



REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

Not Reportable

Case no: PR 108/14

In the matter between

INGQUZA HILL LOCAL MUNICIPALITY

Applicant

and

SOUTH AFRICAN LOCAL GOVERNMENT

BARBAINING COUNCIL

First Respondent

VUYANI NOSINDWA N.O

Second Respondent

IMATU obo MADIKANE, MANGCOTYWA

RHINI and QUMBA

Third Respondent

Heard: 6 October 2015

Delivered: 30 October 2015

Summary: Having raised a point *in limine of lis alibi pendens*, the applicant could not launch an application for the dismissal of the review application before the determination of the point *in limine*.

JUDGMENT

LALLIE, J

- [1] This is an application to dismiss the applicant's review application. The individual third respondents were employed by the applicant. They were dismissed for misconduct in 2009 and challenged the fairness of their dismissals by referring separate unfair dismissal disputes to the first respondent. The second respondent arbitrated their disputes and in April 2010, issued arbitration awards in which he found their dismissals unfair and ordered the applicant to reinstate them. The applicant filed separate review applications to have each arbitration award reviewed and set aside. The review applications were archived in November 2010 owing to the applicant's failure to prosecute them. The third respondent had the awards certified in terms of section 134 of the Labour Relations Act 65 of 1996 as amended (the LRA) in order to enforce them. On 22 May 2014, the applicant filed the present review application seeking an order reviewing and setting aside all for arbitration awards in one application.
- [2] The third respondent opposed the review application and raised a preliminary point of *lis alibi pendens* (*lis pendens*) on the basis that it was impermissible for the applicant to launch the present review application while the review applications it filed in 2010 were still pending. In addition, the third respondent filed an application for the dismissal of the review application on the basis that it was filed in order to delay the implementation of the arbitration awards issued in favour of the individual third respondents. The applicant opposed the application for the dismissal of the review application and argued that it was not open to the third respondent to apply for the dismissal of the review application while its *lis pendens* preliminary point was pending.
- [3] I have considered the submissions and arguments on behalf of both parties before me and am convinced that having raised a preliminary point of *lis*

pendens which may be dispositive of this matter, there was a duty on the third respondent to ensure that, the preliminary point was set down and determined before the application dismissing the review application was enrolled. This court has an obligation to determine the preliminary point which was raised by the third respondent. The application to dismiss the review application is premature in the circumstances and has the effect of denying this court of the opportunity to determine the preliminary point.

[4] The applicant sought the dismissal of the application to dismiss its review application with costs. I am not convinced that dismissing this application is the appropriate relief because the third respondent should not be denied of the opportunity of applying for the dismissal of the review application at the appropriate time. I am further not convinced that both the law and fairness require that a costs order be made against the third respondent. The applicant contributed substantially to the filing of this application as it has for years prevented the individual third respondents from being reinstated in terms of arbitration awards issued in 2010.

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

5.1 The application to dismiss the review application under case number PR 108/14 is struck off the roll.

5.2 No order is made as to costs.

Lallie, J

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate Matotie with Advocate Pango

Instructed by: Ximbi Ncolo Inc Attorneys

For the Third Respondent: Mr Heuer of Minnaar Niehaus Attorneys

LABOUR COURT