

Delete whichever is not applicable

Reportable : yes / no

Of interest to other Judges: yes / no

Revised

25 March 1999

Signature

IN THE LABOUR COURT OF SOUTH AFRICA

(Held at Johannesburg)

Case No: J

469/99

In the matter between:

Applicant

and

Y)LIMITED

Respondent

REASONS FOR JUDGMENT

Revelas J:

- [1] The applicant contends that he was employed by Standard Bank Financial Services (Pty) Ltd (“Stanfin”) as a General Manager until 31 December 1998 and that with effect from 1 January 1999, Stanfin’s business was transferred as a going concern to the respondent. Accordingly, in terms of

section 197 of the Labour Relations Act, No 66 of 1995 (“the Act”), his contract of employment was transferred automatically to the respondent, which was obliged to employ him on the same terms and conditions as he had previously enjoyed at Stanfin. Instead, according to the applicant, the respondent offered him employment on terms and conditions, which were less favourable, in terms of remuneration, than he enjoyed at Stanfin. The applicant contended that the respondent had unilaterally changed his terms and conditions of employment, and he has referred this dispute on those grounds to the Commission for Conciliation Mediation and Arbitration (“the CCMA”).

[2] The applicant alleges, that by way of letter dated 1 February 1999, the respondent terminated the contract of employment then subsisting between himself and the respondent. The applicant’s case is that this termination constituted an unfair dismissal. That dispute, too, has been referred to the CCMA.

[3] Pending the final resolution of these proceedings the applicant argues, that he is entitled to the order sought in the notice of motion which reads as follows :

“Pending the final resolution of the proceedings instituted by the applicant against the respondent and/or Standard Bank Financial Services (Pty)Ltd in the CCMA... on 29 January 1999 and 6 February 1999 this respect of reference numbers GA 55843 and GA 56455;

2.1 An order setting aside the respondent’s termination of the applicant’s services,

2.2 An order directing the respondent to employ the applicant on the same terms and conditions as the applicant’s employment with Stanfin, alternatively on the same terms and conditions set out in annexure “N87” attached to this application.”

[4] The respondent’s case on the other hand, was as follows. The applicant was employed by Stanfin with effect from 31 December 1998. Stanfin ceased operating as a separate entity and its business was incorporated into the respondent’s three banking divisions. As a consequence, it engaged its employees in retrenchment consultations in terms of section 189 of the Act.

[5] Some of the employees of the respondent were retrenched and paid retrenchment packages. Others were able to procure offers of alternative employment from the respondent. The applicant formed part of the latter group since the respondent’s offer of alternative employment to him was comparable with the terms and conditions under which the applicant worked for Sasfin, he was not entitled to any severance pay having regard to section

196(3) of the Act.

[6] The applicant initially accepted the respondent's offer of employment with effect from 1 January 1999. He later repudiated that contract by asserting that he had accepted the offer subject to the qualification that he had done so under protest and with full reservation of his rights to dispute with the respondent, the view that the terms and conditions of the respondent's offer was comparable to those enjoyed by him whilst he was employed by Stanfin. The respondent argues that such termination was at the instance of the applicant and did not constitute a dismissal as contemplated by the Act. It was further the respondent's case that, in any event, since the business of Stanfin was not transferred as a going concern to the respondent, and since Stanfin did not agree with the respondent that it would transfer the applicant's contract of employment, section 197 of the Act, is not applicable to the facts of the matter before me. The applicant, according to the respondent, is therefore not entitled to the relief sought by him.

[7] The respondent raised the point of urgency as a *point in limine*. It was agreed that I should decide the question of urgency first and then, if necessary the merits of the application.

[8] The applicant contended that his application was urgent for the following reasons:

- (1) His reputation would be injured as a result of the summary dismissal ;
- (2) He would lose his membership of his medical aid scheme which he cannot afford;
- (3) There is a danger that the respondent could employ another employee in his position;
- (4) There was a prospect of serious financial embarrassment to him.

[9] The Act does not make provision for the kind of *status quo* relief as was found in section 43 of the Labour Relations Act, No 28 of 1956 (“the former LRA”). However, the Labour Court has very wide powers to grant urgent interim relief in terms of section 158(1)(a)(i) of the Act. The Labour Court is therefore empowered to grant relief tantamount to urgent reinstatement on an urgent basis. The court will however, only grant such relief, where an applicant is able to persuade the court that extremely cogent grounds for urgency exist.

See: *National Union of Metalworkers of South Africa and others v Comark Holdings (Pty)Ltd* (1997) 18 ILJ 516 (LC) at 526 C-D

Fordham v O K Bazaars (1929) Ltd (1998) 19 ILJ 1156 (LC)

on & Others v University of the Western Cape, case number C645/98 (unreported)

South African Chemical Workers Union & Others v Sentrachem, case number J 789/99 (yet unreported)

[11] These above cases illustrate the principle that the Labour Court would only grant urgent interim relief amounting to *status quo* relief, in very special circumstances, has now been firmly established..

[12] I have considered the grounds for urgency raised by the applicant. Insofar as the applicant alleges that there would be an injury to his reputation and a possibility that the respondent could employ another person in his position, these are not factors which distinguish the applicant's case from any other dismissal case. The applicant has not demonstrated with reference to proper facts why his particular case is different in this regard.

[13] Financial hardship or loss of income is not regarded as a ground for urgency. Mlambo J in the *University of Western Cape* matter (*supra*) found that loss of income cannot establish a ground for urgency in an attempt to obtain urgent interim relief from this court. The applicant, in its founding

papers, has not put forward any evidencery detail with regard to injury to his reputation if he is not reinstated in his former position, by way of urgent interim relief.

[14] The applicant's main concern, as I understand it from reading his affidavit, is that his loss of membership of the medical aid scheme of which he was a member, constitutes a ground of urgency. According to the applicant, his wife suffers from an illness which requires her to be dependant on medical aid and he could not afford not being employed by the respondent, and being dismissed, he could not afford to pay for her medical expenses which she would have to incur due to his wife's illness.

[15] The applicant does not assert that he is unable to make ends meet in the period pending the resolution of the dispute. He has also not established in his founding papers, that there is no alternative remedy, other than approaching this court on an urgent basis, to secure medical care for his wife.

[16] There was also evidence before me by way of documents handed up to me, by consent, during the hearing of argument, that the respondent had applied on 1 March 1999 for the continuance of his medical aid benefits with the

respondent. On 5 March 1999 the applicant received a letter from the respondent stating the following :

“Following your telephone call last week I acknowledge receipt of your application form for continuation membership of Bankmed which has been forwarded to them for processing.

I am pleased to confirm that you will be eligible for continuation membership in accordance with the agreement that the Bank has made with Bankmed as you were a member of a Group Company Stanfin (Pty)Ltd, retrenched, and over the age of fifty years. As you acknowledged on the telephone, the contributions will be for your own account.

Yours sincerely ”

This letter is signed by the Head :Compensation and Benefits, of the respondent.

- [17] In the *South African Chemical Workers’ Union & Others* matter, (*supra*) I held that medical aid benefits, *per se*, does not establish special circumstances (in paragraphs 19-20 of that judgement). Medical aid benefits are often obtained in the same circumstances as general remuneration for services rendered. If a loss of income, which is the harshest consequence of

a dismissal, does not constitute a ground for urgent interim relief, (a trite principle), it has to be, that the mere loss of a medical benefit, *per se*, is not a ground for urgent interim relief either. Exceptional circumstances have to exist before urgent interim relief is granted on this ground.

[18] Even if I were to find that the applicant's personal circumstances surrounding the medical complications suffered by his wife, were a ground to grant interim relief, I cannot ignore the fact that the applicant was assured by the respondent that he would receive medical aid benefits from the respondent as late as 5 March 1999. This application was brought by the applicant only some days after he received this assurance.

[19] Since the applicant has failed to prove urgency, this application had to be dismissed. As far as the question of costs is concerned, the applicant has in the face of Labour Court decisions to the contrary, persisted that he is entitled to urgent interim relief amounting to a *status quo* order, when he had an alternative remedy available to him, namely a process of conciliation and adjudication/arbitration. In the normal course, costs should follow the result. I saw no reason to deviate in this particular case from this established principle.

[20] Consequently, the application was dismissed with costs.

E REVELAS

For the Applicant

Adv J Bester

Instructed by: M T De Bruin Attorneys

For the Respondent

Adv C.D.A Loxton & Adv A. E. Franklin

Instructed by : Deneys Reitz

This Judgement is also available on the Internet at Website :

<http://www.law.wits.ac.za/labourcrt>