



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 31 March 2011

STATUS Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Johannesburg City Parks v Adv. Jafta Mphahlaneni NO & others (344/10) [2010] ZASCA 56 (31 March 2011)

The Supreme Court of Appeal upheld an appeal against a judgment of the Labour Appeal Court (LAC) with costs. It furthermore set aside the order of the Labour Court (LC) and substituted it with an order setting aside the arbitration award issued under the auspices of the South African Local Government Bargaining Council (SALGBC).

The third respondent (Mr Maguvhe) was dismissed from his employment with the appellant on the ground that he had been in breach of the appellant's conditions of service when he did some private work during office hours. He challenged the fairness of his dismissal and referred the dispute to second respondent SALGBC which is registered as a bargaining council in terms of s 29 of the Labour Relations Act 66 of 1995 (LRA). Its registered scope is the 'Local Government Undertaking in the Republic of South Africa.' SALGBC called the appellant and the third respondent to attend a conciliation meeting. The appellant declined on the basis that it did not fall within the jurisdiction of the SALGBC. The SALGBC then called on the parties to attend arbitration. The appellant wrote a letter to the arbitrator stating that it will not attend the arbitrator's proceedings as there was a pending demarcation dispute before the CCMA. The appellant reiterated that the arbitrator does not have jurisdiction to hear the arbitrator.

In the absence of the appellant, and notwithstanding the objection raised, the arbitrator proceeded with the arbitration, found that the third respondent had been unfairly dismissed

and ordered that he be reinstated from the date of his dismissal. An application for the review of the order to the LC failed, as well as an appeal to the LAC.

The SCA found that the arbitrator was bound by the peremptory terms of s 62(3A) of the LRA, which provides in explicit and peremptory terms that in any proceedings before an arbitrator about the interpretation or application of a collective agreement, if a question contemplated in subsection (1) (a) or (b) is raised, the arbitrator must adjourn the proceedings and refer the question to the Commission.

The SCA found that as the demarcation dispute was still pending before the CCMA, that the SALGBC did not have the authority or jurisdiction to adjudicate a dispute about its own registered scope. In terms of s 62 it is the CCMA which has the jurisdiction to determine the dispute.

Finally the SCA found that the arbitrator acted wrongfully in the circumstances. The appeal is therefore upheld.