

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT CAPE TOWN

Not reportable
Case no: C1132/10

In the matter between:

KHAYALETHU JIMLONGO

Applicant

and

BELTHAZAR RESTAURANT AND WINE BAR

Respondent

Date of hearing: 19 August 2011

Date of judgment: 29 August 2011

JUDGMENT

CONRADIE AJ:

1. This matter came before me as an “Application for Default Judgment” after the Applicant served a Statement of Claim on the Respondent but received no response.
2. According to the Applicant, prior to joining the Respondent he had been employed in the restaurant industry for a number of years as a waiter. A few years back he relocated to Cape Town and found employment with the Respondent. The Respondent was not however prepared to offer him a position as a waiter as it was felt that he did not have “fine dining” experience. The Applicant accepted this arrangement on the basis that it would give him an opportunity to get in. However, the Applicant subsequently discovered that when

vacancies arose these were given to young white employees who in his words “could barely hold a tray”. At some stage he referred a dispute to the CCMA relating to what he felt was unfair discrimination. Subsequent to this referral one black runner has been promoted to the position of waiter. The other black employees that are employed as waiters by the Respondent are not South African citizens.

3. The Applicant argued that he has been unfairly discriminated against on the basis of his race and that this is contrary to the Employment Equity Act 55 of 1998.
4. Given that there was no appearance for the Respondent I have to accept the Applicant’s version that he has been discriminated against on the basis of race.
5. As far as relief is concerned, the Applicant asked that I order that he be paid the difference in income between what he currently earns and that which he would have earned as a waiter. However, the Applicant was unable to give an indication as to the amount of money which a waiter earns. In the circumstances I am of the view that an order for compensation is not appropriate in this matter. A more appropriate order is one which requires the Respondent to promote the Applicant to the position of waiter when the next vacancy arises. In the circumstances I make the following Order:
 - 5.1. The Applicant is to be promoted to the position of waiter when the next such vacancy arises.
 - 5.2. There is no order as to costs.

Conradie AJ

Appearances:

For the applicant: Khayaletu Jimlongo (In person)

LABOUR COURT