

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

CASE NO JR 1532/10

GATW 14335/09

In the matter between:

POGISO KGOBOKOE

Applicant

and

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

First Respondent

COMMISSIONER B. VAN DYK

Second Respondent

SITA (PTY) LTD

Third Respondent

MPM PERSONNEL

Fourth Respondent

JUDGMENT

COETZEE AJ:

Introduction

1. Applicant applies for the review and setting aside of a ruling dated 11 May 2010.
2. The Commissioner on 11 May 2010 made the following ruling:

“The citation of the Employer is amended as follows: MPM Personnel, [.....]”.

3. The Applicant complains that the Commissioner at the arbitration agreed to *join* MPM Personnel as a further party and *not to substitute* MPM Personnel as the only employer party.

Service

4. It is necessary to first deal with whether proper service has taken place and whether this matter is unopposed.
5. The attorneys for Fourth Respondent by notice of intention to oppose dated 28 June 2010 served and filed the notice upon Applicant and the other Respondents. The notice was received by the labour Court on 1 July 2010.
6. Fourth Respondent therefore is a party to the review proceedings as from that date opposing the review application.
7. In a letter dated 29 October 2010 Fourth Respondent’s legal representatives pointed out that the CCMA had filed the record of proceedings, but that Fourth Respondent had not received a copy of the record, nor a notice in terms of Rule 7A(8) of the rules of the Labour Court. They further indicated their client’s intention to file an answering affidavit on behalf of their client.
8. The Court requested Applicant to provide proof of service of its notice in terms of Rule 7A(8)(b) dated 21 October 2010 upon Fourth Respondent either on the Fourth Respondent directly or on its attorneys of record.
9. The Court’s attention was drawn to a postal slip in respect of a registered letter addressed to *MPM Personnel*. The slip is dated 21 October 2010 and is incomplete and it is not clear what the exact address is that the

accompanying letter or document was sent to. It appears to have been addressed to Fourth Respondent.

10. Fourth Respondent by that time had duly appointed legal representatives to act on its behalf. It is expected of applicant to serve his papers upon the Fourth Respondent at the address appointed for service thereof.
11. There is no evidence to show that the notice in terms of Rule 7A(8) has been served upon Fourth Respondent either at the address of its attorneys of record or on itself and there is no evidence to show that Fourth Respondent in any other way became aware of or actually received a copy of this notice.
12. Applicant indicated that he was in possession of electronic communications that would show that Fourth Respondent received the notice and its annexures.
13. The Court is not persuaded that what the service of the notice took place.

Finding

14. This matter is an opposed matter where some of the documents have not been properly served upon one of the Respondent's wishing to oppose the application.

Order

15. Applicant is ordered to serve its notice in terms of Rule 7A(8)(b) with its annexures comprising the record of the arbitration proceedings on the Fourth Respondent at the address of its Attorney of record and to submit proof thereof to the Registrar.
16. The matter is postponed sine die.
17. There is no order as to costs.

COETZEE AJ
ACTING JUDGE OF THE LABOUR COURT

DATE OF HEARING: 20 DECEMBER 2010

DATE OF JUDGMENT: 22 December 2010

APPEARANCES:
FOR APPLICANT: IN PERSON

FOR THE RESPONDENTS: NO APPEARANCE