



JURISDICTIONAL RULING

Case Number: GAEK 6242-20

Commissioner: Rendani Ewart Matumba

Date of Award: 04 July 2019

In the matter between

George Ndou and 2 Others

(“the applicant”)

Legosec International

(“the respondent”)

Union/Employee’s representative:

In person

Union/Applicant’s address:

02 Sethukga Section

Tembisa

1632

Telephone:

(082)-816-2287

Telefax:

N/A

E-mail:

N/A

Employer’s representative:

In person

Respondent’s address:

151 Elizabeth Street

Pretoria

0182

Telephone:

(082)-816-2287

Telefax:

N/A

E-mail:

headoffice@legosec.co.za ; leeann@legosec.co.za

DETAILS OF HEARING AND REPRESENTATION

- 1) This is a Jurisdictional Ruling in the matter between George Ndou and 2 others, the Applicants, and Legosec International, the respondent.
- 2) Only 2 of 3 applicants appeared before me and the respondent was represented by Marco Entrec, an official from South African United Employers Organization (SAUEO).

BACKGROUND TO THE DISPUTE

- 3) On 31 July 2020, the matter was set down before me for con/arb process. During conciliation, the respondent raised a jurisdictional point that the applicants before me are appearing under false identity, citing that their real identity is different from those provided on the LRA 7.11 referral form.
- 4) In terms of the summary of the facts on the LRA 7.11 referral form, the applicants are claiming outstanding salaries.
- 5) It was pertinent that I allow both parties to address me on this preliminary point through submissions in terms of Rule 31(10) of the CCMA Rules for the Conduct of Proceedings before the CCMA.

SUBMISSION BY PARTIES

Respondent

- 6) Both applicants sourced employment from the respondent under false identification. Mr Lovemore Blessed Maweni was employed by the respondent as Mr Macbeth Lamola under identity no: 860823 5478 080. Mr Brighton Mtandwa was employed by the respondent as Mr George Ndou under identity no: 800812 6025 084.
- 7) The 3 applicants submitted their Curriculum Vitae using false identity in order to secure employment with the respondent. They rendered their employment services under false identity. The applicants did not have PSIRA certificates which is mandatory in the security industry.
- 8) The applicants would have not received any employment or remuneration had they submitted true documents. Although they have worked for the period they are claiming, the same was done unlawfully.
- 9) The 3rd applicant, was employed as Jeffrey Sokhela under identity number: 810325 5502 084 and his real identity is Mr Morebows Dzedze. The birth date on the passport states 03 June 1980 and to the contrary, the Curriculum Vitae says 20 March 1981.

Applicants

- 10) Mr Brighton Mtandwa cited as Mr Gorge Ndou, identity no: 800812 6025 084 on the LRA 7.11 referral indicated that during his employment on 09 November 2019, he produced his Passport to the respondent seeking employment. The respondent indicated that in order for him to secure employment, he must have South African Identity document and PSIRA Certificate.
- 11) The respondent provided him with a false identity as stated above. The respondent further provided him with the bank account belonging to Mr George Ndou.
- 12) Mr Lovemore Maweni cited as Mr Macbeth Lamola, identity no:860823 5478 086 on the LRA 7.11 referral stated that he was also offered false identity just like Mr Brighton Mtandwa. In his case, he rendered his employment services since 01 June 2018 without a PSIRA certificate.
- 13) According to them, the respondent was aware of the false identification since they were able to allow them to continue render employment service under the same false identification.

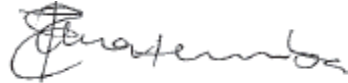
DISCUSSIONS

- 14) Section 73A of Basic Condition of Employment Act 75 of 1997 ("the BCEA") as amended provides that "any person who earns equal to or less than the BCEA threshold, may refer to the CCMA a dispute concerning any failure to pay any amount owing to the person in terms of BCEA, the National Minimum Wage Act, a contract of employment, a sectoral determination or a collective agreement. alternatively, a person may refer the such claim to Labour Court, Magistrate Court, High Court or subject to their jurisdiction, the Magistrate`s Court or the small Claims Court.
- 15) According to the LRA 7.11 referral, the applicants referred the dispute as Mr George Ndou, Macbeth Damola and Jeffrey Sokhela with Identity numbers as stated above in the submissions.
- 16) CCMA Rule 4 of the Rules for the Conduct of Proceedings before the CCMA provides that a document that a party must sign in terms of the Act or these Rules may be signed by the party or by a person entitled in terms of these Rules to represent that party in the proceedings.
- 17) In this case, the LRA 7.11 referral, was signed by Mr George Ndou and others using their false identities. The same was confirmed by the applicant in their submission above. It is clear that the persons appearing before me are not exactly the persons in terms of the referral. The persons appearing before me signed the referral under false identification and they are not the party or parties entitled in terms of the Rules to sign the referral. The persons appearing before me do not qualify for the remedy in terms of section s73A of BCEA.
- 18) It is therefore my finding that the referral is defective and the CCMA lacks jurisdiction to entertain the dispute.

RULING

- 19) The CCMA lacks jurisdiction to entertain the dispute.
- 20) The CCMA case management is directed to close the file.
- 21) The CCMA is directed to serve this ruling to the Dept of Home Affairs.

Signature:



Commissioner: ***Rendani Ewart Matumba***

Sector: