

IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)

CASE NO: JR2585/10

In the matter between:

RAMOKONE JOHANNA MOGANO

Applicant

And

COMMISSION FOR CONCILIATION
MEDIATION AND ARBTRATION

First Respondent

THENJIWE NHLIZIYO N.O.

Second Respondent

LAURICE PRESTON

Third Respondent

Date of hearing : 20 July 2011

Date of judgment : 20 July 2011

JUDGMENT

MOLETSANE AJ

1. In this application the applicant seeks the following order:

1.1 Declaring Annexure A attached hereto purporting to be a settlement

agreement between myself and the third respondent to be invalid and

of no force and effect.

1.2 Setting aside Annexure A and remitting the matter back to the second respondent for reconsideration.

1.3 Alternatively, declaring that the applicant was unfairly dismissed.

1.4 Cost of this application in the event of opposition.

1.5 Granting the applicant further and/or alternative relief.

2. The application is unopposed.

Brief background

3. On 15 July 2010, at the Commission for Conciliation, Mediation and Arbitration (“CCMA”) offices in Pretoria, conciliation took place between the applicant and the third respondent. The said conciliation was conciliated by the second respondent (Commissioner Nhlinziyo).

4. The outcome of conciliation was the settlement agreement signed by the applicant and the third respondent. The Commissioner thereafter issued a certificate that the matter had been resolved/settled. The settlement agreement contained the following contents:

4.1 The applicant will hereby withdraw this matter on condition that the respondent also withdraws the criminal case that she has opened

against the applicant.

4.2 The relationship has come to an end by mutual agreement between the parties.

5. The settlement agreement further stated that it was in full and final settlement of the said dispute, without further recourse.

Applicant's grounds for seeking the setting aside of the settlement agreement

6. The applicant states the following in her affidavit:

6.1 The Commissioner advised her that the third respondent had opened a criminal case against her.

6.2 That the Commissioner advised her that she must withdraw her referral and that the third respondent would withdraw her criminal case against her.

6.3 She was forced and/or instructed and/or pressured by the Commissioner to sign the settlement agreement.

6.4 The Commissioner requested the interpreter to call her sister (who was outside the conciliation room) to explain to her the proposition.

7. The confirmatory affidavit of the applicant's sister (Mapula Margaret

Mokone) has been attached to the applicant's founding affidavit.

My concerns

8. The applicant's founding affidavit is incomplete in that it does not have page 6. Mr Mketsu for the applicant conceded that indeed page 6 was missing even in this file. The incomplete affidavit has clearly prejudiced the respondents in that when they decided not to oppose the application, they did not have page 6. I am therefore not in a position to properly determine the matter. On this reason alone the application stands to be dismissed. Furthermore, there is a duty on the applicant to substantiate how she was forced to enter into a settlement agreement facilitated by the Commissioner.¹ *In casu* due to missing pages, the applicant has failed to substantiate.
9. Secondly, the applicant is not specific in terms of what ground she wants to rely upon. She states that she was "forced" and/or "instructed" and/or "pressured" by the Commissioner. It shows that she is not sure which ground she wants to rely on.
10. Thirdly, the applicant seeks as a prayer that the settlement agreement be set aside without seeking to set aside the certificate certifying that the dispute

¹ See *Lutchman v Pep Stores and Another* [2004] 4 BLLR 374 (LC)

has been resolved/settled.

11. Fourthly, the applicant seeks that the matter be remitted back to the very same commissioner that allegedly instructed and/or forced and/or pressured her to enter into that settlement agreement.

12. Under the circumstances the applicant cannot be assisted by this court. In my view, an applicant that seeks to be assisted by the court needs to place proper and sufficient information before the court. The applicant was at all material times assisted by firm of attorneys and one would have expected that a proper work to have being done when drafting the application.

13. In the event I make the following order :

13.2The applicant's application is dismissed.

13.3There shall be no order as to costs.

MOLETSANE AJ

Appearances

For the Applicant : Attorney Mketsu