



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: C840/19

In the matter between:

**MOTOR INDUSTRY ASSOCIATION
ON BEHALF OF MEMBERS**

Applicant

and

BIG APPLE MOTORS CC

Respondent

Heard: 3 January 2020

Delivered: 6 January 2020

Summary: Application to interdict a retrenchment – Court lacks jurisdiction – where section 189A does not apply – no referral to conciliation. Held: (1) application dismissed for want of jurisdiction.

JUDGMENT

MOSHOANA, J

Introduction

- [1] This is an unopposed application in terms of which the applicant trade union seeks to interdict a retrenchment. Papers in relation to this matter were first filed in the Labour Court Johannesburg to be heard on 31 December 2019. Subsequently, for reasons not apparent in the papers, similar papers were filed in the Labour Court Cape Town to be heard on 2 January 2020. In these papers, a prayer was added seeking retrospective reinstatement pending compliance with section 189 of the LRA. The arrangement was to hear this Cape Town matter over the telephone. On the day, I was advised by my associate that the applicant had sent a representative to the Johannesburg Labour Court in order to move the application. I directed that the matter be stood down to the following day in Johannesburg.

Background facts

- [2] Given the view I take at the end of this matter, it is unnecessary to set out all the background facts pertinent hereto. The applicant is a registered trade union, bringing this application on behalf of three of its members. It is unclear from the founding papers whether any of the members of the applicant were retrenched or are in the process of being retrenched. In the papers it is alleged that the respondent employs approximately 15 employees. Out of that number, the applicant has three of them as its members. One Ms Poggenpoel, a member of the applicant, was verbally informed on 11 December 2019 to attend a meeting on 12 December 2019. The said meeting happened whereat Ms Poggenpoel was informed that she was retrenched.

- [3] Subsequent thereto the applicant's officials and the respondent's official engaged in a barrage of correspondence over the issue of the retrenchment of Ms Poggenpoel. That culminated in the applicant launching the present application on 19 December 2019. The application stands unopposed.

Evaluation

- [4] This application is brought as one of urgency. The reasons for urgency are flimsy and self-serving. This Court was prepared to strike the matter from the roll for lack of urgency. However, having had regard to how badly the case was pleaded, if the matter was only struck off the roll, the applicant would have returned to this Court to unduly clog the roll of this Court with a hopeless matter.
- [5] The jurisdiction of this Court over procedural irregularities on matters involving what is known as mass retrenchment arises from section 189A (13) of the LRA. The provisions of section 189A (1) are clear. The section only applies to employers employing more than 50 employees. On the applicant's own version, the respondent employs 15 employees. Therefore, the provisions of section 189A (13) does not find application.
- [6] In a normal retrenchment situation, this Court's jurisdiction is ignited after referral to conciliation. There is no allegation that prior to approaching this Court a dispute alleging unfair dismissal based on the respondent's operational requirements was referred for conciliation. Therefore, the jurisdictional pre-requisites have not been met.
- [7] For all the above reasons, the Labour Court lacks jurisdiction to entertain this matter. Accordingly, the application is bound to fail.
- [8] In the results, I make the following order:

Order

1. The application is dismissed for want of jurisdiction.

G. N. Moshwana
Judge of the Labour Court of South Africa

Appearances:

For the Applicant : Mr N T Goba Union Official.

For the Respondent : No appearance.