REPORTABLE

IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT CAPE TOWN)

Case no: C321/02

RELATED CASE NO'S C494/01 & C285/01

DATE: 17 APRIL 2002

In the matter between:

Applicant

and

S LTD Respondent

JUDGMENT

WAGLAY,J:

1. The applicant, dismissed by J B Masikane Labour Brokers, (hereafter MLB), instituted an action against it on the grounds that the dismissal was unfair. The

applicant has also instituted action against the SA Breweries Limited,

(hereafter SAB) on the grounds that she was discriminated against as an applicant for employment on arbitrary grounds as provided for in Section 6 of the Employment Equity Act 66/98. Applicant now seeks an order from this Court directing that the above-mentioned two matters, filed under case number C285/01 and 494/01 respectively, be consolidated for hearing jointly on 13th May 2001, this being the date allocated for the hearing of the trial of the matter under case number C494/01 between applicant and the SAB.

2. In the principle actions all material aspects of the applicant's claim against the two respondents are in dispute. In support of the application for consolidation, applicant avers that the facts which she intends presenting at the hearings are the same in both actions. According to the applicant, acts of harassment were

perpetrated against her which led to her dismissal and that she will rely upon the very same acts of harassment to prove her claim against the SAB in terms of Section 6 of the Employment Equity Act. She alleges that the two separate claims she instituted against MLB and SAB, are inextricably linked and that it would be convenient for all concerned for the two matters to be consolidated.

3. This application for consolidation is opposed by SAB, principally on the grounds that it is not convenient for the two matters to be heard jointly and that consolidation will cause it severe prejudice. Rule 23 of the rules for the conduct of proceedings in this Court, provides that separate proceedings may be consolidated if it is expedient and just to do so. Whether it would be expedient and just to grant consolidation, is left for the determination by this Court, in this regard the rules that regulate consolidation of matters in the High Court is neither instructive nor

helpful. In terms of the rules of the High Court, mere convenience of the parties may ground the basis for the granting of such an order.

4. When one speaks of terms such as “convenience”, “expedient” and “just”, this implies that it must be equitable to all parties if condonation of separate actions is to be allowed. This concept of equitability goes beyond merely determining the issue on a balance of convenience. For the Court to grant consolidation of separate actions, it need not simply consider whether the balance of convenience may favour such consolidation, but go further and be satisfied that consolidation will in no way prejudice the party or parties sought to be joint. See in this respect NEW ZEALAND INSURANCE COMPANY LIMITED v STONE 1963 (3) SA 63 (C) at 63 H. The prejudice must, however, be substantial and in determining whether or not the prejudice is substantial, one of the issues that the Court is required to consider is whether the relief sought in

each of the separate actions which are sought to be consolidated, depends on the determination of substantially the same questions of law and fact or not.

5. In this matter the claim against SAB relates to unfair discrimination in terms of the Equity Act. The claim against MLB relates to unfair discrimination and other alternatives thereto, based on the Labour Relations Act. The questions of law and fact which are applicable in the action between applicant and SAB are not the same as between applicant and MLB.

6. While it is so that applicant intends leading exactly the same evidence in both the actions. this only addresses the issue of the balance of convenience and then again, only in so far as applicant is concerned. It does not address the issue that the same facts will have to be considered in the light of very different statutes that neither of the respondents have any relation to the actions instituted by the applicant vis-à-vis the other in

so far as the cause of action against either of them is concerned. In the light of the fact that since each of the actions instituted by the applicant is not determinable on substantively the same questions of law and fact, I am not inclined to order the consolidation of the matter.

7. This then brings us to the issue of costs. I have a discretion based on law and equity, to decide whether or not to order cost. Having considered the matter and the issues raised, I am not satisfied that this is a matter in which a cost order should be made.

8. In the result the application for consolidation is refused.

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Waglay J

Date of hearing and judgement: 17 April 2002

Appearances: For the applicant: T Ferguson of Ferguson

Attorneys For the Respondent: D.A. Loxton of attorneys Findlay and Tait