

REPUBLIC OF SOUTH AFRICA



THE LABOUR COURT OF SOUTH AFRICA, BRAAMFONTEIN

Case no: J1189/2015

In the matter between:

DAIMLER FLEET MANAGEMENT

SOUTH AFRICA (PTY) LTD

1ST APPLICANT

THE INDIVIDUALS LISTED

10

IN ANNEXURE A

2nd to Further applicants

("the employees")

and

BIDVEST BANK LIMITED

First Respondent

TELKOM SA (SOC) Ltd

Second Respondent

Heard: 3 July 2015

Delivered: 6 July 2015

Summary: urgent application: struck off the roll with costs for lack of urgency

JUDGMENT

- [1] GUSH J: This is an application brought as a matter of urgency by the applicants for an order that “the cessation of the rendering of fleet management services by the first applicant to the second respondent and the commencement of the rendering of the management services by the first respondent to the second respondent, is declared to constitute the transfer of the business from the first applicant to the first respondent in terms of section 197 (2) of the Labour relations act 66 of 1995”, and ancillary relief.
- 10 [2] The application is opposed by both first and second respondents who dispute that the application is urgent.
- [3] The parties agreed that the matter would commence by determining whether or not the application was urgent and if found to be urgent would be adjourned to a date to enable further preliminary points to be raised and the merits to be argued.
- [4] The applicants had provided the second respondent with fleet management services for a number of years. The contract between the applicant and the second respondent was due to end on 31 March 2015 and during August 2015 the second respondent published what
- 20 is referred to as a “request for proposal” or tender for its fleet management services.

[5] On 31 October and 18 November 2014 the second respondent advised the applicant that its tender had been unsuccessful and that the first respondent had been appointed as the new service provider with effect from 1 April 2015.

[6] The question of whether section 197 of the Labour relations act would apply to the awarding of the contract revenue service provider had arisen during 2013. The applicant had on 15 November 2013 recorded that it believed section 197 to be applicable and on 26 November 2013 the second respondent made it clear that it believed the section was not applicable.

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[7] Whilst there was some ambivalence regarding the applicability of section 197 after the award of the contract revenue service provider it is abundantly clear that by 25 March 2015 the applicant was aware that this issue was in dispute. So much so that the applicant saw fit to pass a resolution:

That Daimler fleet management institute an urgent application against Telkom SA Soc Ltd and Bidvest in the Labour Court, for declaratory and such further relief that may be necessary, concerning section 197 of the Labour Relations Act 1995

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[8] At the same time there was a further dispute between the applicant and the second respondent regarding the applicant's obligation to

continue rendering services during a 3 month lead out phase from 1 April to 30 June 2015 and the applicant at the same time resolved to approach the High Court in this regard.

[9] In Accordance with the resolution the applicant made an application to the high court regarding the lead-out phase issue, but did not apply to the labour court to resolve the section 197 dispute.

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10 [10] The dispute between the applicant and the second respondent regarding the lead out phase is recorded in the judgement of the High Court as follows:

In broad basic terms, the dispute can be described as follows: Daimler insists that any obligations which it may have to discharge during the lead out phase do not include the supply of vehicles to Telkom. Telkom argues that on a proper interpretation the lead out phase makes provision for the vehicles to remain available to Telkom during the lead out phase, to be gradually phased out and replaced by Bidvest during this period.

20 [11] The court ordered the applicant inter alia to “during the lead out phase, 1April to 30 June 2015, render reasonably necessary

assistance to enable Telkom to transfer the provision of the services the new service provider, Bidvest, ...”.

[12] It is abundantly clear from this and the voluminous papers filed in this matter that the effective “takeover” of the service by the first respondent took place on 1 April 2015, albeit that the applicant was in terms of its contract with the second respondent obliged to assist for a three month period.

[13] The relevant or effective date therefore for the purpose of determining when a transfer in terms of section 197 took place is 1 April 2015.

10 [14] This application was only filed on 12 June 2015 to be heard on 26 June 2015, some four days before the end of the lead out phase.

[15] This application was only filed on 12 June 2015 to be heard on 26 June 2015, some four days before the end of the lead out phase.

[16] Having considered the applicant's submissions I am not persuaded that the urgency the applicant endeavours to rely on was not self-created. The contract with the applicant (aside from its lead out phase obligations) came to an end on 31 March 2015. The first respondent took over the service on 1 April 2015 and it commenced rendering services to the second respondent on the same day. It is so that the applicant was obliged to assist the second respondent during the lead out phase but this does not alter the fact that the effective date of the commencement of the new contract was 31 March 2015.

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[17] The applicant was clearly aware of the dispute regarding the applicability of section 197 to the award of the contract to the first respondent and resolved timeously to approach this court in order to resolve this dispute. It elected not to do so apparently for tactical reasons pertaining to the ultimate determination of the applicability of S197.

[18] The matter was urgent on 25 March 2015. It is not urgent today.

[19] In the circumstances and for the reasons set out above, I make the following order:

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ORDER

- The applicant's application is struck off the roll for lack of urgency.
- The first applicant is ordered to pay the first and second respondents' costs. Such costs include the costs of two counsel.

- - - - -

D H Gush

Judge of the Labour Court of South Africa

COUNSEL FOR APPLICANT: ADV MYBURG

20 COUNSEL FOR RESPONDENT: ADV REDDING
ADV BADENHORST

DATE OF JUDGMENT: 2015-07-06



CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, ***in as far as it is audible*** the foregoing is a **VERBATIM** transcription of the proceedings as was ordered to be transcribed by iAfrica Transcriptions and which had been recorded by Digital Court Recording Services by means of a digital recorder.

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DAIMLER FLEET MANAGEMENT SA

Applicant

and

BIDVEST BANK LTD
TELKOM SA LTD

1st Respondent
2nd Respondent

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None.



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