IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

Case number : **223/98**

In the matter between :

COIN SECURITY GROUP (PTY) LTD
APPELLANT

and

SA NATIONAL UNION FOR SECURITY OFFICERS AND OTHERS
RESPONDENTS

CORAM: **F H GROSSKOPF, OLIVIER, SCOTT, PLEWMAN JJA and FARLAM AJA**

HEARD: **8 SEPTEMBER 2000**

REASONS HANDED DOWN: **29 SEPTEMBER 2000**

REASONS FOR JUDGMENT

Appeal dismissed in terms of s 21A of Supreme Court Act 59 of 1959

PLEWMAN JA:

[1] In this appeal counsel were, at the outset of the hearing and for reasons

which will presently be made clear, required to address argument on the preliminary question of whether the appeal and any order made thereon would, within the meaning of s 21A of the Supreme Court Act 59 of 1959, have any practical effect or result. After hearing argument on this issue the appeal was dismissed in terms of s 21A and appellant was ordered to pay the costs of the appeal. It was indicated when so ordering that the Court's reasons would be handed down later. The reasons follow.

[2] The manner in which this question arose is as follows. The appeal is against an order made on the return day of a rule *nisi* discharging the rule by setting it aside. Appellant is a company carrying on business in the security industry providing guard services and an asset transfer service. The respondents were originally fifty five persons employed by its asset transfer division and the registered trade union to which they belonged. Only some now remain parties to the litigation. How this occurred and why only some are now involved is not relevant to the appeal.

[3] A dispute arose between appellant and respondents in January 1997. This led to a strike. Appellant contended (and contends) that this was an unprotected strike. In the course thereof certain of the respondents unlawfully occupied appellant's premises. There were also incidents of assault and intimidation and a blockading of the entrance to appellant's premises. Appellant thereupon approached the Cape of Good Hope Provincial Division on an urgent basis and on 16 January 1997 obtained an order evicting the persons who had occupied its premises and coupled with this a rule *nisi* operating as an interim interdict restraining respondents from committing or perpetrating further acts of the nature referred to above.

[4] Effect was given to the eviction order but the return day of the rule was extended by various orders (it seems by consent). The matter was finally argued in October 1997 and the judgment which is appealed against was delivered on 31 October 1997 with the result indicated. The court's order is not clear. It must have been intended to deal only with that part of the original order which was included in the rule *nisi*. The main point taken in opposition to the confirmation of the rule was a challenge to the jurisdiction of the High Court on the ground that in terms of the Labour Relations Act 66 of 1995 the Labour Court (unlike its predecessor - the Industrial Court) exercised an

exclusive jurisdiction in matters of this nature. The objection was upheld by the court *a quo*. It granted leave to appeal to this Court.

[5] It is also necessary to refer to certain other events (these being common cause before this Court). Not only were those respondents who had unlawfully occupied appellant's premises evicted but on 17 January 1997 all the individual respondents were formally dismissed. This is referred to in the replying affidavits (eventually) filed in the matter. Thereafter the validity of these dismissals was challenged in the Labour Court (re-instatement was sought) and finally held by the Labour Appeal Court to have been fair and accordingly legal. (See *Coin Security Group (Pty) Ltd vs Adams and Others* [2000] 4 BLLR 371 (LAC).) The result is that all the material disputes between the parties were as a result of the Labour Appeal Court's finding finally resolved.

[6] On 26 June 2000 this Court addressed a directive to the parties calling for further heads of argument. These were duly filed. In appellant's additional heads of argument the facts above set out are recorded. It is also conceded that the order sought by appellant in the court *a quo* will, apart from costs, "no longer have any practical effect *inter partes*".

[7] The purpose and effect of s 21A has been explained in the judgment of Olivier JA in the case of *Premier, Provinsie Mpumalanga en'n Ander v Groblersdalse Stadsraad* 1998 (2) SA 1136 (SCA). As is there stated the section is a reformulation of principles previously adopted in our courts in relation to appeals involving what were called abstract, academic or hypothetical questions. The principle is one of longstanding. In the case of *Geldenhuys and Neethling vs Beuthin* 1918 AD 426 at 441 (as an example) it was said as follows by Innes CJ:

> "After all, Courts of Law exist for the settlement of concrete controversies and actual infringements of rights, not to pronounce upon abstract questions, or to advise upon differing contentions, however important."

This is a principle which is common also to other systems - where the doctrine of binding precedent is followed. It has particular application in courts of appeal. The attitude of the House of Lords is illustrative of this. What that court has held is that it is an essential quality of an appeal (such as may be disposed of by it) that there should exist between the parties to the appeal a

matter “in actual controversy which (the court) undertakes to decide as a living issue”. See *Sun Life Assurance Co of Canada vs Jervis* [1944] 1 All ER 469 (HL) at 471 A-B. This phrase accurately states the standpoint of our courts. It is a principle consistently adopted by this Court and the other courts in the Republic.

[8] Counsel for appellant (as has been stated) conceded that if the matter were viewed *inter partes* the appeal should be dismissed. But he sought to argue that the approach to the question should not be so narrowly focussed. In large measure this argument was based on what was, in my view, a fruitless analysis of the reported facts in the case of *Natal Rugby Union vs Gould* 1999 (1) SA 432 (SCA). However, every case has to be decided on its own facts. It follows that efforts to compare or equate facts of one case to that of another are unlikely to be of assistance. The section confers a discretion on this Court. *President, Ordinary Court Martial and Others vs Freedom of Expression Institute and Others* 1999 (4) SA 682 (CC) at p 687 para [13]. In the light of this fact a comparison of the type urged upon us is not appropriate. But there is something which I must add. Firstly the judgment in the *Natal Rugby* case lays down no new or different criteria from those adopted in the *Groblersdal* case. I was party to the decision in the *Natal Rugby* case. It must, I think, be said that given the factual setting and, in particular, the uncertainty which arose in the context of the peremption argument (see p 443 F - 444 G) the members of the union had, as a result of the litigation, been left “disturbingly but understandably divided” with regard to the meaning and effect of their constitution. This was felt to be “living issue” - sufficiently so for the exercise of the court’s discretion in the manner in which it was exercised. To suggest, as counsel did, that the facts reveal a different approach to that taken in the *Groblersdal* case is not correct.

[9] It was also argued that a decision by this Court may resolve possible future problems in other cases. In the heads of argument this is clearly stated, with reference to certain reported decisions, as follows:

> “The practical result of the aforesaid judgments is that any employer, including the appellant, who is confronted by unlawful conduct by his employees in the course of a strike, protected or unprotected, cannot approach the High Court for an interdict to protect himself against such conduct, regardless of whether such employer knows or does not know the purpose his employees are

> attempting to achieve by conducting themselves in such unlawful manner and regardless of what the relationship between the unlawful conduct and the strike, if any, is. Such an employer would, in view of these judgments, almost certainly have to approach the Labour Court for the required relief, but would then be faced with the risk of the employees or their union contending that the Labour Court does not have jurisdiction because the conduct complained of was not conduct in contemplation or in furtherance of the strike in which they are participating."

A more striking demonstration of a hypothetical situation would be difficult to find. It could also scarcely be more appositely answered than by the following extract from the speech of Lord Bridge of Harwich in the case of *Ainsbury v Millington* [1987] 1 All ER 929 (HL) at p 930 g -

> "In the instant case counsel for the appellant has submitted that Viscount Simon LC's principle should be confined in its application to cases where the point of law at issue is peculiar to the facts of the case or arises on the construction of particular documents and should not inhibit the House from resolving, even in the absence of any live issue between the parties, a question of law of general importance which, as is said to be the case here, different decisions of the Court of Appeal have left in doubt. Assuming without deciding that this is such a case, I cannot see that it makes any difference, nor can I accept that the principle as stated by Viscount Simon LC is to be limited as suggested. In the *Sun Life* case the outcome of the appeal, if the House had been prepared to entertain it, would at least have been of some concern to the appellant, since the ruling it sought would presumably have affected its obligations to other policy holders. In the instant case neither party can have any interest at all in the outcome of the appeal. Their joint tenancy of property which was the subject matter of the dispute no longer exists. Thus, even if the House thought that the judge and the Court of Appeal had been wrong to decline jurisdiction, there would be no order which could now be

made to give effect to that view. It has always been a fundamental feature of our judicial system that the courts decide disputes between the parties before them; they do not pronounce on abstract questions of law when there is no dispute to be resolved."

[10] There is a further feature of s 21A to which attention has perhaps not been pertinently directed in earlier decisions. In terms of the section the question is whether "the issues are of such a nature that the judgment or order sought will have no practical effect or result". The words "judgment or order" reflect the longstanding concept adopted in our courts that only an order is appealable. *Heyman vs Yorkshire Insurance Co Ltd* 1964 (1) SA 487 (A). It is an equally well established rule that our courts do not lightly (otherwise than in the now often adopted practice flowing from the application of Rule 33(4) or instances where further evidence is to be led) decide cases on a piecemeal basis. *Botha vs A A Mutual Insurance Association Ltd and Another* 1968 (4) SA 485 (A) at 489 F-H. Appellant in its main heads sought an order dismissing "the respondents' point in limine" and remitting the case to the High Court. The effect thereof would be that the interdict sought in terms of the rule *nisi* would then have to be finally decided.

[11] It is questionable to say the least that the present case can be said to fall into the category of cases where remittal is possible. It is, however, unnecessary to consider the matter further because it could not be more clearly demonstrated that the "order sought" (whether in this Court or by remittal) would "have no practical effect or result". The Court would be asked to confirm a rule which interdicted, for the future, acts committed in the course of

an industrial dispute which was finally resolved between the parties by the dismissals in 1997 and in which all the perpetrators have long since gone their separate ways.

[12] For the aforegoing reasons the appeal was dismissed. Since the respondent was not brought before this Court as a willing party no cause was seen to depart from the normal rule as to costs which were accordingly ordered to follow the result with the consequence that appellant has to pay them.

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C PLEWMAN JA

CONCUR:

F H GROSSKOPF JA)
OLIVIER JA)
SCOTT JA)
FARLAM AJA)