

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NUMBER: JR1779/2006

In the matter between:

TIGER FOOD BRANDS t/a ALBANY BAKERY **Applicant**

and

CCMA, JOHANNESBURG **First Respondent**

HLONGWANE, R N.O **Second Respondent**

UNITED PEOPLE'S UNION OF SA **Third Respondent**

NDLOVU, THULANI **Fourth Respondent**

JUDGEMENT

NGALWANA AJ

- [1] This is an application for leave to appeal against the judgment of this court dated 12 June 2007. The applicant's main ground seems to be that in conducting the arbitration proceedings in a "fair and equitable" manner as enjoined by section 138(1) of the LRA, the second respondent had an obligation to warn the applicant's representative of the dangers of not presenting in evidence the

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video footage on which one of its witnesses relied upon as showing the fourth respondent loading or buying bread from a supplier other than the one from which he was obliged to buy bread. The second respondent's failure so to caution the applicant's representative, so the argument goes, constitutes a gross irregularity in the conduct of the arbitration proceedings. This is particularly so, says the applicant, because the representative in question was a lay person (by which it is presumably intended to convey that he was not a lawyer or accustomed to procedures at arbitration proceedings) and the video footage "formed the core of the applicant's case". In failing to find that this omission on the second respondent's part constituted gross irregularity in the conduct of arbitration proceedings, concludes the applicant, this court erred. For this proposition, the applicant invokes what he terms "helping hand cases" among which he cites one, *Bafokeng Rasimone Platinum Mine v CCMA and Others* [2006] 7 BLLR 647 [(2006) 27 ILJ 1499] (LC) at paragraph [17].

[2] To meet this argument, the fourth respondent denies that Mr Botha is a lay representative but then does not deal with the issue of whether or not the second respondent had a duty to caution him, in the interests of a fair and equitable hearing, about the dangers of not presenting the video footage in evidence. He simply submits that it is not for the second

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respondent to choose a representative for the applicant.

- [3] The *Bafokeng Rasimone Platinum Mine* case is not authority for the proposition advanced by the applicant. It is, in fact, a caution against such a proposition. At 1505E-G, Musi J cautioned thus against the “helping hand” practice:

“Care should be taken not to straddle the fine line between legitimate intervention by an arbitrator and assistance amounting to advancing one party's case at the expense of the other. Otherwise we would be opening the floodgates allowing every lay representative who has bungled his/her case to seek its reopening by shifting the blame to the arbitrator.”

- [4] Du Preez was asked by the second respondent whether he has the video footage with him to which he answered “*I have not got the footage*”. He kept referring to the “footage” as proof of the fourth respondent’s transgression on company policy, and pointed to the representative as the person who has all the information when he said:

“I have not got access, I think our the representative has got all the, all the ...”

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at which stage the second respondent intervened to ask whether he (Du Preez) has the footage with him to which he answered in the negative.

[5] Intervention of the sort suggested by the applicant in arbitration proceedings clearly falls within the kind against which this court has cautioned in *Bafokeng Rasimone Platinum Mine*. It is one thing to remind a representative that it is his turn to cross-examine or re-examine a witness, or to tread carefully in leading a witness so as to avoid asking leading questions; it is quite another to run his case for him by advising on which evidence he must present to prove his case.

[6] After careful consideration of the written submissions, I am not satisfied that there are any reasonable prospects of success on appeal, or that another court could reasonably arrive at a different conclusion on the same facts and evidence.

[7] The application for leave to appeal is denied with costs.

Ngalwana AJ

For the applicant: *Mr FA Ponelis*
Instructed by: *Brink Cohen Le Roux Inc*

For the 4th respondent: *Mr E Luthuli*
Instructed by: *United People's Union of South Africa*

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Date of judgment: *06 August 2007*