



IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable/ Not Reportable

Case No: JA 136/22

In the matter between:

**SOUTH AFRICAN COMMERCIAL CATERING
AND ALLIED WORKERS UNION (SACCAWU) obo MEMBERS** **Appellant**

and

MOTLATSI PHALA N.O. **First Respondent**

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION** **Second Respondent**

WOOLWORTHS (PTY) LTD **Third Respondent**

Heard: 9 November 2023 and 28 March 2024

Delivered: 27 November 2024

Coram: Molahlehi AJP, Savage AJA and Malindi AJA

JUDGMENT

MALINDI, AJA

Introduction

[1] The issue in this appeal is whether the Commission for Conciliation, Mediation and Arbitration (CCMA) lacked the jurisdiction to arbitrate an unfair labour practice (ULP) dispute in circumstances where the issues in dispute were the subject of a lock-out. The first respondent (Commissioner), issued a ruling dated 14 September 2021 under the auspices of the CCMA holding that the dispute concerned an unfair labour practice and thus, that the CCMA had jurisdiction to arbitrate the dispute between the parties.

[2] The third respondent, Woolworths (Pty) Ltd (Woolworths), approached the Labour Court seeking an order to review and set aside the ruling issued by the Commissioner on various grounds. On 16 September 2022, the Labour Court¹ issued a judgment reviewing and setting aside the ruling of the CCMA and substituting it with an order that the referral was dismissed for want of jurisdiction.

[3] This appeal, which is opposed by Woolworths, is with leave of the Labour Court made on 30 November 2022.

Background

[4] This dispute has a protracted history, culminating in the judgment of the Constitutional Court in November 2018.² The initial dispute served before the Labour Court under case number JS 1177 12 (per Nkutha-Nkontwana J), concerned the dismissal of the 44 members of the appellant, SACCAWU, by the third respondent, Woolworths. The dismissal was based on Woolworths's operational requirements.

[5] The dispute originates from Woolworth's decision in 2002 to change its operational model based on the workforce employed on a full-time basis to that flexi-time. The full-time employment model was found to be inflexible, particularly about

¹ *Woolworths (Pty) Ltd v Phala N.O. and Others* [2022] ZALCJHB 265.

² *SA Commercial Catering & Allied Workers Union & others v Woolworths (Pty) Ltd* (2019) 40 ILJ 87 (CC); [2019] 4 BLLR 323 (CC).

the trading hours of the various Woolworths stores. This resulted in a significant increase in the employment of flexi-timers to such an extent that by 2012, the workforce of Woolworths consisted of about 16,400 flexi-time compared to 590 full-timers.

[6] In July 2012, Woolworths resolved to convert the contracts of the remaining 590 full-timers to flexi-timers. This decision was based on operational requirements, and accordingly, a consultation process with the full-timers commenced in August 2012.

[7] In the consultation process, Woolworths, amongst others, offered the full-timers early retirement with severance pay and/or voluntary retrenchment with severance pay. Some of the full-timers accepted the voluntary options offered by Woolworths, resulting in 92 full-timers being retrenched, and 44 of those challenged the retrenchment dismissals.

[8] It is apparent that during the meetings facilitated by the CCMA, the applicants accepted the conversion to flex-time contracts but insisted it be done without changes to their terms and conditions of employment.

The history of litigation

The Labour Court case – unfair dismissal -5 March 2016.

[9] The first Labour Court case was served before Nkutha-Nkontwana J under case numbers J 3159/12 and JS 1177/12. In that case, the appellants challenged Woolworths' dismissal on the grounds of operational requirements because it was unfair. The Labor Court, in that case, held that the dismissal of the 44 appellants was substantively and procedurally unfair and ordered Woolworths to reinstate them retrospectively to the date of their dismissal.

[10] The Labour Appeal Court (LAC), partially upheld the decision of the Labour Court in that it agreed that the dismissal was substantively unfair but set aside the decision that the dismissal was procedurally unfair.

[11] In relation to the relief sought by the appellants, the LAC, despite having found that the dismissal was substantively unfair ordered compensation for 12 months and not reinstatement.

The Constitutional Court- 6 November 2018

[12] The appellants disagreed with the LAC's decision and sought an appeal from the Constitutional Court against the same.

[13] The Constitutional Court overturned the decision of the LAC and reinstated that of the Labour Court that the dismissal of the 44 employees by Woolworths was substantively unfair and that they should be retrospectively reinstated to the positions they occupied at the date of their dismissal.

[14] The Constitutional Court further observed in its judgment that:

‘... What we emphasise is that, after this judgment, the parties will be free to resume their discussions aimed at reaching agreement on the working of the flexi-time by the applicants.’³

[15] It is common cause that Woolworths complied with the Constitutional Court reinstatement order and reinstated the affected 44 employees into their full-time contracts without any changes to the terms and conditions of employment that existed before their dismissal. After that, it continued to negotiate with the employees to accept the conversion from full-timers to flexi-time.

[16] It is apparent that while the employees agreed with the change from full-timers to flexi-timers, they did not agree with Woolworths' proposal to change the terms and conditions of the full-time employment contracts. This resulted in a deadlock, which resulted in Woolworths referring a mutual interest dispute to the CCMA in terms of section 64(1) of the Labour Relations Act⁴ (LRA).

³ See *SA Commercial Catering & Allied Workers Union & others v Woolworths (Pty) Ltd* (2019) 40 ILJ 87 (CC); [2019] 4 BLLR 323 (CC) at para 58.

⁴ Act 66 of 1995, as amended.

The Labour Court – urgent interdict -25 May 2021.

[17] The appellant approached the Labour Court seeking an urgent interdict against implementing the lock-out. On 31 May 2021, the Labour Court (per Mahosi J) issued a judgment finding that the dispute between the parties related to issues of mutual interest which ought to be resolved through power play and accordingly dismissed the application for an urgent interdict. Subsequently, Woolworths raised a jurisdictional point contending that the issues before the CCMA did not constitute a dispute of unfair labour practice but were rather issues of mutual interest and which were the subject of the lock-out. Moreover, Woolworths contended that the dispute between the parties was *res judicata* in view of the Labour Court judgment (per Mahosi J), which found that the dispute concerned issues of mutual interest.

The Labour Court case – unfair labour practice -9 December 2020

[18] On 9 December 2020, the appellant referred to the CCMA a dispute of unfair labour practice in terms of section 186(2)(a) of the LRA. . On 15 January 2021, the CCMA issued a certificate of non-resolution of section 186(2)(a) of the LRA dispute. On 11 February 2021, the dispute was referred to arbitration. Woolworths raised a preliminary point concerning the jurisdiction of the CCMA to entertain the dispute. On 15 February 2021, Woolworths referred a dispute of mutual interest to the CCMA and sought to force the employees to accept a demand that the employees be paid in terms of the flexi 40 employment contract. On 20 May 2021, Woolworths implemented a lock-out seeking to compel the employees to accept the demand to be paid in terms of the flexi 40 contracts.

[19] On 14 September 2021, the Commissioner issued a ruling in respect of the section 186(2)(a) of the LRA and ruled in favour of the appellant that the CCMA had the authority to entertain the dispute. In reviewing and setting aside the Commissioner's ruling, the Labour Court (per van Niekerk J) reasoned that the dispute, as formulated by the appellant, did not satisfy the definition in section 186(2)(a) of the LRA. In other words, the dispute did not concern the provision of benefits. The Labour Court further held that the issues that were the subject of the labour practice dispute had already been declared by Mahosi J to be matters of

mutual interest. It alleged, among other things, that Woolworths had failed to remunerate the employees under their contract of employment, failed to refund the employees for the over-deductions from their back pay amount emanating from the reinstatement order, and further changed the employee's medical aid scheme.

The parties submissions

[20] The appellants denied that they were reinstated in accordance with the Constitutional Court's reinstatement order. It was contended that at the time the employees were dismissed on account of Woolworths' operational requirements, they were employed full-time and were required to render their services for 45 hours per week; that they were members of the Wooltru Medical Aid scheme, and they were entitled to long service awards. The assertion is that the appellants were not reinstated under the terms which prevailed before their dismissals.

[21] As such, the contention is that the Labour Court erred in failing to distinguish between the rights that accrued to the employees over and above the working hour issue (such as the Wooltru Medical Aid membership and the increase of retirement age from 60 to 63 years of age) as a result of the reinstatement order and the separate issue of Woolworths' demand for the employees to accede to the flexi 40 contract. The rights sought to be enforced in terms of section 186(2)(a) of the LRA, dispute flowed from the reinstatement order and were not demands to create new rights, so the contention goes. Moreover, proper characterisation of section 186(2)(a) of the LRA dispute does not give rise to a valid defence of exception *res judicata* since it was based on the accrued rights and not on demand by Woolworths for the employees to accede to the revised terms and conditions of employment.

[22] The appellant submitted that there was a clear distinction between the cause of action between section 186(2)(a) of the LRA dispute (where Woolworths failed to reinstate the terms of employment as they existed in 2018), and the lock-out proceedings (which arise from the 40-hour week terms which were implemented on post the November 2018 retrenchments and their dismissal). It is contended that the Labour Court ought to have concluded that, albeit the causes of action may have arisen from the same facts, the issues referred to in terms of section 186 of the LRA

ought to have been arbitrated. The appellants contend that this rule arises since *Maritime Industries Trade Union of SA & others v Transnet Ltd & others*,⁵ that both rights and power play avenues are available to issues arising from the same facts.

[23] On the other hand, Woolworths contended that since there was no agreement on the flexi 40 contracts, there cannot be any basis for it to act in accordance with those terms and that any fruits which may have arisen from the resolution of section 186(2)(a) of the LRA dispute would be subordinate to the outcome of the power play in respect of the mutual interest dispute. Thus, since the parties were still negotiating the new terms and conditions of employment, any referral to the CCMA at this stage would not gain any traction.

[24] Furthermore, the appellants cannot demonstrate which benefits arising from the flexi 40 contracts were unfairly dealt with by Woolworths. This could only be shown once there is an agreement on the flexi 40 contracts. This was since the order of reinstatement was subject to the parties negotiating the terms of the flexi 40 contracts, and since the parties had not reached a consensus on the issue, there was no basis to refer the section 186(2)(a) of the LRA dispute, so the contention goes. Woolworths further contended that the Labour Court was correct in concluding that the issues were *res judicata* since the Labour Court had found that the issues in dispute were matters of mutual interest, the Labour Court could not have referred the dispute to the CCMA to arbitrate the same issues since that would have been met with the defence of *exceptio res judicata*.

Legal framework

[25] It is common cause what the Constitutional Court order means by reinstating the appellants' pre-existing contracts. In *Equity Aviation Services (Pty) Ltd v Commission For Conciliation, Mediation And Arbitration and Others*⁶ it was held that the term 'reinstate' means to take back the employee into the same position she occupied before the dismissal, on the same terms and conditions. The objective is to place the employee in the same position she would have been in prior to the

⁵ (2002) 23 ILJ 2213 (LAC); [2002] ZALAC 19.

⁶ 2009 (1) SA 390 (CC); [2008] ZACC 16 at para 36.

dismissal. This manifests the return of the *status quo ante*. The LAC in *Kubeka & others v Ni-Da Transport (Pty) Ltd*,⁷ noted that in accordance with the general principle of applying reciprocal specific performance, the employee must tender to perform and that the employer's reciprocal duty to remunerate the employee will depend on the employee's tender of services.

[26] In this instance, it is apparent that from the implementation of the lock-out, the employees tendered their services and Woolworths accepted such tender. This means that the pre-existing contract was revived as a result of the acceptance of the tender of services. The fact that the Constitutional Court left the door open on the negotiations regarding the implementation of the flexi 40-hour per week term,⁸ does not detract from the Constitutional Court's order to restore the pre-existing employment relationships.⁹ This means that the pre-existing employment relationship was revived subject to the reinstated workers accepting the flexi 40 contract as a term of employment rather than the 45-hour working week.

[27] I now consider whether the reinstatement was in its entirety and whether it remained open to the appellants to approach the CCMA for relief that has culminated in this appeal.

[28] The provisions of section 186(2)(a) of the LRA provide that an unfair labour practice means any unfair act or omission arising between the employer and employee involving unfair conduct by the employer relating to promotion, demotion, probation or training of an employee or related to the provision of benefits to an employee.

[29] In *Apollo Tyres SA (Pty) Ltd v Commission for Conciliation, Mediation & Arbitration & others*,¹⁰ the employer had initiated an early retirement scheme for its employees between the ages of 46 and 59. The employee had applied to be

⁷ (2021) 42 ILJ 499 (LAC); [2020] ZALAC 55 at paras 16 and 36.

⁸ *SA Commercial Catering & Allied Workers Union & others v Woolworths (Pty) Ltd supra* f(n) 1 at paras 56 & 58.

⁹ *SA Commercial Catering & Allied Workers Union & others v Woolworths (Pty) Ltd supra* f(n) 1 at para 57.

¹⁰ *Apollo Tyres SA (Pty) Ltd v Commission for Conciliation, Mediation & Arbitration & others* (2013) 34 ILJ 1120 (LAC); [2013] ZALAC 3 at paras 46 – 48.

included in the scheme but was declined because the applicants for the scheme had to be 55 years of age. The employee subsequently resigned from the employer's employment. The employee after that referred a section 186(2)(a) dispute to the CCMA. In the arbitration proceedings, the employer contended that the CCMA lacked jurisdiction to arbitrate the dispute since the retirement package did not constitute a benefit within the meaning of section 186(2)(a) of the LRA. On appeal, the Labour Appeal Court (LAC) held as follows:

[46] I also agree, with qualification, with the Labour Court's conclusion that there are at least two instances of employer conduct relating to the provision of benefits that may be subjected to scrutiny by the CCMA under its unfair labour practice jurisdiction. The first is where the employer fails to comply with a contractual obligation that it has towards an employee. The second is where the employer exercises a discretion that it enjoys under the contractual terms of the scheme conferring the benefit.

[47] The first instance is in sync with the *HOSPERSA* approach. The second instance calls for qualification. Mr Pretorius argued that the effect of the judgment is that there must be contractual terms even in instances where the employer exercises a discretion. If that is indeed what the Labour Court meant, then I cannot agree with it. I am of the view that the Labour Court used the words 'contractual terms' loosely. It did not mean that the source of the discretion must be found in a contract. It is in my view clear that, if one has regard to the context of the whole judgment and the Labour Court's conclusion, it actually meant when the employer exercises a discretion under the terms of the scheme conferring the benefit. Therefore, even where the employer enjoys a discretion in terms of a policy or practice relating to the provision of benefits such conduct will be subject to scrutiny, by the CCMA, in terms of s 186(2)(a).

[48] The facts of this matter clearly illustrate that the *HOSPERSA* approach, that the benefit must be an entitlement that is rooted in contract or legislation, is untenable. Hoosen had, in terms of her employment contract, a right to retirement benefits. The contract did not make provision for a right to voluntary early retirement benefits. She would therefore, on the *HOSPERSA* approach, be able to challenge, by way of arbitration, any unfairness relating to the ordinary retirement benefits. When the appellant decided to accelerate

the existing contractual benefits and retained a discretion to grant the accelerated benefits, the benefits would strangely morph into something less than benefits because according to the *HOSPERSA* approach she did not have a contractual right to the accelerated retirement benefits. The employer would then have a licence to act with impunity. She would thus not have recourse in the civil courts, because no contract came into being, nor would she have a remedy in terms of s186(2)(a) of the Act to challenge the patent unfairness because there is no underlying contractual right to the benefits. Being a single employee she would in accordance with *Schoeman v Samsung* not have the right to strike. Clearly the notion that the benefit must be based on an *ex contractu* or *ex lege* entitlement would, in a case like this, render the unfair labour practice jurisdiction sterile.'

[30] In *Prinsloo NO and Others v Goldex 15 (Pty) Ltd and Another*,¹¹ the Supreme Court of Appeal (SCA) restated the three requirements for *res judicata* as being: the same parties; the same cause of action; and the same relief. The Court noted that inequity may arise from the application of the *res judicata* rule in certain circumstances. It opined that *res judicata* should be considered according to the circumstances of each case and that deviation from the threefold requirements of *res iudicata* should not be allowed when it is likely to give rise to potential unfair

¹¹ 2014 (5) SA 297 (SCA); [2012] ZASCA 28 at paras 23 and 26 and where it was held:

'[23] In our common law the requirements for *res iudicata* are threefold: (a) same parties, (b) same cause of action, (c) same relief. The recognition of what has become known as issue estoppel did not dispense with this threefold requirement. But our courts have come to realise that rigid adherence to the requirements referred to in (b) and (c) may result in defeating the whole purpose of *res iudicata*. That purpose, so it has been stated, is to prevent the repetition of lawsuits between the same parties, the harassment of a defendant by a multiplicity of actions and the possibility of conflicting decisions by different courts on the same issue (see e.g. *Evins v Shield Insurance Co Ltd* 1980 (2) SA 814 (A) at 835G). Issue estoppel therefore allows a court to dispense with the two requirements of same cause of action and same relief, where the same issue has been finally decided in previous litigation between the same parties.'

And

'[26] Hence, our courts have been at pains to point out the potential inequity of the application of issue estoppel in particular circumstances. But the circumstances in which issue estoppel may conceivably arise are so varied that its application cannot be governed by fixed principles or even by guidelines. All this court could therefore do was to repeatedly sound the warning that the application of issue estoppel should be considered on a case-by-case basis and that deviation from the threefold requirements of *res iudicata* should not be allowed when it is likely to give rise to potentially unfair consequences in the subsequent proceedings (see e.g. *Kommissaris van Binnelandse Inkomste v Absa Bank Bpk* supra at 676B – E; *Smith v Porritt* supra para 10).'

consequences in the subsequent proceedings. The element of fairness in the application was earlier reiterated by the SCA in *Smith v Porritt and Others*¹² where the Court held as follows:

[10] Following the decision in *Boshoff v Union Government* 1932 TPD 345 the ambit of the *exceptio rei judicata* has over the years been extended by the relaxation in appropriate cases of the common-law requirements that the relief claimed and the cause of action be the same (*eadem res* and *eadem petendi causa*) in both the case in question and the earlier judgment. Where the circumstances justify the relaxation of these requirements those that remain are that the parties must be the same (*idem actor*) and that the same issue (*eadem quaestio*) must arise... Relevant considerations will include questions of equity and fairness not only to the parties themselves but also to others. As pointed out by De Villiers CJ as long ago as 1893 in *Bertram v Wood* (1893) 10 SC 177 at 180, 'unless carefully circumscribed, [the defence of *res judicata*] is capable of producing great hardship and even positive injustice to individuals.'

Discussion

[31] This appeal has to be considered in the context of the Constitutional Court having urged the parties to enter negotiations regarding whether the parties can reach an agreement on the implementation of the flexi 40 contract. The flexi 40 which has been accepted by the employees after the retrenchment process in 2012 would constitute terms of remuneration and benefits to the appellants which have not yet accrued to them. At this stage, the appellants referred to an ULP in respect of benefits which they enjoyed under the pre-existing contracts in the form of a medical aid scheme. They also sought the benefit of an extended retirement age of 63 which did not exist in the pre-existing contract but does under the Flexi 40.

[32] Van Niekerk J deals with the law and the issues before it succinctly at paragraphs 13 and 14 of the judgment. In short, it holds that the appellants can only seek benefits that have been acquired after the flexi 40 has been agreed and yet be

¹² 2008 (6) SA 303 (SCA); [2007] ZASCA 19 at para 10.

adjudicated under section 186(2)(a) of the LRA. On the other hand, the appellants contend in this court that the issues referred to in section 186(2)(a) adjudication were those that Woolworths was not affording the appellants in terms of the pre-existing contract despite being reinstated by the Constitutional Court. This contention is primarily regarding forced membership of Discovery Medical Aid whereas Wooltru Medical Aid existed under the pre-existing contracts. Woolworths conceded during argument that this was the situation but submitted that Wooltru cannot be reinstated merely for the benefit of the appellants while the rest of the employees are under Discovery. They pleaded the impossibility of performance of this pre-existing benefit.

[33] The key findings of the Labour Court were that on the objective facts, the dispute between the parties was Woolworths' refusal to continue to pay the employees on the pre-existing contract of a 45-hour week remunerating them on the flexi 40 contracts like the rest of the employees. Woolworths did this by issuing a lockout notice in terms of section 64(1) of the LRA as it considered negotiations to have failed on the flexi 40 between November 2018 when the Constitutional Court issued its order and December 2020, some two years later.

[34] The Labour Court correctly characterised the tussle over the flexi 40 and 45-hour week, as was also held by the Labour Court in the interdict proceedings, as a remuneration issue being a matter of mutual interest that is susceptible to industrial action by a strike or lockout. It is now settled law that the term 'benefit' must be interpreted to include, first, a right or entitlement to which the employee is entitled (*ex contractu* or *ex lege* including rights judicially created). Secondly, that it includes discretionary benefits¹³. The second category should be subject to section 186(2)(a) adjudication in exceptional circumstances lest the legislative intent of creating a specific category of ULP challenges is unduly made wildly.¹⁴

[35] It is in respect of the second category that the appellants contend that the refusal to extend the age of retirement in circumstances where Woolworths had done so in respect of other employees during the period of the employees' dismissal

¹³ *Apollo Tyres* at paras 45 - 48.

¹⁴ *Apollo Tyres* at 48.

constituted a refusal by Woolworths to exercise its discretion to afford the reinstated workers the same benefit as that created during the period of their dismissal.

[36] The gravamen of the appellant's complaint is that the appellants were not reinstated on the same terms and conditions (45-hour week, Wooltru Medical Aid Scheme and other benefits) which governed the employment relationship prior to their dismissals but on the flexi 40 terms (which were introduced during their period of dismissal). This factor had to be assessed in determining whether what the employees claimed were rights flowing from the contract law, or an ULP as contemplated in section 186(2)(a) of the Constitution.

[37] At paragraph 23 of her judgment, Mahosi J held that the appellants' demand that their demands in their email of 11 November 2020 be incorporated into the Flexi40 contract that was still under negotiation are matters of mutual interest that ought to be resolved through power play. Those issues included medical aid scheme to be subscribed to, the extension of the pension/retirement (extension of the retirement age to 63), salary/remuneration and long service awards.¹⁵ The Court held therefore that since the flexi 40 contract, inclusive of demands for the stated benefits to be included therein, is subject to a legitimate power play, the lockout cannot be declared unlawful or not protected.

[38] Van Niekerk J was correct therefore that the issues that fall under section 186(2)(a) have been traversed and cannot be revisited by another court and therefore *res judicata*.

[39] The Mahosi J Judgment accords with the authorities that the CCMA cannot adjudicate in terms of section 186(2)(a) claimed benefits unless they arise out of an existing contract, law, judicial order or are discretionary in the hands of the employer.¹⁶

¹⁵ Labour Court judgment at para 17.

¹⁶ Apollo Tyres at paras 45-48.

[40] The appellants' reliance on *Maritime Industries Trade Union of SA & others v Transnet Ltd & others*,¹⁷ does not avail them in this case as the circumstances in which the same set of facts may give rise to both a mutual interest and a rights dispute do not exist in this case. The issues referred to the CCMA had not become acquired rights but were demands to be incorporated into the flexi 40 contract. To the extent that the Wooltru Medical Aid Scheme membership formed part of the pre-existing contract, Woolworths advanced an argument that it has become impossible to reinstate it. That argument is a sound one. The Constitutional Court was alive to the fact that its order of reinstatement would last for as long as it took to reach a new agreement under the flexi 40 contract.¹⁸

Conclusions

[41] Following upon the reinstatement of the appellants' consequent to the Constitutional Court finding that their dismissal after a section 189 of the LRA retrenchment process was substantively unfair, and the Court urging the parties to engage in further negotiations as to the implementation of the flexi 40 contract already entered into with the rest of the workforce, the parties entered into such negotiations. The flexi 40 contract, a template of which is part of the papers before the court sets out benefits in addition to the remuneration clause. The appellants contended for a different set of benefits to be included in addition to the issue of salary/remuneration in terms of the letter of demands of 11 November 2020. The employer, Woolworths issued a section 64(1) of the LRA notice of lockout after having referred the dispute to conciliation and a certificate of non-resolution was issued.

[42] Having considered the matter and traversed the legal principles considered in the Mahosi J and Van Niekerk J judgments, it is my view that the appellants' contracts were reinstated fully, save for the substitution of Wooltru Medical Aid with Discovery Medical Aid. Since all other employees were employed in terms of the flexi 40 contract and the Constitutional Court had urged the parties to start where they had stopped in 2012 when the appellants were dismissed after a section 189 of the

¹⁷ (2002) 23 ILJ 2213 (LAC); [2002] ZALAC 19.

¹⁸ Constitutional Court Judgment at para 56.

LRA retrenchment process and that these negotiations reached maturity with the employer issuing a lockout notice, the Labour Court found that the CCMA lacked jurisdiction to entertain a section 186 of the LRA claim for unfair labour practice. This judgment is unassailable and the employer's lockout meets the requirements of the LRA.

[43] In the circumstances, it is ordered that;

Order:

1. The appellant's appeal is dismissed with no order as to costs.

Malindi AJA

Molahlehi AJP and Savage AJA concur.

APPEARANCES:

FOR THE APPELLANT:

Dockrat Attorneys.

FOR THE THIRD RESPONDENT:

Macgregor Erasmus Attorneys Incorporated