



**IN THE EQUALITY COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NO: 056024/2023
EQ7/2023**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

20 /10/23

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In the matter between:

DARYL CHETTY

APPLICANT

And

**OPPENHEIMER PARTNERS AFRICA
ADVISORS (PTY) LTD**

FIRST RESPONDENT

**JONATHAN ERNEST MAXMILLIAN
OPPENHEIMMER**

SECOND RESPONDENT

JACOB BRUCE HINSON

THIRD RESPONDENT

EUGENE SCOTT BRODSKY

FOURTH RESPONDENT

NEERAJ SHAH

FIFTH RESPONDENT

MODISE MADONDO

SIXTH RESPONDENT

OPPENHEIMER PARTNERS
LIMITED (UK)

SEVENTH RESPONDENT

JUDGMENT

TWALA, J

- [1] The applicant launched this application against the respondents in terms of the provisions of the Promotion of Equality and Prevention of Unfair Discrimination Act¹ (“the Equality Act”) in terms whereof he in essence alleges the following:
- 1.1 he was unfairly dismissed;
 - 1.2 he was induced into signing a settlement agreement terminating his employment with the first respondent; and
 - 1.3 he was intimidated by the directors and partners of the first respondent.
- [2] The application is opposed by the respondents who have filed a comprehensive answering affidavit comprising two points in *limine* and plea over. The essence of the points in *limine* is that this Court lacks the necessary jurisdiction to adjudicate this matter as whole and that it does not have jurisdiction over the seventh respondent who does not reside within the jurisdiction of this Court but is a company that is registered in the Isle of Man, a foreign *peregrinus*, and has not consented to the jurisdiction of this Court.
- [3] The genesis of this case is that the applicant was an employee of the first respondent as IT Support from the 1st of March 2019 up until the 31st of May 2021.

¹ 4 of 2000.

It is further undisputed that the applicant and the first respondent concluded and signed a settlement agreement on 11 May 2021 terminating the employment relationship with effect from 31 May 2021. However, on the 6th of June 2023 the applicant initiated these proceedings and alleged that he was unfairly dismissed and that he was induced to conclude the settlement agreement and was not afforded an opportunity to seek advice before signing it. Furthermore, he alleges the sixth respondent, for no apparent reason, used vulgar language against him and called him an idiot. He reported the conduct of the sixth respondent to the fifth respondent and the latter, though senior to the sixth respondent failed to intervene.

[4] These proceedings are before this Court in terms of Regulation 6(4) of the Regulations relating to the Equality Act which provides that, within seven days of receiving the documentation relating to the matter, the presiding officer must decide whether the matter is to be heard in the court or whether it should be referred to an alternative forum.

[5] It is apposite to restate the provisions of the Equality Act at this stage which are relevant and would be of assistance in the determination of whether this Court is to hear the matter. The Equality Act provides as follows:

“5 Application of Act

1. *This Act binds the State and all persons.*
2. *...*
3. *This Act does not apply to any person to whom and to the extent to which the Employment Equity Act, 1998 (Act 55 of 1998), applies.”*

[6] It is also necessary to mention the provisions of the Employment Equity Act², which are relevant for the determination of the issues in this case which provide as follows:

“Application of this Act

4. *(1) Chapter II of this Act applies to all employees and employers.*

² 55 of 1998.

49. *Jurisdiction of Labour Court*

The Labour Court has exclusive jurisdiction to determine any dispute about the interpretation or application of this Act, except where this Act provides otherwise.”

- [7] It is useful to restate certain provisions of the Labour Relations Act³ (“LRA”) which are relevant in this case, and which provide the following:

“157 Jurisdiction of Labour Court

- (1) Subject to the Constitution and section 173, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labour Court.*
- (2) The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from -*
- (a) employment and from labour relations;*
- (b)*

210. Application of Act when in conflict with other laws

“If any conflict, relating to the matters dealt with in this Act, arises between this Act and the provisions of any other law save the Constitution or any Act expressly amending this Act, the provisions of this Act will prevail.”

- [8] It should be recalled that the applicant was employed by the first respondent and the conduct complained about occurred at the workplace – the conduct complained of falls within the ambit of the Employment Equity Act. Furthermore, the applicant is asking this Court to come to its assistance and enforce the provisions of the Labour Relations Act upon the employer. The unavoidable conclusion is that this Court does not have jurisdiction to adjudicate matters which fall within the purview of the Employment Equity Act and the Labour

³ 66 of 1995.

Relations Act. It is the Labour Court that has the exclusive jurisdiction to determine such matters and not the Equality Court.

- [9] In *Chirwa v Transnet Limited and Others*⁴ which was quoted with approval in *Gcaba v Minister for Safety and Security and Others*⁵, the Constitutional Court per Justice Skweyiya stated the following:

“[41] It is my view that the existence of a purpose-built employment framework in the form of the LRA and associated legislation infers that labour processes and forums should take precedence over non-purpose-built processes and forums in situations involving employment-related matters. At the least, litigation in terms of the LRA should be seen as the more appropriate route to pursue. Where an alternative cause of action can be sustained in matters arising out of an employment relationship, in which the employee alleges unfair dismissal or an unfair labour practice by the employer, it is in the first instance through the mechanisms established by the LRA that the employee should pursue her or his claims.”

- [10] The Court continued to state the following as per Justice Ngcobo:

“[124] Where, as here, an employee alleges non-compliance with the provisions of the LRA, the employee must seek the remedy in the LRA. The employee cannot, as the applicant seeks to do, avoid the dispute resolution mechanisms provided for in the LRA by alleging a violation of a constitutional right in the Bill of Rights. It could not have been the intention of the legislature to allow an employee to raise what is essentially a labour dispute under the LRA as a constitutional issue under the provisions of section 157(2). To hold otherwise would frustrate the primary objects of the LRA and permit an astute litigant to bypass the dispute resolution provisions of the LRA. This would inevitably give rise to forum shopping simply because it is convenient to do so or as the applicant alleges, convenient in this case “for practical considerations”. What is in essence a labour dispute as envisaged in the LRA should not be labelled a violation of a constitutional right in the Bill of Rights simply because the issues

⁴ [2007] ZACC 23; 2008 (4) SA 367 (CC); 2008 (3) BCLR 251 (CC).

⁵ [2009] ZACC 26; 2010 (1) SA 238 (CC); 2010 (1) BCLR 35 (CC).

raised could also support a conclusion that the conduct of the employer amounts to a violation of a right entrenched in the Constitution.”

[11] It should be noted that the Equality Court is a creature of statute and has only the jurisdictional powers which are conferred upon it by the legislation that created it. It does not have any discretionary powers with regard to its jurisdiction. It therefore does not lie in the mouth of the applicant that litigants have been waiting for years for their matters to be heard in the Labour Court and as such it is expedient for his matter to be heard by this Court. This is tantamount to bypassing the dispute resolution mechanism provided for in the LRA and would inevitably result in litigants being involved in forum shopping which should be discouraged.

[12] In *Affordable Medicine Trust and Another v Minister of Health and Another*⁶ the Constitutional Court stated the following regarding the power of functionaries:

“[49] The exercise of public power must therefore comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls which the exercise of public power is regulated by the Constitution. It entails that both the legislature and the executive ‘are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law’. In this sense the Constitution entrenches the principle of legality and provides the foundation for the control of public power.”

[13] I am unable to disagree with counsel for the respondents that this Court does not have jurisdiction over a foreign *peregrinus* entity which does not reside within the jurisdiction of this Court, and which has not consented to its jurisdiction. The applicant has failed to demonstrate to this Court that the seventh respondent has consented to the jurisdiction of this Court, nor did it deny that it is a foreign *peregrinus* company. The ineluctable conclusion is therefore that this Court cannot competently entertain this case – thus the respondents succeed with their contentions that this Court does not have jurisdiction to hear this matter nor over the seventh respondent who is a foreign *peregrinus*.

⁶ [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC).

[14] In the circumstances, the following order is made:

1. This Court does not have jurisdiction to determine the issues in this case since they fall within the purview of the Labour Relation Act, 65 of 1995.
2. The application is dismissed.

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TWALA M L

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Delivered: This judgment and order were prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the order is deemed to be the 20th of October 2023.

Appearances:

For the Applicant: Mr Daryl Chetty (In person)
Mr D Haribhai
Mrs Janine Haribhai (Nominated non-legal
Representatives)

For the Respondents: Advocate N Rajab-Budlender SC
Advocate P Maharaj-Pillay

Instructed by: Cliff Decker Hofmeyr Incorporated
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Date of Hearing: 9th of October 2023

Date of Judgment: 20th of October 2023