IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J1366/19

In the matter between:

CATHRINE MBUYISA & 115 OTHERS **Applicants**

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA **First Respondent**

UNKNOWN CONTRACT CLEANING COMPANIES

OPERATING AT PARK STATION, JOHANNESBURG **Second Respondent**

Heard: **6 June 2019**

Delivered: **11 June 2019**

JUDGMENT

TLHOTLHALEMAJE, J

[1] The applicants approached the Court on an urgent basis to seek interim relief declaring the 'on-going lockout by the first and second respondents to be unprotected and unlawful'. They further seek orders interdicting and ordering the respondents to end the lockout, and to pay them their normal remuneration; and further ordering the security guards at Park Station in Johannesburg to allow them to enter the premises and perform their normal duties.

[2] The applicants seek relief against the first respondent (PRASA) and unnamed contract cleaning companies cited as the second respondent. Various preliminary points were raised in the answering affidavit filed and served by PRASA. The matter was initially enrolled for a hearing on 4 June 2019 and was removed from the roll to enable the applicants to file a replying affidavit. The applicants were self-represented in these proceedings and it appears from the papers that they were assisted by an entity called Casual Workers

Advice Office in drafting their founding affidavit. A replying affidavit was indeed filed and served, albeit it was not signed by the deponent.

[3] The urgent application is brought before the Court against the following background;

3.1 The individual applicants are according to PRASA, employed by various service providers to provide cleaning services at its train stations, including at its Park Station in Johannesburg. These service providers are Bonnie and Clide Projects; FABS Projects; Khuthala Africa Trading and Projects; Maboka Cleaning; Mushoma Security Services and Projects; Natty and Skizo Trading and Projects; and Motasedi Trading Projects.

3.2 The individual applicants' contention is that they are part of a larger group of employees who have been engaged to provide services at PRASA, and had since 2017, engaged with it to be insourced and be directly employed by it instead of the contract service providers. They further alleged that they do not belong to any recognized union.

3.3 It is common cause that as a result of this dispute, the applicants on 2 May 2019, began protests at Park Station. Attempts by PRASA to resolve the applicants' grievances were unsuccessful and the protests had continued into 3 May 2019. This resulted in PRASA having to approach the High Court on an urgent basis on 4 June 2019. Further attempts by PRASA to get the service providers to intervene were unsuccessful. An interdict was then obtained on 6 May 2019 prohibiting the applicants from gathering and protesting at Park Station. PRASA's contention is that the protests were marred by violent conduct and threats by the employees towards other employees, commuters and members of the public.

3.4 According to PRASA, despite the interdict, the protests and pickets had continued at Park Station, necessitating the enlisting of the members of SAPS, which led to the arrest of some of the applicants. Upon their release on 8 May 2019, they had returned to Park Station on 9 May

2019 to continue with their protests and pickets. The applicants denied that they had returned with the intention to continue with the protests, and contended that they sought to resume their duties when they were 'locked out'. They were however denied access by security personnel deployed by PRASA. This had led to the application before the Court.

[4] PRASA's case is that the application ought to be dismissed or struck off the roll on a variety of grounds, including that the matter is not urgent, and I agree.

[5] The issue of whether a matter should be enrolled and heard as an urgent application is governed by the provisions of Rule 8 of the Rules of this Court[1], which require an applicant seeking urgent relief to adequately and in detail, set out in the founding affidavit, the reasons for the urgency, the circumstances which render the matter urgent, and the reasons why substantial redress cannot be obtained at a hearing in due cause[2]. The import of these requirement is that the procedure set out in Rule 8 is not there for taking.

[6] It is further trite that the Court would refuse to accord a matter urgency where a party fails to approach it with the necessary haste. It is thus incumbent upon the aggrieved party to approach the court without delay for a remedial relief. In this case, it was common cause that the basis upon which the applicants approached the Court for relief was when they were prevented from rendering their services on 9 May 2019. They had only approached this Court on or

[1] See *Jiba v Minister: Department of Justice and Constitutional Development and Other* (2010) 31 ILJ 112 (LC) at para 18, where it was held that;

> 'Rule 8 of the rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and why urgent relief is necessary. It is trite law that there are degrees of urgency, and the degree to which the ordinarily applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self-created when seeking a deviation from the rules.'

[2] *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2012] JOL 28244 (GSJ) at para 6, where it was held that;

> '…. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.'

about 4 June 2019, and no attempt was made to explain the reason it took about four weeks for them to approach the Court, other than to aver that after obtaining advice, they had addressed a letter to PRASA on 22 May 2019, advising it that its actions amounted to an unprocedural lockout, and gave it until 24 May 2019 to end it. Even then, nothing is said about what was done between 9 and 22 May 2019, and 24 May and 04 June 2019, when this application was launched.

[7] A further concern is the reason that the applicants proffered for the matter to be treated as urgent. It is appreciated that a loss of remuneration as pointed out by the applicants has devastating effects on them and their dependants. It has however been held that the loss of salary and benefits, with the concomitant financial hardship, are not regarded as sufficient to establish urgency[3]. Other than the issue of financial hardship, no other basis was laid as to the reason the matter ought to be accorded urgency.

[8] Other than the fact that the applicants have not made out a case for the matter to be treated as urgent, in the founding affidavit, they had alleged that they had no knowledge of who the service providers were, as PRASA had concealed their identities from them. In the answering affidavit, PRASA had identified these service providers were, attached copies of contracts of service with these entities as annexures, which contracts further included the particulars of these entities.

[9] When the matter was removed from the roll, one would have expected that in the light of the issues of a misjoinder and jurisdiction having been raised, and the particulars of the service providers having been made available, the applicants would have made attempts to properly cite and join the service providers as second respondents. This was however not to be so.

[10] The applicants submitted in these proceedings that PRASA, and not the service providers was their employer. This however is belied by their own averments in the founding affidavit that their demand, that led to the dispute,

[3] *De Beer v The Minister of Safety & Security Services/ Police and Another* (2013) 34 ILJ 3083 (LAC); See also *Ledimo and Others v Minister of Safety and Security and Another* (2242/2003) [2003] ZAFSHC 16 (28 August 2003) at paras 29 - 33

was for PRASA to insource them and employ them directly instead of through contract companies[4]. They further acknowledged that it was through these service providers that their employment at PRASA was procured. In the light of these factors, the applicants have not established the basis upon which PRASA is joined in these proceedings, other than for convenience.

[11] Aligned to the above is the issue of jurisdiction. It is trite that this Court would refuse to grant relief in circumstances where an employer-employee relationship has not been established. In this case, other than the averments in the founding affidavit that points to an employment relationship with the service providers, in the answering affidavit, the applicants sought to rely on what appears to be bank statements to contend that PRASA was in fact the employer, as it had paid their salaries. They further contended that they received work instructions from PRASA management.

[12] It is trite that jurisdiction is determined on the basis of the pleadings, and not on the substantive merits of the case[5]. Furthermore, a case cannot be made out in the replying affidavit as the applicants have sought to do in this case. To the extent that the issues surrounding alleged payments of salaries by PRASA and instructions were raised in the replying affidavit, these carried little weight in demonstrating any employment relationship. Even if these issues were to be considered, the bank statements and receipt of work instructions from PRASA's management do not on their own in any event demonstrate an employment relationship.

[13] In the end, in the absence of the applicants having demonstrated any employment relationship between themselves and PRASA, the latter had correctly pointed out that this Court lacks jurisdiction to determine the dispute.

[14] In the light of the above conclusions, it follows that the applicants' application ought to be dismissed rather than being merely struck off the roll. I have further had regard to the requirements of law and fairness in relation to the

[4] At paragraph 11
[5] *Chirwa v Transnet Ltd* [2008] 2 BLLR 97 (CC)

issue of costs, and given the circumstances of this case, I am of the view that no such an award of costs should be made.

Order:

[15] In the premises, the following order is made;

1. The applicants' urgent application is dismissed.

2. There is no order as to costs

_____

E. Tlhotlhalemaje

Judge of the Labour Court of South Africa

Appearances:

For the Applicants: In Person (Ms C Mbuyisa)

For the First Respondent: Ms T Godlo of Msikinya Attorneys & Associates