



IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JA 99/20

In the matter between:

CITY OF JOBURG PROPERTY COMPANY

(SOC) LIMITED

Appellant

and

LORRAINE PULENG KUHLMANN

Respondent

Heard: 25 November 2021

Delivered: 10 December 2021

Coram: Waglay JP, Davis JA and Savage AJA

JUDGMENT

DAVIS JA

Introduction

[1] This appeal concerns part of the order granted by Lagrange J on 28 February 2020, in particular where he ordered the appellant to resume paying the respondent's salary from the date of the order. With the leave of the court *a quo*,

the appellant has approached this court on appeal against this part of the order so granted.

The factual matrix

- [2] The respondent was employed by the appellant as a Senior Manager: Property Management in terms of a contract of employment of 10 May 2012. In July 2018, she took ill and was diagnosed by a psychiatrist with a major depressive disorder together with hypertension and hypothyroidism. Her illness was attributed mainly to chronic work-related problems.
- [3] She was declared unfit to work from July 2018 until 16 January 2019 and was on sick leave until 1 October 2018 when her sick leave entitlement was depleted. From that date, she was also not entitled to further annual leave and therefore remained on unpaid leave. During this period, however, the appellant continued to make contributions to the respondent's medical aid and housing allowance.
- [4] On 15 May 2019, the respondent arrived at her work premises after an absence of some eleven months. She produced a handwritten report from her doctor which declared her fit to work.
- [5] The appellant was justifiably concerned that this was not an accurate depiction of her medical condition, given that the health problems that she had encountered had been attributed to work pressure. She was then requested to produce a copy of her full medical report which comprehensively detailed her medical condition. A report was produced but the appellant continued to hold the view that it did not contain sufficient particularity on her status and ability to resume. A comprehensive medical report was not forthcoming until 28 June 2019.
- [6] Thereafter on 28 October 2019, the appellant issued a notice in terms of s 189 (3) of the Labour Relations Act 66 of 1995 (LRA) which sought to consult with her on the issues so documented in the notice. In short, the appellant was of the view that the respondent's position as a Senior Manager: Property Management was no longer operationally required, however a meaningful joint consensus-seeking

process proved impossible because the appellant continued to suffer from ill-health and was thus remained on prolonged leave.

- [7] On 19 February 2020, the respondent referred an unfair labour practice dispute to the South African Local Government Bargaining Council as a result of the appellant not paying her salary and terminating her employment benefits.
- [8] Subsequent thereto, on 25 February 2020, the respondent launched an urgent application with the court *a quo* against the appellant and Bonitas Medical Aid Scheme in which she sought the following relief:

‘1. That The [Appellant and Bonitas Medical Aid Scheme] be ordered to:-

1.1 Reinstated [Respondent’s] medical aid cover with Bonitas Medical Scheme:

1.2 Reinstated [Respondent’s] salary and all benefits in terms of her contract of employment;

1.3 Take back [Respondent] to employment in terms of her contract of employment.

2. That the [Appellant] be interdicted from effecting the unlawful retrenchment.’

- [9] The parties agreed to settle this dispute as follows:

‘1 By agreement between the parties the first respondent shall pay the arrears and employer medical aid contributions to the applicant’s medical aid from 1 January 2020;

2 The first respondent will resume paying the applicant’s housing subsidy in terms of the first respondent’s conditions of service with effect from the date of this order.’

- [10] The problem which has given rise to this appeal was that the court *a quo*, having made the settlement agreement an order of court, went further than that contained

in the settlement agreement and ordered that the appellant resume paying the respondent's salary from the date of the order; that is from 28 February 2020. It is this part of the order that has become the subject of an appeal before this Court.

[11] In the court *a quo*, it appears that the reason for the part of the order which is subject to this appeal was in the words of Lagrange J that 'no good reason was advanced why the (appellant) should not resume paying the (respondent's) salary whilst (respondent) remains in its employment.'

[12] Significantly, in the founding affidavit in support of her application, the respondent set out the purpose of her application, as being to order the appellant to reinstate all employment benefits such as:

- '1 Medical aid scheme held with Second Respondent;
- 2 Housing Subsidy
- 3 All arrear unpaid salary;
- 4 Monthly salary with effect from October 2018 to date;
- 5 Take me back to my employment.' (my emphasis)

[13] Manifestly, the relief sought by the respondent did not extend to ordering the appellant to resume paying the respondent a salary from the date of the order. This was not surprising. This form of relief would have had the effect of ordering the appellant to pay future earnings to the respondent such earnings would have been paid, to the respondent pursuant to the ongoing discharge of her obligations in terms of an employment agreement between the parties.

[14] There was simply no legal basis for such an order to be granted by the court *a quo*. To the extent that the respondent might have had a case, which I might add certainly did not emerge from the papers provided to this Court for unpaid remuneration, that relief could have been sought in terms of s 77 of the Basic Conditions of Employment Act 77 of 1997.

[15] However, on the facts of this case, there was no demonstration of a clear right enjoyed by the respondent to be paid from the date of the order, save in terms of services which the respondent might have provided in respect of future obligations in terms of a contract of employment. But this clearly falls outside the relief sought or that which on these facts is legally competent. Hence, there was no basis to include such relief in the order of Lagrange J of 28 February 2020.

[16] For all these reasons, the appeal is upheld and that part of the order of 8 February 2020 in which the appellant is required to resume paying the respondent's salary from the date of the order is set aside. There is no order as to costs.

Davis JA

Waglay JP and Savage AJA concur.

APPEARANCES:

FOR THE APPELLANT: Mr Kent of Edward Nathan Sonnenbergs Inc

FOR THE RESPONDENT: Adv Sadike

Instructed by Moima Inc