



**IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

**JUDGMENT**

Not Reportable

Case Number: JR2719/13

In the matter between:

**MINISTER OF POLICE**

**Applicant**

and

**CONSTABLE F. NOMDO**

**First Respondent**

**POPCRU**

**Second Respondent**

**Date heard: 14 October 2015**

**Delivered: 8 February 2016**

---

**JUDGMENT**

---

**RABKIN-NAICKER J**

- [1] The applicant relies on section 158(1)(h) of the LRA and/or PAJA to review a decision by the Appeal Authority of the South African Police Services. The Appeals Authority of the SAPS was established in terms of paragraph 17(1) of the Regulations for the SAPS. The Regulations reads as follows:

“17. Appeal –

- (1) An appeals authority is hereby established.
- (2) The appeals authority comprises of a person or person appointed by the National Commissioner to consider appeals or a specific appeal in terms of these Regulations.
- (3) An employee may appeal a finding or sanction in the form determined by the National Commissioner.
- (4) The employee must, within ten (10) working days of receiving the notice of the final outcome of the hearing, submit the appeal to the administrative office of the appeals authority.
- (5) The appeals authority may on good cause shown condone the late lodging of an appeal.
- (6) The appeals authority must consider the appeal and, in the event that the appeals authority decides that a hearing is required, the appeals authority must notify the appellant of the date and place of the hearing.
- (7) The appeals authority may –
  - (a) uphold the appeal; or
  - (b) reduce the sanction to any lesser sanction allowed in terms of regulation 15 (1); or
  - (c) confirm the outcome of the disciplinary hearing.
- (8) The employer must immediately implement the decision of the appeals authority. Where the appeals authority decides to reduce the sanction or to confirm the outcome of the disciplinary hearing, the sanction will be implemented by the employer from the date of the decision of the appeals authority.
- (9) The appeals authority must finalise an appeal within (30) working days from the date of the receipt of the appeal, failing which in cases where the employee is on precautionary suspension or temporarily transferred, he or she must resume duties immediately and await the outcome of the appeal.”

- [2] The decision to uphold the first respondent appeal was, according to the founding papers, one in which the Appeals authority of the SAPS was acting *qua* employer and the functionary was fulfilling his duties in terms of the applicable legislation.
- [3] The first question that the court has to consider is whether a proper application is before it, given that neither the appeal authority nor the functionary himself is joined in the application. Joinder is a matter for the Court to decide even if the parties to the relevant litigation do not raise the point or insist on the joinder of another party<sup>1</sup> A court will order the joinder of another party to ensure that all the parties interested in the subject-matter of the dispute and whose rights may be affected by the judgment of the court are before it to avoid a multiplicity of actions and to avoid a waste of costs.<sup>2</sup> It is generally accepted that what is required is a legal interest in the subject-matter of the action which could be prejudicially affected by the judgment of the Court.<sup>3</sup>
- [4] In **Member of the Executive Council, Department of Education, Eastern Cape v Gqebe**<sup>4</sup> the LAC stated that:

“[33] It is settled law that where a person or entity has a direct and substantial interest in the outcome of the proceedings such a person and/or entity should be joined in the proceedings (*Public Servants Association v Department of Justice & others* (2004) 25 ILJ 692 (LAC); [2004] 2 BLLR 118 (LAC)). In review applications, it is necessary to cite the arbitrator and/or CCMA or the relevant bargaining council. (Cf *I Dlala v Commissioner for CCMA & another* [1999] 7 BLLR 670 (LC) at para 19; *Johnson v CCMA & others* (2005) 26 ILJ 1332 (LC); [2005] 8 BLLR 796 (LC) at para 6; *Duda v MEC for Gauteng Department of Education & others* (2001) 22 ILJ 1637 (LC) at para 23; *De Beers Consolidated Mines Ltd v CCMA & others* (2000) 21 ILJ 1051 (LAC); [2000] 9 BLLR 995 (LAC) at para 15; see also *Cloete v Evander Gold Mines Ltd* [2001] 4 BLLR 433 (LC) at para 36.

<sup>1</sup> *Toekies Butchery (Edms) Bpk en Andere v Stassen* 1974 (4) SA 771 (T) at 774G--H; *Harding v Basson and Another* 1995 (4) SA 499 (C) at 501D--E.

<sup>2</sup> *Harding v Basson and Another supra* at 501I--J.

<sup>3</sup> see *Henri Viljoen's case supra* at 167

<sup>4</sup> (2009) 30 ILJ 2388 (LAC)

[34] In *casu* the Labour Court should have afforded both the arbitrator and the relevant bargaining council an opportunity to make representations on the issue relating to whether the award fell to be set aside or not.”

[5] In this matter the Appeals Authority, one Colonel JR Mokwena, should have an opportunity to depose to a affidavit, in his representative capacity, as to whether the decision stands to be set aside. I therefore intend to make an interlocutory order in this matter as follows:

Order

1. It is ordered that Colonel JR Mokwena *N.O.* is joined as third respondent to these proceedings.
2. The applicant is directed to serve upon the third respondent within 21 days of the date of this order copies of all pleadings and papers filed in this application.
3. The third respondent is directed to answer thereto within 10 days of date of service.
4. The matter may then be re-enrolled for final adjudication on the opposed motion roll.

---

H. Rabkin-Naicker

Judge of the Labour Court of South Africa

Appearances:

Applicant: Adv. M. Gwala instructed by the State Attorney

First Respondent: Chism Incorporated Attorneys

LABOUR COURT