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Mofokeng & Others v JAC Pallets Africa CC and Others (2009) ZALC 69

AC Basson, J

This was an application for leave to appeal to the Labour Appeal Court against an order of the Labour Court that the applicant must join the liquidator as interested party to the proceedings.

The main ground upon which leave to appeal was refused is on the basis that the first two parts of the order are interlocutory in nature and as such do not constitute a final order and is thus not appealable. Apart from this fact, the application has no merits on the facts.

Section 173 of the Labour Relations Act, No 66 of 1995 reads as follows:

"173 Jurisdiction of Labour Appeal Court

(1) Subject to the Constitution and despite any other law, the Labour Appeal Court has exclusive jurisdiction-

(a) to hear and determine all appeals against the *final judgments* and the *final orders* of the Labour Court; and

(b) to decide any question of law reserved in terms of section 158 (4)."

-----LABOUR NEWS-----

The court held that in terms of this section it is thus clear that where an order of the Labour Court does not have the effect of a final order, it is not appealable. The first two parts of the order granted by this Court does not have the effect of a final judgment and is thus not appealable to the Labour Appeal Court. It is only in the event of a final judgment or order that a judgment will be appealable to the Labour Appeal Court. The court referred to and at length quoted from the case of **Liberty Life Association of Africa Ltd v Niselow (1996) 17 ILJ 673 (LAC) at 676G-678D:**

The court held that although the above decisions dealt with the position under the now repealed Labour Relations Act, the same principle applies under the present Labour Relations Act namely that a flexible and pragmatic approach must be taken in order to determine the effect of the order. Bringing an appeal now will not necessarily lead to a more and cost effective final determination of the main dispute between the parties and will not decisively contribute to its final solution. Certainly, it also will not bring about the just and expeditious decision of the major substantive dispute between the parties. In the present matter the major substantive dispute is still pending before this Court and has not yet been ventilated by this Court.

The court held that in terms of the order granted, the matter was merely postponed *sine die* in the interests of fairness to allow the Applicant to **join the liquidator** as an interest party. This is certainly not a final order and does not finally dispose of the proceedings between the parties. It is trite that once an entity has been placed in liquidation, the liquidator steps in and becomes the relevant entity to deal with any claims against the close corporation. The effect of the order is therefore not to finally dispose of the matter. In fact, it does not dispose of the matter in any way at all.

The court held that this appeal will have the effect of dragging this matter out even longer and will in effect deny the Applicants their right to a speedy resolution of their dispute.

The court held that in terms of the second part of the order, the Applicants have been ordered to **amend its papers** within 10 court days of the date of the order. This also does not have the effect of a final order. This order has the effect of assisting the parties to bring the main dispute to a procedural point where this Court may be placed in a position where it can hear the merits of the dispute. It is for the Applicants to decide whether or not they want to amend their papers. The mere fact of their failure



-----LABOUR NEWS-----

to amend their papers does not, in itself, dispose of the application. At the very worst it may lead to the ultimate dismissal of the matter but this consequence does not flow from this order. Even where the parties ultimately comply with the order, they still have the remedy of applying for condonation for the late compliance of the order.

The appeal was dismissed with costs.

