



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JS 292/2023

In the matter between:

MICHELLE VENETA EPHRAIM AND 2 OTHERS

Applicants

and

DRG OUTSOURCING (PTY) LTD

Respondent

Heard: 03 November 2025

Delivered: 04 November 2025

Territorial jurisdiction: applicants employed by a South African entity to render services to a USA employer in the USA and Nigeria. On the principle established by the LAC in *Sorrell v Petroplan Sub-Saharan Africa (Pty) Ltd* (2025) 46 ILJ 128 (LAC) this Court lacks jurisdiction to determine their unfair dismissal claim. Matter removed from the roll.

JUDGMENT

HARVEY AJ

Introduction

- [1] This matter was enrolled as a 3-day trial. However, what I have before me are two special pleas belatedly raised by the respondent, DRG Outsourcing (Pty) Ltd (DRG).
- [2] The three applicant employees were all dismissed on 19 January 2023 pursuant to a retrenchment process. They referred an unfair dismissal dispute to the CCMA, which remained unresolved, and subsequently instituted proceedings in this Court alleging that their dismissals for operational requirements were both substantively and procedurally unfair. They seek reinstatement or maximum compensation.
- [3] It appears that DRG initially elected to represent itself, and only instructed the employer's organisation, NEASA, to act on its behalf at a late stage. A few weeks before the matter was due to be heard, DRG applied for a postponement in order to amend its statement of response so as to introduce the special pleas. The applicants, who have been awaiting the hearing for almost three years since their dismissals, agreed that the amendments would not be opposed and that the matter should proceed on the allocated date, with the special pleas to be argued and determined. Both representatives confirmed that the Court should regard the statement of response as having been amended accordingly.
- [4] The first special plea is that this Court lacks territorial jurisdiction; the second is one of non-joinder of the entity to whom the employees' services were provided by the respondent, which is a company called 54Gene Inc. (54Gene).
- [5] The parties agreed that no witnesses would be called and that the facts relevant to the preliminary issues appear from the jointly compiled and filed trial bundle. That bundle, prepared by agreement, contains the employment contracts, correspondence, and documentation relating to the retrenchment process, and it serves as the evidentiary foundation for determining the preliminary issues.

The jurisdictional plea

- [6] DRG contends that although the applicants were recruited and paid by a South African entity (themselves), they in fact performed work for its client, 54Gene, reporting to its personnel in the United States and Nigeria.
- [7] The issue is accordingly whether, on the facts, this Court has territorial jurisdiction to determine the unfair dismissal dispute.
- [8] If the Court has jurisdiction, I must also determine whether 54Gene has a material interest in the matter requiring it to be joined.

The governing principles

- [9] Jurisdiction is a question of law and fact. The Labour Appeal Court in *Sorrell v Petroplan Sub-Saharan Africa (Pty) Ltd*¹ noted that whether the Labour Court has territorial jurisdiction in any matter referred to it is a factual issue and must be determined with reference to the location of the physical workplace of the employee, not the place where the contract is concluded. Where employees are placed through a recruiter or TES, it is the location of the undertaking for which the employee is contracted to provide services, as opposed to the location of the (intermediary) undertaking that recruits personnel or administers or manages the contract on behalf of its client.
- [10] The LAC in *Sorrell* further held that the fact that section 198 of the LRA stipulates that an employee employed by a TES is employed by the TES, and not by the client, does not alter this conclusion. That is so, the court held, because the undertaking of an entity that recruits, manages or pays personnel who work not for it, but for a client, is an undertaking distinct from the undertakings of the clients to which such personnel are provided.

The facts

- [11] The applicants' employment contracts assigned them to DRG's client 54Gene in either Washington D.C. or Lagos, Nigeria, and recorded that 'this written agreement will constitute your contract of employment with the Client'.

¹ *Sorrell v Petroplan Sub-Saharan Africa (Pty) Ltd* (2025) 46 ILJ 128 (LAC) (*Sorrell*).

- [12] 54Gene is a biotechnology company engaged in genetic research. It is the undertaking for which the employees were contracted to provide services. By contrast, the business of DRG is the provision of human-resources, payroll and compliance services.
- [13] The retrenchment process was facilitated by DRG, which refers to itself as an 'employer of record' responsible for ensuring compliance with South African labour law. It clearly saw itself as duty-bound to assume the responsibilities of a retrenching employer for the purposes of procedure under the Labour Relations Act.

Arguments and evaluation

- [14] Against that factual background, the competing submissions and the Court's assessment of them are as follows.
- [15] Mr Hayward, for DRG, argued that the applicants' work was carried out for 54Gene's undertakings in Washington D.C. and Nigeria, and that these undertakings were entirely distinct from any South African business. He submitted that, applying the reasoning in *Sorrell*, the Labour Relations Act cannot apply because the undertakings to which the employees' services were rendered were located outside South Africa.
- [16] Mr Goldberg, for the applicants, advanced several arguments in support of this Court's jurisdiction. He submitted that the employment contracts were signed in South Africa under South African law; that payslips were issued by DRG Outsourcing; that DRG facilitated the section 189 process; and that DRG described itself as the 'employer of record'. He argued that, in substance, DRG was the true employer, and that the applicants' work was accordingly performed for a South African undertaking.
- [17] Those submissions cannot be sustained. Even if DRG regarded itself as obliged to comply with South African labour law in effecting the retrenchments, jurisdiction is a matter of fact and law, not self-characterisation. DRG describes itself on the court papers as an intermediary or 'employer of record' whose business it is to align HR strategies with business strategies for its clients. It does not itself conduct, or have any commercial interest in, the biotechnology

and genetic research enterprise carried on by 54Gene Inc., which is the undertaking to which the applicants rendered services.

[18] Under the principle affirmed in *Sorrell* the Labour Court lacks territorial jurisdiction to adjudicate the dispute. The proper course, as canvassed with both representatives, is to remove the matter from the roll.

[19] In light of the Court's conclusion that it lacks jurisdiction, it is unnecessary to determine the separate plea of non-joinder, even though the parties advanced argument on it.

Costs

[20] The applicants pressed for an order of costs on the basis that the jurisdictional and non-joinder objections were raised late, after they had already prepared for a three-day trial. Their frustration is understandable: the preliminary points could and should have been raised earlier, and their late timing resulted in wasted effort and expense. Nonetheless, jurisdiction is a threshold question that cannot be resolved by considerations of fairness or convenience. The respondent has succeeded on that point, and the Court is not persuaded that it acted unreasonably or in bad faith in doing so. Having regard to the requirements of law and fairness, and in terms of section 162 of the Labour Relations Act, the appropriate course is to make no order as to costs.

Order

[21] The matter is removed from the roll for lack of jurisdiction.

[22] There is no order as to costs.

SJ Harvey

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr A Goldberg, attorney

For the Respondent: Mr K Hayward, NEASA official

LABOUR COURT