

Sneller Verbatim/HDJ

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: JS622/01

2002-05-17

In the matter between

P J BEETS

Applicant

and

VESSEL INSPECTION SERVICES

Respondent

J U D G M E N T

WAGLAY J:

1. The CCMA issued a certificate indicating that the dispute referred to

it by the applicant against the respondent concerning an alleged unfair dismissal based on respondent's operational requirements remained unresolved. The certificate was issued on 19 March 2001.

2. On 27 July 2001 applicant's statement of case was filed. The filing sheet to the applicant's statement of case records that the documents filed on 27 July 2001 were:

"prepared and filed by Advocate Jeannine B Coetzee instructed by Silver & Warren Attorneys and in co-operation with Coetzee and Associates CC, the representative of the applicants."

This is repeated in paragraph 1 of the applicant's statement of case and the address given in the same paragraph, being the address at which the applicant would accept service of relevant documents is recorded as follows:

"29 Klub Street, Randpark, Telephone number 011-4769226/7, fax - 011-4769225, P O Box 4234 Cresta 2118"

3. On 1 November 2001 the applicant filed a schedule of documents, together with five documents as well as a request for default judgment.

4. On 7 December 2001 applicant filed two documents under cover of a

filing sheet. The two documents were as follows: Applicant's reply to respondent's application for condonation and applicant's reply to respondent's response. Although the file is paginated and indexed, neither respondent's application for condonation nor respondent's response is in the bundle of pleadings in the court file.

5. On 7 December 2001 applicant filed two affidavits in terms of the Rule 4(2)(b), stating:

- i) that the statement of case was telefaxed to the respondent on 27 July 2001; and
- ii) that the request for default judgment was telefaxed to the respondent on 6 September 2001.

Both these affidavits are deposed to by one Simone Scheepers and the telefax confirmation reports indicate that these documents were faxed from: Fax number: 011-4769225, Name: Coetzee and Associates.

6. On 4 April 2002 the Registrar set the matter down for default judgment for 8 May 2002. On 8 May 2002 a notice of withdrawal as attorneys of record was filed by Joubert Attorneys. They withdrew as attorney for the respondent herein.

7. On the same day (8 May 2002) this matter came before me for default judgement, the applicant being represented by one Advocate J B Coetzee. I postponed the matter to today, making the following order:

- "1. The matter is postponed to 17 May 2002;
2. Attorneys Silver & Warren who are on record as being applicant's attorneys of record, must under oath explain what is meant by the recordal in the documents filed that they act "in co-operation with Coetzee and Associates CC" and also why they have not signed any of the documents (pleadings) filed of record;
3. Advocate Coetzee who appeared on behalf of the applicant and who represented that she was briefed by Attorney Silver & Warren, must explain under oath the nature of her brief and her role, if any, in Coetzee and Associates CC.
4. The said affidavits must be filed by noon on 16 May 2002."

8. On 15 May 2002, under a filing sheet filed by Silver & Warren, applicant's attorneys (of 70C Oxford Road, Riviera, Johannesburg, P O Box 47153 Parklands 2121; telephone 486 2850, reference, Mr A Hindss/5734), affidavits deposed to by Janine Beatrice Coetzee (hereafter "Coetzee"); Anthony Hinds (hereafter "Hinds"), Peter Johannes Beets (hereafter "the applicant") were filed with this Court.

9. In her affidavit Coetzee explained that she is an admitted advocate. She then explains that Coetzee and Associates CC is a close corporation which "specialises in labour law and industrial relations". The said close corporation's managing member is one Anton Coetzee (hereafter "Anton") who is her husband, and its two other employees are Simone Scheepers and Leonie Steenkamp.

10. Coetzee further states that the close corporation consulted with the applicant and referred his dispute to the CCMA, more specifically that Simone Scheepers attended the conciliation proceedings with the applicant and liaised with CCMA in order to obtain a certificate of outcome of this dispute between the applicant and the respondent.

11. As the matter between the applicant and the respondent remained unresolved and had to be referred to this court for adjudication, she states in her affidavit: The close corporation which

"has no *locus standi* in the labour court requested Silver & Warren attorneys to act on behalf of the applicant to refer the matter to the Labour Court".

She adds:

"Silver & Warren thereafter instructed me to draft the statement of case which had to be drafted."

12. Coetzee's affidavit goes on to state that:

"There is no association between Silver & Warren Attorneys and Coetzee and Associates CC. The only co-operation which exists between Silver & Warren Attorneys and Coetzee and Associates CC is that Coetzee and Associates CC referred the matter to Silver & Warren ... to refer the matter to the Labour Court. Silver & Warren thereafter briefed me to draft the pleadings and represent the applicant in these proceedings."

13. A copy of the brief cover from Silver & Warren to Coetzee is annexed to her affidavit. This is dated 29 May 2001 and under the heading Brief records:

"Preparation of settlement of claim

Pre-trial

On trial."

14) Finally she states that there is no co-operation or association "of any manner whatsoever between Silver & Warren Attorneys and

Coetzee and Associates CC".

15) The affidavit from Hinds is to the effect that he is an admitted attorney, practising as a partner under the name and style of Silver & Warren. Hinds states that he was contacted by Anton on 29 May 2002: "[To]take over the matter and to act on behalf of the applicant herein. He then instructed advocate J Coetzee to prepare a statement of case and to act on behalf of the applicant for the trial herein in due course." He further confirms what Coetzee deposed to it in an affidavit. The applicant basically confirms what is contained in the affidavits of Coetzee and Hinds.

16. From the documents filed of record and the affidavits filed in response to the order of this court, the picture that emerges is this:

- i) Coetzee and Associates CC whose membership is not disclosed in this court is a labour consultancy who acted on behalf of the applicant in negotiations with the respondent company to reach a settlement of the dispute which applicant alleged he had with the respondent.
- ii) That notwithstanding the fact that Coetzee and Associates CC had no right of appearance at the CCMA it "attended conciliation

proceedings with the applicant" at the CCMA.

- iii) Since Coetzee and Associates could not represent the applicant at this court they contacted Attorneys Silver & Warren to be on record in the matter and that the attorneys simply forwarded a blank brief to Advocate Coetzee, the wife of the managing member of Coetzee and Associates CC to attend to the matter.
- iv) Coetzee drafted the applicant's statement of case with her address as the address on which all documents relating to applicant's matter would be dealt with, that is, Attorney Silver & Warren were to play no role whatsoever in the matter, other than forwarding a brief cover to Coetzee.
- v) That documents that were faxed to respondent as required by the rules of this court, were in fact faxed by Coetzee and Associates CC.

17. There is no indication whatsoever that the applicant ever consulted with any attorney from Silver & Warren. In fact, even before Silver & Warren were "requested" to "act" on behalf of the applicant, applicant was advised that if this matter was required to be referred to this Court, it would then be "required" to be referred to Silver & Warren Attorneys, and further, that an advocate "would be briefed" to represent him in this matter.

18. Applicant has not said that he ever consulted any attorneys from Silver & Warren or that he was required, or not required to pay any fees for their services. Hinds is also silent about this very important issue. In fact, there is no indication whatsoever that Silver & Warren Attorneys had any idea about the case that it had briefed Coetzee to deal with. Although Hinds states that he briefed Coetzee with a bundle of documents, he does not say what these documents were or how he came to be in possession of these documents. From his affidavit it is clear that neither he nor any one from Silver & Warren consulted with the applicant. It also does not appear that there was any consultation with any person from Coetzee and Associates CC.

19. Furthermore, Silver & Warren briefed Coetzee on the same day on which it was requested to act. Assuming that Silver & Warren was properly instructed and that it properly briefed Coetzee, why is it then that their name was not recorded as the address at which documents would be served in respect of this matter?

20. Having regard to the above, what is clear is that this matter was in fact being dealt with by Coetzee and Associates CC together with Coetzee. Silver & Warren Attorneys were simply used, with their

consent, to mislead this Court into believing that the matter before this Court is being handled by those entitled to appear in this court. I say this, not only for reasons recorded above. If one has regard to the fax number recorded in applicant's statement of case, as a fax number at which it will accept service of documents, the fax number is that of Coetzee and Associates CC. Furthermore, the affidavit of service was attested to by the employees of Coetzee and Associates CC and faxed from their fax machine. There is nothing to indicate that Silver & Warren Attorneys exercised any control once they forwarded a brief cover to Coetzee. Nor were they aware of what had or was happening in the matter. In fact, they may be surprised to learn that if they did properly accept instructions from the applicant, as they claim, they could possibly be faced with a claim against them by the applicant of failing to timeously refer this dispute to this Court. The dispute was in fact referred on 27 July 2001 to this Court, approximately a month after the prescribed period and two months after they "briefed" Coetzee.

21. Silver & Warren Attorneys, I am satisfied, were not really applicant's attorneys. What they did was lend their name to Coetzee and Associates CC and Coetzee so that these parties could jointly bring applicant's matter to this Court under the guise that Silver & Warren

Attorneys were the applicant's attorneys in this matter.

22. Silver & Warren Attorneys, Advocate Janine Beatrice Coetzee and Coetzee and Associates CC acted in concert to deliberately mislead this Court. Since both the attorneys at Silver & Warren Attorneys and Coetzee are officers of this Court, their conduct is nothing short of being dishonourable. Their conduct brings the legal profession into disrepute. Silver & Warren held themselves out to be briefing attorneys when they were not and Coetzee used them to perpetuate this role.

23. On the assumption that Coetzee is a member of the Bar, I shall ask the Registrar of this Court to refer this judgement to the Bar Council. I shall also ask the Registrar to refer this judgment to the Law Society, to investigate any possible actions that may need to be taken against Silver & Warren Attorneys or such attorneys from that firm who may be responsible for this wrongful conduct.

24. In dealing with applicant's "representatives", it appears as if applicant is forgotten. Applicant's action is in respect of an unfair dismissal dispute. The certificate of non-resolution of the dispute, which is a condition precedent for the institution of applicant's action

was issued by the CCMA on 19 March 2001. In terms of the relevant section of the LRA applicant was required to launch his application within 90 days of that date. As recorded earlier the application was only made on 27 July 2001-- the application is therefore out of time. This Court has no jurisdiction to hear applications which do not comply with the time limit that is prescribed by the Act, unless the party which brings the application out of time, applies for the condonation of the late filing of the application and same is granted. In this matter there is no application to condone the late filing of the application, and the application as it stands, is therefore not one which this court can entertain.

In the result I make the following order:

1. The application is struck from the roll.
2. The Registrar of this Court is to forward a copy of this judgment together with the documents filed of record to the Local Bar Council and to the Law Society for them to investigate and take such action as they may deem expedient against advocate Janine Beatrice Coetzee and Attorneys Silver & Warren.

WAGLAY,J

DATE OF HEARING AND JUDGEMENT: 17TH MAY 2002

APPEARANCES: AS RECORDED IN THIS JUDGEMENT