

**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD IN DURBAN)**

CASE NO: D835/09

In the matter between:

S H SHANGE

Applicant

and

S A POLICE SERVICE

First Respondent

JUDGMENT

LALLIE AJ

- [1] This is an application against a judgment I gave in favour of the respondent on 15 April 2011.
- [2] The applicant lodged an application for the condonation of the late filing of the notice for leave of appeal. It was not opposed by the respondent. The application is granted because the period of lateness is short and the applicant has furnished valid explanation for the lateness.
- [3] The events leading to this application are that on 13 August 2008 the applicant referred a dispute regarding disclosure of information and the interpretation and application of a

collective agreement to the Safety and Security Sectoral Bargaining Council (the SSSBC). The collective agreement concerned is Resolution 7 of 2000. It is a collective agreement of the Public Service Co-ordinating Bargaining Council (the PSCBC). An attempt to resolve the dispute through conciliation was unsuccessful and it was scheduled for arbitration.

[4] The respondent objected to the SSSBC arbitrating the dispute on the grounds that it lacked the necessary jurisdiction. The first ground for objection was that clause 14 of Resolution 7 of 2000 provides that disputes pertaining to the application and interpretation of the collective agreement must be dealt with in accordance with the dispute resolution procedure of the PSCBC. The second was that disclosure of information falls outside the ambit of unfair labour practice. The SSSBC issued a ruling on 10 August 2009 that it had the necessary jurisdiction to arbitrate the dispute.

[5] The respondent lodged an application at the Labour Court to have the SSSBC ruling reviewed and set aside. It was opposed by the applicant. I gave a judgment in favour of the respondent. The applicant seeks leave to appeal against that judgment.

[6] The applicant contends in the application for leave to appeal that the prospects of success on appeal favour him overwhelmingly and that another court would arrive at a different conclusion on the point that the PSCBC and not the SSSBC has jurisdiction over the dispute about the interpretation and application of Resolution 7 of 2000 for the

following reasons:

6.1 Clause 14.1 of Resolution 7 of 2000 refers to dispute resolution of the PSCBC Constitution but Clause 1.1 of the PSCBC dispute resolution procedures gives powers to Sectoral Councils.

6.2 Clause 5 of the SSSBC constitution grants it the following powers and functions:

“The powers and function of the Council are to perform those functions set out in terms of Section 28 of the Act, including to: (a) negotiate collective agreements on matters of mutual interest; (b) implement, monitor and enforce its collective agreements; (c) implement, monitor those collective agreements that have been concluded in the PSCBC; (d) prevent and resolve labour disputes; etc ...”

6.3 Clause 5(c) of the SSSBC constitution gives it exclusive jurisdiction in the dispute.

6.4 Clause 1.5 of the PSCBC dispute resolution procedure which provides as follows should have been applied:

“If there is jurisdictional dispute between the Council and Sectoral Council as to whether these procedures or the Sectoral Council’s procedures apply, any party to the dispute may refer the dispute to the CCMA in terms of Section 38 of the Act for conciliation and

arbitration.”

- 6.5 In terms of Section 127 of the Labour Relations Act 66 of 1995 (the Act), the only forum that may claim jurisdiction over any dispute is the CCMA, because it is the CCMA alone that accredits bargaining councils and allow them to perform all dispute resolution functions.
- 6.6 The Court should have considered that the dispute and interpretation in question affected the Safety and Security sector only and not the Public sector as a whole and that the dispute fell within the registered scope of the SSSBC.
- 6.7 The website of the PSCBC provides as follows:

“The PSCBC (Public Service Co-Ordinating Bargaining Council) deals with disputes of all Public Service employees. If the dispute is about the interpretation or application of a PSCBC Resolution, or if the dispute is about an issue that affects more than 1 sector, PSCBC may not deal with a dispute if there is a Sector Bargaining Council that has jurisdiction.”

- [7] The respondent opposed the application for leave to appeal mainly on the grounds that my judgement was correct. The other grounds are that Section 38 of the LRA is of no relevance as the dispute did not involve 2 bargaining Councils. It was further argued on behalf of the respondent that after the arbitrator had taken the decision that the SSSBC had

jurisdiction to determine the dispute, its decision could not be challenged at the CCMA but at the labour Court. The respondent found the applicant's submissions based on the PSCBC website misplaced.

[8] It is trite that the test for leave to appeal is that there must be a reasonable possibility that another court might come to a different conclusion than the one reached by the court a quo. In *Strategic Liquor Services v Mvumbi NO & others* [2009] 9 BLLR 847 (CC) the court found that for leave to appeal to be granted there must be prospects of success on appeal. See also *General Domestic and Professional Employers Organisation v Registrar of Labour Relations* [2011] 4 BLLR 352 (LC). The decision appealed against must be susceptible to criticism and incorrect. See *Zwane v Alert Fencing Contractors CC* [2011] 2 BLLR 109 (CC).

[9] The applicant conceded that clause 14.1 of Resolution 7 of 2000 provides that disputes about its interpretation or application shall be dealt with according to the dispute resolution process of the PSCBC. He however argues that clause 1.1 of the PSCBC constitution passes that power to Sectoral Councils. This argument is incorrect. Clause 1.1 of the constitution of the PSCBC which deals with the dispute resolution procedures of the council provides as follows:

“Sectoral Councils may use these procedures to establish their own procedures. The procedures may be amended in accordance with the needs of that particular council”.

[10] What clause 1.1 does is to grant Sectoral Councils permission to copy the dispute resolution procedures of the PSCBC when establishing their own. It further grants Sectoral Councils permission to amend the PSCB dispute resolution procedures to suit their needs. Clause 1.1 merely gives Sectoral Councils guidance on how to establish their own dispute resolution procedures. It is silent on passing the PSCBC dispute resolution powers to Sectoral Councils and does not grant Sectoral Councils jurisdiction to entertain disputes about the interpretation and application of Resolution 7 of 2000.

[11] The applicant's argument that the relationship between the constitution of the PSCBC and that of the SSSBC regarding dispute resolution and clause 5 of the SSSBC constitution grant the SSSBC jurisdiction over disputes about the interpretation and application of Resolution 7 of 2000 is incorrect. Clause 5 of the constitution of the SSSBC deals with powers and functions of the SSSBC. It re-affirms the powers of the SSSBC stipulated in Section 28 of the LRA which provides in clear language the powers and functions of Sectoral Councils. It excludes the power over and the function of entertaining disputes about interpretation and application of PSCBC collective agreements.

[12] The applicant provided no basis for the argument that the dispute and interpretation in question affected the Safety and Security Sector only and fell within the registered scope of the SSSBC giving the SSSBC jurisdiction over the dispute regarding the interpretation and application of Resolution 7 of 2000. This argument cannot be correct because the

interpretation of Resolution 7 of 2000 does not affect only the Safety and Security Sector.

[13] The applicant's argument that in terms of Section 127 of the LRA, the CCMA is the only forum with jurisdiction because it accredits bargaining councils and allow them to perform all dispute resolution functions is inconsistent with his argument that the SSSBC has jurisdiction over disputes concerning the interpretation and application of Resolution 7 of 2000. Section 127 of the LRA is of no relevance in disputes involving the interpretation and application of collective agreements.

[14] The information on the PSCBC website which the applicant seeks to rely on in proving that the SSSBC has jurisdiction over the dispute that was before the arbitrator does not constitute authority. Authority on which forum has jurisdiction over the interpretation and application of Resolution 7 of 2000 is contained in the collective agreement itself read with section 24 of the LRA. Even the information on the website states that the PCSBC will not have jurisdiction over disputes about the interpretation and application of a PSCBC Resolution if there is a Sector Bargaining Council that has jurisdiction. The applicant has failed to provide the correct basis for claiming that the SSSBC has the necessary jurisdiction.

[15] It is true that the footnotes on page 74 of the SSSBC constitution state that the SSSBC has jurisdiction over disputes referred to in Section 24(1) of the LRA. Section

24(1) of the LRA provides that a dispute about the interpretation or application of a collective agreement must be resolved in terms of the conflict resolution clause of that collective agreement. The footnotes therefore do not detract from the version that the PSCBC has jurisdiction over the dispute before the arbitrator as its conflict resolution clause provides that conflict arising from the interpretation and application of Resolution 7 of 2000 must be resolved in terms of the PSCBC conflict resolution procedure.

[16] The applicant argued that the CCMA has jurisdiction over the dispute that was before the arbitrator on the grounds that Section 38 of the LRA provides that if there is a jurisdictional dispute between the Council and a Sectoral Council as to whether these procedures or the Sectoral Council's procedures apply, any party to the dispute may refer the dispute to the CCMA. The dispute falls outside the ambit of section 38 of the LRA because it is not a jurisdictional dispute between bargaining councils.

[17] For these reasons the applicant has no reasonable prospects of success on appeal.

[18] The application for leave to appeal is therefore dismissed with costs.

Date of judgement: 27 September 2011

For the Applicant: Adv SR Mthombeni

Instructed by: S F Mkwanaazi & Associates

For the Respondents: Adv LR Naidoo

Instructed by: The State Attorney