



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case No: 2773 /2022

In the matter between:

CENTLEC SOC LTD
MALEFANE SEKOBOTO

1st APPLICANT
2nd APPLICANT

And

HLONELWA NKOMO

RESPONDENT

In re:

HLONELWA NKOMO

APPLICANT

and

CENTLEC SOC LTD
MALEFANE SEKOBOTO

1st RESPONDENT
2nd RESPONDENT

JUDGMENT BY: **MOLITSOANE, J**

HEARD ON: **28 JULY 2022**

DELIVERED ON: The judgment was handed down electronically by circulation to the parties' legal representatives by email and released to SAFLII on 31 October 2022. The date and time for hand-down is deemed to be 31 October 2022 at 11:00.

- [1] The applicant in the main application seeks an order:
- a) Setting aside the settlement agreement concluded on 18 October 2021 between her and the first respondent (Centlec), or declaring it null and void for contravening sections 29(p) and 79(1) of the Basic Conditions of Employment Act, 75 of 1977 and the Local Government: Disciplinary Regulations for Senior Managers, 2010;
 - b) Declaring that in placing the applicant under precautionary suspension, taking disciplinary action against her and concluding the settlement which compromised the disciplinary proceedings, the second respondent (Sekoboto) acted without authority.
- [3] The respondents oppose the main application and also brought a counter application seeking to have the applicant declared a vexatious litigant. It is apt to mention that she appeared on her own in these proceedings.
- [4] On 1 July 2021 the applicant was appointed the Chief Financial Officer (CFO) of Centlec on a fixed term contract of five years. A few weeks after the appointment of the applicant, Centlec instituted disciplinary proceedings against her. In order to resolve the issues between them, the applicant and Centlec concluded a settlement agreement. The settlement agreement had the effect of terminating the employment contract of the applicant. During the conclusion of the settlement agreement, Sekoboto, the Chief Financial Officer of Centlec acted for the first respondent. This

authority to act by Sekoboto is the main reason for this and other similar applications brought by the applicant against Centlec.

- [5] Subsequent to the conclusion of the settlement agreement, the applicant took the view that the settlement agreement was null and void. She contended that Centlec was not entitled to fill the vacant post of the CFO. It is clear from the papers filed that she seeks an order that would ultimately ensure her resuming her position as the CFO of Centlec. Centlec contended that the settlement agreement was valid and the position of the applicant had been terminated.
- [6] Owing to this dispute, Centlec brought an application in this court under case number 724/2022 (the Centlec application) in which it sought a declarator that it had complied with its obligations in terms of the agreement and that the agreement brought the fixed term of employment of the applicant to an end. At the time of the hearing of this application, the judgment in the Centlec application had not been handed down.
- [7] After the hearing of the Centlec application the applicant launched an urgent application in this court under case number 2552/2022 in which she sought an order to set aside the settlement agreement or to have it declared null and void. (the Urgent High Court application). That application was struck of the roll for lack of urgency. The applicant had also instituted an urgent application against Centlec in the

Labour Court. That application was also struck off the roll for lack of urgency.

- [8] The issues for determination in this application are:
- a) Whether the relief sought in this application is the subject matter of other pending legal proceedings;
 - b) Whether the second respondent had the authority to enter into a settlement agreement with the applicant;
 - c) Whether the settlement agreement is valid.

- [9] The party wishing to raise the defence of *lis alibi pendens* bears the onus of proof. For this dilatory plea to be successfully raised the person raising it must prove to the court that there are pending legal proceedings between the same parties, based on the same cause of action and in respect of the same subject matter¹. It is necessary to mention that the fact that there are pending legal proceedings in another forum somewhere is no bar to requiring that the case should proceed. In this instance though, that person raising the defence must satisfy the court that the balance of convenience and equity require that the matter must proceed.

- [10] At the hearing of this application there were three other applications based on the causes of actions seeking the same relief. The main relief sought by the applicant is to invalidate the settlement agreement. She does so by seeking to show that the second respondent was not authorised to

¹ Amler's Precepts of Pleading, Lexis Nes, 9th ed page 251.

act for Centlec. In opposition of the Centlec application the applicant relies on the same causes of action and in respect of the same subject matter. The alleged lack of authority in this application is pleaded word for word as a ground in support of prayer 1 to have the settlement agreement declared null and void. This is the classic case of why, despite the pending case in another forum, this court should not entertain the application. The judgment in the Centlec application is pending. The risk of this court granting a conflicting order with the other court is real and must be avoided at all costs.

- [11] Both the Labour and Urgent High Court matters were removed from the roll for lack of urgency. These cases have thus not been finalised. The same issues raised in those applications are still alive as the court did not pronounce itself on their merits. That issue of the validity of the settlement agreement is the same thing the applicant is asking this court to pronounce itself on. During the hearing of this application the applicant conceded that the cases referred to above were very much alive as they have never been withdrawn. The applicant held the view, albeit incorrectly, that any matter which has been struck off the roll cannot be revived as it was 'dead'. He could not make submissions why this court should proceed with the application in hand. In my view the defence of *lis pendens* must be upheld. It is unnecessary to deal with the rest of the issues raised.

[12] The respondent also brought a counter application to declare the respondent a vexatious litigant. In my view this counter application must fail. During the hearing of this application it became clear that lack of knowledge motivated the applicant to bring these numerous applications. She held a mistaken view that 'seeing that the applications' were stuck off the roll, that means they were finalised. The court should in my view not easily grant this order and thus limit the ordinary litigant access to justice. It is clear that what the applicant sought to do was simply to have her dispute determined on the merits. This application must fail.

[13] Both parties are not successful in these applications. I exercise my discretion not to award the costs. I make the following order

ORDER

[14] The following order is issued:

1. The main application and counter applications are dismissed.
2. There is no order as to costs in respect of both applications.


P E MOLITSOANE, J

On behalf of the Applicant:
Instructed by:

In Person

BLOEMFONTEIN

On behalf of the 1st and 2nd Respondent:
Instructed by:

Adv HN Moloto
Tshangana Attorneys
BLOEMFONTEIN