



**IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not reportable  
Case No: J 1146/20

In the matter between:

**SIPHO SKHOSANA, GODFREY NAKANA**

**First Applicant**

**THE PERSONS LISTED IN ANNEXURE “A”**

**Second to Further Applicants**

and

**SMOLLAN SALES AND MARKETING (PTY) LTD**

**t/a MONDELEZ FIELD SERVICES**

**Respondent**

**Heard: 27 October 2020**

**Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's website. The date and time for hand-down is deemed to be on 31 October 2020 at 20:00**

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**JUDGMENT**

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**TLHOTLHALEMAJE, J**

[1] The individual applicants approached the Court on their own and on an urgent basis to seek orders which are not clear. They however contend that;

“ ...

5.1 The respondent knowingly broke the law in terms of section 14 of the Pension Funds Act of 1956 by transferring the members' funds without consent from the members.

5.2 The respondent knowingly broke the rule of law in terms of section 197 of the Labour Relations Act 66 of 1995 as amended, by not following all the sub-sections under the transfer of business.

5.3 An order in this regard should be made.”

- [2] The application is opposed by the respondent. The applicants are former employees of the respondent, (Smollan Sales and Marketing (Pty) Ltd t/a Mondelez Field Services). In December 2013, the business of Field Support Services was transferred to the respondent as a going concern as contemplated in section 197 of the Labour Relations Act (LRA).<sup>1</sup> The applicants contended that there was further a transfer of their pension funds from the Sanlam Provident Fund (provident fund) to the Smollan Pension Fund (pension fund) without any prior consent or consultations with them.
- [3] From what can be gleaned from the clearly incoherent pleadings, the applicants complain about the infringement of their rights and further alleged that the respondent breached its obligations provided for in terms of the provisions of section 197(6) and (7) of the LRA; the respondent’s alleged failure to disclose the terms of the agreement in respect of the transfer of the business in contravention of section 197(7) of the LRA; the alleged non-compliance with the terms of the agreement in respect of the contribution and deductions to be paid to the pension fund; the non-compliance with the provisions of the Pension Funds Act<sup>2</sup>; the alleged unilateral substitution of the administrators of the pension fund from Alexander Forbes to Buddhi Group, which is a company partly owned by the Smollan Group of Companies; and the alleged breach of the rules of the pension fund, since they have not attended any administrative presentation or any annual general meetings of the pension fund.
- [4] The respondent in its answering affidavit raised a number of preliminary points in opposing the relief sought by the applicants, which for all intents and purposes should all be upheld.

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<sup>1</sup> Act 66 of 1995, as amended

<sup>2</sup> Act 24 of 1956

- [5] The first preliminary point is that the applicants have not set out in the founding papers, the basis upon which urgent relief is sought. The respondent is correct in pointing out that the founding affidavit is vague and embarrassing, and lacks the averments necessary to sustain a valid cause of action.
- [6] The second preliminary point relates to urgency. It was not in dispute that the section 197 transfer took place in January 2014, whilst the applicants have since been dismissed on account of the respondent's operational requirements on 1 September 2020. For the applicants to therefore approach this Court for urgent relief on 15 October 2020, more than a year since the termination of their services or some seven years since the transfer took place is indeed to stretch the indulgence of this Court too far. I agree that the requirements for urgent relief have not been demonstrated and that in any event, any urgency claimed is clearly self-created, necessitating that the application be struck off the roll.
- [7] Striking the matter off the roll would not serve any purpose as it will find itself back on the ordinary roll, and in my view, unnecessarily burden the Court's roll. The matter ought to be dismissed as submitted by Counsel on behalf of the respondent. This is so in that as already indicated, it is not clear what the applicants' cause of action is, and or on what basis this Court can assume jurisdiction in respect of the complaints raised by the applicants.
- [8] If the applicants' complaint is in relation to the transfer of their pension funds from the Sanlam Provident Fund to the respondent following the section 197 of the LRA transfer, a further difficulty that arises is that of material non-joinder of Sanlam Provident Fund, let alone of the Smollan Group Provident Fund. The applicants have cited the respondent and it is not clear what the basis thereof is in view of no specific relief being sought from it.
- [9] If the applicants' other complaint is that the respondent did not comply with the provisions of the Pension Fund Act, or that they have not been allowed to attend any pension fund general meetings, and to elect the fund's trustees or Administrator, or that they were not paid in accordance with the pension fund rules, surely their remedy lies with the Pension Fund Adjudicator.

[10] In summary, the applicants have not satisfied the requirements of urgency under the provisions of Rule 8 of the Rules of this Court; their application is clearly defective and does not establish a cause of action, and thus the requirements for the relief that they seek have not been established.

[11] Counsel for the respondent sought a costs order against the individual applicants. Inasmuch as I agree that this application was indeed not only ill-conceived but frivolous, to make an award of costs against the applicants who approached this Court on their own, and it being apparent that they are persons of straw, would merely be to kick them when they are down.

[12] Accordingly, the following order is made;

Order:

1. The applicants' urgent application is dismissed.
2. There is no order as to costs

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Edwin Tlhotlhemaje

Judge of the Labour Court of South Africa

REPRESENTATION:

For the First and second – Further Applicants:

In person (Mr S. Skhosana)

For the Third Respondent:

Adv. M.J. Van As,  
instructed by Bowman  
Gilfillan Incorporated