



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS 338/15

In the matter between:

MAUREEN ANN PEINKE

Applicant

and

BOEHRINGER INGELHEIM (PROPRIETARY) LIMITED

First Respondent

JARDINE LLOYD THOMPSON

(PROPRIETARY) LIMITED

Second Respondent

CRS HR PAYROLL SOLUTIONS

Third Respondent

Heard: 18 May 2018

Delivered: 2 November 2018

Summary: An application for joinder cannot succeed when the applicant has not shown the respondent's direct and substantial interest in the matter.

JUDGMENT

LALLIE, J

- [1] The applicant was employed by the first respondent. Subsequent to the termination of the employment relationship she referred an automatically unfair dismissal dispute to this Court. Pursuant to the filing of the response to

the statement of claim by the first respondent the applicant filed the application at hand seeking an order that the second and third respondents be joined as parties. In this application the applicant seeks an order against the third respondent only. The application is opposed by the third respondent. The applicant's basis for the relief she is seeking is that in or during September 2015, she became aware that her functions were outsourced to the third respondent. The third respondent denied the applicant's averment. The applicant did not file a replying affidavit.

- [2] In order to have the third respondent joined as a party, the applicant has to prove that the third respondent has a direct and substantial interest in the matter. It was argued on behalf of the third respondent that the applicant laid no basis to draw a nexus between the first and the third respondents. It therefore has no substantial interest in the main case. The applicant denied having failed to establish that the third respondent has a direct and substantial interest in her automatically unfair dismissal dispute.
- [3] The applicant did not lay a factual foundation for her averment that the third respondent should be joined as a party. The allegation that she became aware in 2015 that her duties had been outsourced to the third respondent is insufficient. I do not accept her argument that she had no duty to file a replying affidavit and deal with the third respondent's denial that her duties were outsourced to it. After the third respondent had denied a material averment in its answering affidavit, the applicant had an obligation to reply particularly because the nexus she sought to create between the first and third respondent was not substantiated in the founding affidavit. The applicant did not disclose the manner in which she became aware of the alleged outsourcing, its timing as well as the entity which outsourced her duties. I am not convinced by the applicant's argument that the facts on which the decision on joinder should be based will become clear during the main case. For the third respondent to be made a party to the main case and incur costs of opposing it, it is for the applicant, who seeks the third respondent to be joined, to prove the legal basis for the joinder. In this case the applicant has not succeeded.

[4] The third respondent sought a costs order against the applicant on the basis that her case has no merit. I am not convinced that the law and fairness justify a costs order against the applicant. Although she has not succeeded, the applicant's attempt to join the third respondent as a party was not unreasonable.

[5] In the premises, the following order is made:

Order:

1. The application to join the third respondent as a party to the main application is dismissed.

Z. Lallie

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate Saunders

Instructed by: Fluxmans Inc

For the Respondent: Advocate Keijser

Instructed: Ken Mcdade Attorneys

LABOUR COURT