

D548/08/IB/CD

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ADDRESSING

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Not Reportable

CASE NO:D548/08

Date: 27 January 2009

5 In the matter between

MPUMELELO OBED MBATHA

APPLICANT

and

THE UNIVERSITY OF ZULULAND

RESPONDENT

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JUDGMENT

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PILLAY D. J.:

15 This is an application brought in terms of section 77(1) and (3) of the Basic
Conditions of Employment Act No 75 of 1997 for payment of salaries. The
applicant alleges that the respondent, the University of Zululand (UniZul), is
its employer.

20 The undisputed fact is that the respondent had employed the applicant,
along with two other employees, until 31 December 2005. Thereafter an
organisation referred to as ISS, Isikhungo Sesichazamazwi Sesizulu, took
over the staffing of the three employees as its own. This arrangement
appears in terms of paragraph 2.4 of a tripartite agreement between the Pan
25 South African Language Board (PanSALB), UniZul and ISS.

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The funding arrangement was that PanSALB would secure funding which it

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would make available to Unizul for disbursement to ISS. Salaries of the staff of ISS was paid by UniZul. From the agreement it is patent that ISS became the applicant's employer as from 1 January 2006. It is also common cause that the applicant was employed as the Chief Executive Officer (CEO) of ISS.

5 In that capacity he must have known of his status with ISS and the fact that his employer was no longer Unizul, but ISS.

After UniZul ceased to be the employer on 31 December 2005, the applicant and other staff continued their work for ISS. Matters came to a head in 2008 when funding ceased and the applicant's salary was not paid. In those circumstances it is hard to believe that the applicant was not aware that he was employed by ISS and that his employer was anyone but ISS.

10 Another dimension to this case is that as CEO the applicant was accountable as the financial officer to the board. One of the reasons for the funding ceasing is that PanSALB required an explanation for the funds that ISS had used. There is a dispute as to whether that explanation was given and whether it was a satisfactory explanation.

20 In those circumstances and more particularly the fact that the applicant has failed to establish that his employer was the respondent, the Court is not in a position to grant any relief at all. In the circumstances the applicant must be DISMISSED WITH COSTS.

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Pillay D, JDate of Editing: 22 May 2009

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Appearances:For the Applicant: P.O. Jafta-Jafta Inc10 For the Respondent: R.C.W. Pemberton-Garlicke and Bousfield*man
NNM*