs of today.”*

- [3] Herewith brief reasons for my order. The First Respondent in these proceedings is a close corporation registered in accordance with the laws of the Republic of South Africa. The First Respondent has been placed in liquidation. The 2nd and 5th Respondents are one and the same entity, namely a closed corporation, International Estate Wines (Taiwan) CC trading as Jac Pallets and registered in accordance with the laws of the Republic of South Africa. The 4th Respondent does not exist. No relief is sought against the 7th and 8th Respondents.
- [4] In the joinder application, the Applicants seek to have the second to fifth Respondents joined as Respondents in the writ of execution. The award in favour of the Applicants has, however, been issued against the 1st Respondent (now in liquidation) only.
- [5] It is trite that this Court may join any number of persons as parties in proceedings if their right to relief depends on substantially the same question of law and fact (see Rule 22 of the Rules of this Court). The test is whether or not a party has a “*direct and substantial interest*” in the subject matter of the action, that is, a legal interest in the subject matter of the litigation which may be affected prejudicially by the

judgment of the court. See *Henri Viljoen (Pty) Ltd v Awerbuch Brothers* 1953 (2) SA 151 (O) at 168 – 170.

[6] It is clear from the papers that the issue of the 1st Respondent's pending liquidation arose prior to and was known during the course of the CCMA arbitration proceedings and that that was the reason why the 1st Respondent did not attend the proceedings with the result that a default award was issued. On behalf of the Respondent it was submitted that if the Applicants indeed believed that they were employed by other entities, which is denied by the Respondents, they should have instituted joinder proceedings at that stage – in other words – during the CCMA proceedings.

[7] In the proceedings before this Court the issue of non-joinder was raised obo the Respondent. More in particular it was pointed out that the Applicants have been informed of the identity of the liquidator. Despite this fact the Applicants have not joined him as an interested party in the pending proceedings before this Court. I have already pointed out that one of the applications currently pending before this Court is a contempt application. It is trite that this Court can hear contempt applications and may grant an order for contempt where the Respondent's default is willful and *mala fide*. In the present set of facts the award was certified only against the 1st Respondent. The

1st Respondent has been placed in voluntary liquidation. It is trite that once an entity has been placed in liquidation, the liquidator steps in and becomes the relevant entity to deal with any claims against the close corporation. The liquidator has not been joined as an interested party in the pending applications (and especially the contempt of court application) despite the fact that the Applicants have been made aware of the fact that the 1st Respondent has been placed in liquidation.

[8] In order to assist the individual Applicants, this Court has, in fairness, granted them the indulgence to amend their papers and to join the liquidator as an interested party. This court has, however, decided to order the Applicants to pay the wasted costs of the proceedings. The Applicants in this matter were aware of the fact that the 1st Respondent was placed in liquidation but despite this fact still persisted in approaching this Court without joining the liquidator. The Respondent was as a result placed in the unnecessary position to oppose the application, *inter alia*, on the basis of non-joinder. I can therefore find no reason why the Applicants should not be ordered to pay the Respondent's wasted costs.

13 October 2008