

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT CAPE TOWN

CASE NUMBER : C179/2011

DATE : 2011-03-25

In the matter between:

NATIONAL BARGAINING COUNCIL FOR
THE CLOTHING MANUFACTURING INDUSTRY APPLICANT
and

Z KNITTING CC RESPONDENT

J U D G M E N T

STEENKAMP J:

These are interpleader proceedings which, as is customary, are being dealt with in terms of Rule 58 of the High Court Rules, as the Labour Court Rules do not specifically provide for such a procedure.

The applicant is the National Bargaining Council for the Clothing Manufacturing Industry. The respondent is an entity called Z Knitting CC. The claimant is one Liang Yuan.

After having been served with the Rule 58 interpleader notice Mr Yuan did not enter an appearance or submit any particulars of his claim of ownership of the attached goods, as he was invited to do. However, at the hearing this morning Mr
2011-03-25/11:04-11:12/EYL /...

Stubbings, who appears for the applicant, quite properly brought to my notice that Yuan had sent an affidavit to the Bargaining Council. That affidavit has not been filed at court. Neither is Mr Yuan present at court today.

However, there is also an accompanying letter sent from Yuan's attorneys, Bezuidenhout Inc of Bloemfontein, dated 23 March 2011, that is two days ago, that says the following:

"We refer to the above matter and include herewith an affidavit with annexures confirming Mr Yuan Liang's right to the said attached property. We place further now on record that an interpleader procedure would be held in Cape Town on Friday, 25 March 2011. However, our client is not in the financial position to travel to Cape Town to oppose the attachment and we trust that you can assist our client in receiving back his property."

Mr Groenewald, who is the Legal Officer of the Bargaining Council, responded to that letter yesterday, that is the 24th of March, acknowledging the fax and pointing out that it does not constitute valid service of any process in terms of the rules of this court, and that the Council reserves its right to proceed with the matter, whether or not Mr Yuan is present or represented at the hearing today.

Mr *Stubbings* submitted that in terms of Rule 58(5) I should declare Yuan to be barred from making any claim in the circumstances where he is not present or represented today.

However, I do consider that this is a court of equity and that Yuan appears to be resident in either Bloemfontein or Thaba Nchu where there is no seat of the Labour Court. I also take into account the letter from his attorneys that he is not in a financial position to travel to Cape Town.

I will therefore consider the affidavit that he deposed to. In terms of Rule 58(3)(b) the claimant must deliver particulars of his claim and as *Erasmus* points out in *Superior Court Practice*, B-1400, the subrule does not expect of a claimant that he should clothe his claim in the form of an affidavit. All that is expected of him is that he should furnish the particulars of his claim. The purpose is to inform his opponent of the tenure of his case in order to enable the latter to decide whether or not to oppose the claim.

Although the rule does not require the claimant to set out his claim with the same precision as in a pleading, Mr *Stubbings* also referred me to Corlett Drive Estates v Boland Bank Bpk en 'n Ander 1979(1) SA 863 (C) where Van Winsen J, as he then was, said:

“Die doel, onder andere, van die uiteensetting van ‘n aanspraakmaker se besonderhede van sy aanspraak is om sy teenstander van die strekking van sy saak te verwittig sodat laasgenoemde in staat gestel word om te kan besluit of hy sy aanspraak gaan bestry aldan nie.”

The learned Judge then carries on to make the same

point as that made by *Erasmus*, concerning sufficient particularity of the claim.

Having perused the affidavit by Mr Yuan, I agree with Mr *Stubbings* that it does not set out with sufficient particularity that Yuan is in fact the owner of the attached property. It merely makes the bald allegation setting out the property and saying that it belongs to him. There is no proof attached to back up that bald allegation.

In the circumstances I am not satisfied that the claimant has established that he is in fact the owner of the attached goods.

With regard to costs, as I have said, I do take into account that it appears that Mr Yuan was not in a position to appear today and it would have been very costly for him to attend the proceedings. In law and fairness I do not consider a costs order to be appropriate.

I therefore order that the claimant, that is L Yuan, is barred from proceeding with his claim.

There is no order as to costs.

COURT ADJOURNS: (at 10:41)

