THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No. 2025-112376

In the matter between:

GREGORY CLYDE HUTCHINSON	**Applicant**
and	
GLOBAL BUSINESS ADMINISTRATORS (PTY) LTD	**First Respondent**
WERNER ROETS ***N.O.***	**Second Respondent**

Heard: **17 July 2025**

Delivered: **24 July 2025**

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date for hand-down is deemed to be 24 July 2025.

JUDGMENT

MAKHURA, J

[1] The applicant brings these urgent proceedings in which he seeks the following final relief:

> '2. That the Respondents be ordered to immediately reinstate the Applicant as the Chief Information Officer of the 1st Respondent;
>
> 3. That the Respondents be ordered to immediately to restore, and/or to allow, the Applicant access into the first Respondent's place of business at 2 Nicol Road, Bedforview, Johannesburg;
>
> 4. That the Respondents be ordered to immediately return the Applicant's [work] laptop to the Applicant;
>
> 5. That the first Respondent be ordered to pay the costs of this application on attorney and client scale;'

[2] On 2 July 2025, the applicant was presented with a notice of termination of the Service Level Agreement (SLA). The notice reads, inter *alia*, that:

> 'The service provider, through Gregory Clyde Hutchinson, was deployed in the role of the Chief Information Officer to the Alpha Group, which includes Alpha Insure and the wholly owned subsidiaries of Alpha Head Office Holdings, in terms of the Service Level Agreements entered into with the contracting companies.
>
> It is hereby confirmed that the contracting companies hereby terminate the service level agreements with immediate effect, and that the services of the service provider will no longer be required effective from 2 July 2025, for the reasons set out below…
>
> TAKE FURTHER NOTICE THAT you are not an employee of any entity within the Alpha Group…'

[3] The applicant was required to hand over all assets, including the laptop, to the Alpha Group Chief Operations Officer. He was also informed that he was no longer permitted access to the business premises and was reminded to send all outstanding invoices to the companies.

[4] Although Ms Nortje, who appeared for the applicant, sought to deny during the hearing that the above notice triggered the current proceedings, it is clear from the applicant's founding affidavit that this application was brought in reaction to the above termination notice. The applicant alleged that as a *"shareholder and employee"* of the first respondent and its related entities, the respondents have unlawfully denied him access to his office, the first respondent's premises, and confiscated his laptop. He then concludes that he was being prevented from performing his job in terms of his contract of employment.

[5] The high-water mark of the applicant's case is that he *"served as the Chief Information Officer of the first respondent and related sister companies"* and earned *"a gross monthly salary of R223 738.00"*. To support these allegations, he attached a copy of his payslip from the first respondent for October 2023. Ms Nortje submitted that the applicant remains an employee of the first respondent and that he seeks immediate *reinstatement*, *access to the business premises* and *return of the laptop*.

[6] The respondents raised a special plea of jurisdiction. They admitted that the applicant was an employee of the first respondent in October 2023 (as per the payslip). However, they contended that the employment contract between the applicant and the first respondent terminated at the end of December 2023 and that from January 2024, the applicant provided the services in terms of an SLA entered into between his company, Trinity Equity Holdings (Pty) Ltd (Trinity) on the one hand and Insure HR (Pty) Ltd and Alpha Head Office Holdings (Pty) Ltd (Alpha Group), which is a holding company of various companies, including the first respondent, on the other. In simple terms, the respondents disputed that the applicant is or was an employee of the first respondent. This is how they pleaded the non-existence of an employment contract between the applicant and the first respondent:

> 'The Respondents confirm that the Applicant was an employee until December 2023, but not thereafter. There exists no current or recent payslip for the

applicant as an employee, because he was not employed by the First Respondent, but rather by his company, Trinity, as stated above.

Moreover, the reason the Applicant has failed to allege any terms of this purported (but denied) 'employment', is that there exists no employment agreement and the applicant was not an employee of the First Respondent, Alpha Insure or the Alpha Group; accordingly, this Honourable Court cannot consider same.'

[7] It is common cause that the SLA referred to by the respondents was not signed, and that the applicant refused to sign a copy that was presented to him. The respondents contend that in terms of this SLA, the applicant would, through Trinity, submit invoices monthly for payment for the services rendered. The respondents attached copies of the tax invoices, addressed to Insure HR (Pty) Ltd and Corporate Staffing (Pty) Ltd (from January 2023 up to February 2025) and thereafter to Insure HR and Alpha Head Office Holdings. In terms of these invoices, Trinity claimed consulting fees, gym fees, pension and parking from Alpha Group and consulting fees from Insure HR.

[8] In reply, the applicant contended that he was appointed and employed by the first respondent as the CIO and assisted other affiliated companies. He insisted that he remains an employee of the first respondent. He disputed that he signed an SLA with any Alpha Group-affiliated companies or that he verbally concluded such an agreement. The applicant contended that he refused to sign the SLA when it was presented to him. Furthermore, the applicant denied that his employment terminated in December 2023 as alleged and submitted that the respondents failed to plead how his employment was terminated. He pleaded that:

'I will not entertain the issue of the SLAs any further as I have not signed them. I note that the deponent alleges a verbal contract with regards to the SLAs, which I deny. I submit herein that when the SLAs were presented to me, my intention was always for them not to be signed, that is why my signature does not appear on same, nor on any document the Respondents can produce containing my counter signature. A copy of two such unsigned SLAs is attached hereto as annexure "H1 and H1.1".

At no stage prior to me being presented with the one sided signed SLA's, or thereafter, did my role or impression to other staff, or my duties change. During my employment up until my abrupt ejectment off the premises I reported to the CEO / COO of the Managing Company. Upon my abrupt ejectment, I returned to the representatives of the company the work equipment, being the confiscated laptop, which I was provided with to perform my duties.'

[9] The applicant's best effort to dispute the tax invoices, which reflect Trinity's details, the invoice number, the bank details and the amounts due for payment, was:

> 'I further wish to state that the invoices referred to by the Second Respondent as annexures "DRW6" were not generated by myself, nor were they generated by my company, and that is why they do not contain my signature or the Trinity letterhead. These were all generated by the Respondents, or I would assume people under the control of the Respondents.'

[10] Despite disputing the terms of the unsigned and verbal SLA, in his heads of argument, the applicant submits that if the facts of the matter are considered, including the SLA, he is, for all intents and purposes, an employee of the first respondent.[1]

[11] This Court derives its jurisdiction from section 157 of the LRA and its powers are outlined in section 158 of the LRA. Its concurrent jurisdiction with the High Court is derived from section 77 and its powers in section 77A of the Basic Conditions of Employment Act[2] (BCEA).

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[1] If the applicant's allegation is accepted that he earned R223 738.00 per month (which is disputed by the respondents), section 200A of the Labour Relations Act 66 of 1995 (LRA), does not apply. For discussion on the nature of the relationship, whether it is a contract of or service, see *SA Broadcasting Corporation v McKenzie* (1999) 20 ILJ 585 (LAC); [1998] ZALAC 13 at para 10; *Denel (Pty) Ltd v Gerber* (2005) 26 ILJ 1256 (LAC); [2005] 9 BLLR 849 (LAC) at para 93; *State Information Technology Agency (SITA) (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* [2008] ZALAC 1; (2008) 29 ILJ 2234 (LAC) at para 12.

[2] Act 75 of 1997.

[12] The applicant seeks, in terms of paragraph 2 of the notice of motion, reinstatement. It is now settled law that reinstatement is a remedy available in terms of section 193(1) of the LRA for unfairly dismissed employee.[3] The applicant's case is that he remains employed by the first respondent. After discussing the issue of jurisdiction and competency to grant the relief of reinstatement with Ms Nortje, who appeared for the applicant, the relief was abandoned.

[13] The applicant persists with the two remaining orders: access to the first respondent's premises and the return of the work laptop. In his papers, the applicant contends that this Court has jurisdiction in terms of section 77(3) read with section 77(A)(e) of the BCEA to grant the relief sought. The ground upon which the relief is sought is that the first respondent repudiated the contract of employment by refusing to comply with the terms thereof.

[14] The question is which contract did the first respondent repudiate? Other than stating that he "served" as the first respondent's CIO, the applicant has not pleaded any terms of the employment contract, nor has he attached a copy of the contract of employment. This point was taken by the respondents in their answering affidavit.

[15] In reply, the applicant has not disputed that from January 2024, he had been claiming payment from Insure HR and Corporate Staffing (later Alpha Head Office Holdings) by submitting invoices through his company, Trinity, for services rendered. Although he disputes the conclusion of the SLA, he acknowledged that two copies of the SLA were presented to him, which he refused to sign. He submitted that the SLA was one-sided. The applicant attached an old payslip, and the respondents asked him to produce a payslip after December 2023, which he failed to provide. The applicant, though denying the invoices, could not provide any proof of how he received the alleged salary from the first respondent. He did not dispute that Trinity invoiced Alpha Head Office Holdings nor that Trinity was paid the amounts reflected in the invoices.

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[3] *Steenkamp & others v Edcon Ltd (National Union of Metalworkers of SA intervening)* 2016 (3) SA 251 (CC); (2016) 37 ILJ 564 (CC) at paras 189 and 192.

[16] The duty to prove that he was an employee rests with him, not the respondents. He was aware, at least on 2 July 2025, that the respondents did not recognise him as an employee. His application simply made a bald allegation that he was an employee. This, in a case where he seeks a final relief.

[17] It is trite that in motion proceedings, a final order can be granted if the facts stated by the respondent together with the admitted facts in the applicant's affidavits justify the order, unless if the allegations or denials by the respondent do not give rise to a genuine or *bona fide* dispute of fact, or they so far-fetched or so untenable that they fall to be rejected.[4]

[18] Having considered the applicant's affidavits and the respondents' answering affidavit insofar as they relate to an enquiry whether the applicant was an employee, I find that the applicant has failed to establish in his founding and replying affidavits that he is an employee of the first respondent. The allegations made by the respondents that the applicant was not an employee, considered against the applicant's failure to attach the alleged contract of employment or to plead and substantiate when and how the contract of employment was concluded and the terms of that contract insofar as it relates to issues such as the monthly salary, his entitlement to a work laptop and to report for duty at the first respondent's premises, raised a genuine or *bona fide* disputes of fact. The applicant's company, Trinity, concluded a contract of service with Alpha Head Office Holdings to render services to Alpha Head Office Holdings and its subsidiaries, including the first respondent. For the services rendered, Trinity submitted tax invoices to Alpha Head Office Holdings. Trinity invoiced for consulting, gym and parking fees and for pension.

[19] Based on the above, the applicant, despite his reliance on the BCEA, has failed to prove that he is an employee, and therefore, this Court's jurisdiction has not been

[4] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] ZASCA 51; 1984 (3) SA 623 (A) at 634E – I and 634A – C.

engaged. The special plea of jurisdiction must succeed, and the application must be dismissed for lack of jurisdiction.

[20] The respondents sought the costs of opposing this application. The application was emailed on Sunday, 13 July 2025, giving the respondents until 18h00 on Tuesday, 15 July 2025 to file an answering affidavit. The applicant received the termination notice for the SLA on 2 July 2025. He had eleven calendar days from 2 July 2025 to launch these proceedings, but only afforded the applicant no more than 48 hours to answer to the allegations therein.

[21] The application is misdirected and an abuse of this court's processes, particularly the urgent court processes. As the respondents stated in their answering affidavit, which I agree with:

> '… this application constituted nothing more than an abject abuse of the process, an opportunistic grab for relief, an unnecessary clutter on the Court's urgent roll and an invasion of the rights of the Respondents to participate in litigation in an orderly and reasonable manner.'

[22] The respondents should not be saddled with the costs of opposing this misdirected application. Although both parties sought punitive costs against each other, I am not persuaded that a case has been made out to warrant a costs order on an extraordinary scale.

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

<u>Order</u>

1. The special plea of jurisdiction is upheld.
2. The application is dismissed for lack of jurisdiction.
3. The applicant is ordered to pay the costs of the application.

M. Makhura

Judge of the Labour Court of South Africa

<u>Appearances:</u>

For the Applicant:	Ms N Nortje
Instructed by:	SG Seepamore Inc.
For the Respondents:	Mr A Jansen van Vuuren
Instructed by:	Engelbrecht Attorneys