

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

JS 185/2018

In the matter between:

TAWANDA BHOVHA AND 2 OTHERS

Applicant

and

ASKARI GAME LODGE

Respondent

Heard: 15 August 2022

Delivered: 11 April 2024

JUDGMENT

RAMOLEFE, AJ

Introduction

- [1] The applicants come before Court alleging an unlawful dismissal following what were said to be the operational requirements of the respondent. They seek an order declaring their dismissal procedurally and substantively unfair. They also seek reinstatement and an order for costs.

Background facts

- [2] Following being served on 12 January 2018 with a letter headed “*Notice of intention to retrench*” (letter), the applicants moved swiftly and declared a dispute with the Commission for Conciliation, Mediation and Arbitration (CCMA). This was the first referral.

- [3] The letter mentions that *“the company is contemplating embarking upon a retrenchment process which may lead to the possible termination of employee’s services”*. It proceeds to indicate that it will be necessary to consult with the applicants regarding possible retrenchments, and that *“none of these issues has (sic) been finally determined”*.
- [4] Also stated in the letter is that there would be no alternative to retrenchments because *“the company will no longer be involved in the operations of the reserve”*. Finally, the date of the retrenchment, termed *“timing of retrenchment”*, was given as January 2018.
- [5] The matter was conciliated on 14 March 2018 and a certificate was issued on the same day. The certificate records an unfair dismissal for operational requirements and, that being unresolved, it could be referred to the Labour Court. So the matter came before this Court.
- [6] Central to the respondent’s answer, pleaded in terms of Rule 6(3)¹, is that on 18 January 2018, the applicants referred *“an unfair dismissal dispute based on operational requirements to the CCMA”*. This was the second referral. The respondent also alleges that, in the second referral, the applicants specifically stated that they were dismissed without prior consultation and that they sought reinstatement or compensation. There were, accordingly, two referrals serving before the CCMA.
- [7] On 24 January 2018, the parties appeared at the CCMA and reached a settlement which was reduced to writing. This related to the second referral. The settlement agreement, under case number NWRB177/18, recorded that the agreement was in *“full and final settlement of the dispute referred to the CCMA as well as in full settlement of all statutory payments”*.

¹ Rules for the Conduct of Proceedings in the Labour Court as promulgated by GN 1665 GG 17495 of 14 October 1996.

- [8] Three blocks appear on the front page of the settlement agreement. Reinstatement was excluded, and so too was re-employment. Only monetary settlement is contemplated and the settlement amounts are R31 741.74 in respect of Kenneth Mupepe, R31 741.74 in respect of Washington Pedzisai, and R31 499.18 in respect of Tawanda Bhovha.
- [9] The respondent undertook to pay the monetary settlement amounts by 25 January 2018. The settlement agreement was duly signed by the applicants and also on behalf of the respondents. Attached to the settlement agreement was an attendance register bearing the names of the applicants, and a G de Bruin on behalf of the employer. The attendance register is signed by the applicants and G de Bruin. Proof that the monetary settlement amounts were paid on 31 January 2018 is attached.

Analysis

- [10] The manifest difficulty faced by the applicants is that *ex facie* the settlement agreement, receipt of the amounts mentioned as payments to the applicants constituted a severance of employment ties with the respondent. And if this is in fact the case, which I find it to be, the applicants are non-suited to allege an unfair dismissal following receipt of the amounts. To hold otherwise would be to allow the applicants to bargain unduly. In any event, by its very terms, the settlement agreement made it clear that there would be neither reinstatement nor re-employment.
- [11] What is cause for concern is that in the statement of claim, dated 14 June 2018, the applicants did not disclose that they had referred a second dispute to the CCMA which resulted in the conclusion of the settlement agreement.
- [12] In the premises, I make the following order:

Order

1. The application is dismissed;

2. There is no order as to costs.

K. D. Ramolefe

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

S. Mphakathi, of Mphakathi (Sipho) Attorneys.

For the Respondent:

B.L. Roode, instructed by Victor and Partners Incorporated.