

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG

Reportable
Case Number: JS 707/10

In the matter between:

LIZZY PHILLISTUS BUTHELEZI

Applicant

and

LIBERTY GROUP LIMITED

Respondent

Date of Hearing: 8 and 14 September 2011

Date of Judgment: 22 September 2011

JUDGMENT

MOSHOANA AJ

Headnotes: *Validity of a settlement agreement.*

Introduction

[1] This is a referral in terms of section 191 of the Labour Relations Act as amended (LRA).¹ This matter involves the question of the validity of a settlement agreement, in terms of which the applicant agreed to be dismissed for operational requirements. The applicant contends that the agreement is invalid for reasons of compulsion. Put it differently, the applicant contends that she signed the agreement under duress.

¹ 66 of 1995.

Accordingly, the Court should find that the agreement is unenforceable in law. The respondent on the other hand contends that the agreement is valid and enforceable in law. The agreement extinguishes the applicant's claim for unfair dismissal, so it was contended. The applicant testified in her own case. The respondent called two witnesses in support of its contention.

The postponement application

[2] At the commencement of the trial, an application for postponement was launched on behalf of the applicant. The reason for that was that such a postponement will allow the parties to comply with the Judge President's directives on matters involving dismissal based on operational requirements. Matlejoane for the applicant submitted that on reading the signed minutes filed in Court, there appears a contradiction between the issues to be decided and the facts in dispute. The parties highlighted as facts in dispute the fairness of the dismissal as per the CCMA referral. On the other hand, the parties requested the Court to decide on the validity of a settlement agreement. I was not persuaded and refused the application. I did so because no *good cause* was shown why the trial should be postponed. The postponement would have served no purpose as it seemed clear to me that what the applicant was seeking to do was to resile from the pre-trial agreement.

[3] The purpose of a pre-trial in this Court and any court is to narrow down the issues for trial. It is improper for a party to agree on what issues are to be dealt and later seek to resile therefrom simply because the agent, in this case an attorney, was

negligent in the manner in which the issues were dealt with. Ironically, the applicant yet again seeks to be not bound by the settlement agreement she signed. I take this opportunity to state that if the directives are not complied with, a matter ought not to be set down for trial. It is the duty of practitioners in this Court to ensure that the directives are complied with at all material times. Having said so, I do not mean that non compliance could be used as a *stratagem* to seek postponement. It is improper for a practitioner who has a duty to ensure compliance with the directives to benefit from such a failure on the part of his or her client.

Brief relevant evidence.

[4] As pointed out above, this matter turns on the validity or otherwise of the settlement agreement. The bulk of the evidence dealing with what happened before the agreement was entered into is irrelevant, taking into account the parole evidence rule. On 4 May 2010, the applicant and the respondent entered into a settlement agreement. It is common cause that the applicant signed and understood the contents of the settlement agreement of 4 May 2010. According to the applicant, the agreement was not explained to her in any details. Nkuna presented the agreement to her and asked to sign because if she does not sign she will get nothing. She signed because she had children to look after and other financial obligations. She went and sat in her car called her husband and only read the agreement at home. At that point she realised that she was actually unhappy with the agreement.

[5] Nkuna testified that she took the applicant through the agreement and gave her

option to either sign or not sign. If she does not sign consultation will continue. The applicant took the agreement and returned after about 45 minutes with it signed. The applicant effected amendments by removing the place of signature. She inserted her address. After the agreement was signed, the applicant sought through attorneys to enforce the agreement. On 23 June 2010, the applicant referred a dispute to the CCMA. The jurisdiction of the CCMA was challenged. The basis of the challenge was that the matter was settled. On 15 July 2010, a certificate was issued by the CCMA referring the dispute to this Court. It is apparent that the CCMA did not entertain the jurisdictional challenge. Nonetheless the issue was raised again in this Court; hence the parties agreed that the issue of the validity of the settlement agreement is determinative of the future of the alleged unfair dismissal dispute.

Argument.

[6] The only question to be answered by this Court is whether the settlement agreement entered into on 4 May 2010 is valid and binding on the parties. Both representatives presented very helpful set of heads. It is unnecessary to repeat them in this judgment. Suffice to mention that it was argued on behalf of the applicant that she was coerced into the agreement. It was submitted that by being told that “sign or else you will get nothing” amounts to coercion. On the other hand the respondent’s representative contended that there was no coercion and the applicant waived her rights to claim unfair dismissal. She has not demonstrated the requisite elements of coercion.

Analysis

[7] Is the settlement agreement valid and binding between the parties? If yes *cadit qauesto*. It is correct as submitted by the respondent's representative that as a general rule a person is bound by the terms of a signed agreement-the *caveat* rule. The rule applies even where the signatory has not read the agreement. See in this regard *Bhikhagee v Southern Aviation (Pty) Ltd*². A party seeking to resile from the agreement has to prove that the agreement is not binding on him or her (*Union Government v Gowar*).³

[8] A party seeking to raise duress, like the applicant before me must allege and prove a threat of considerable evil to the person or his family which induced fear, the fear was reasonable, the threat was imminent or inevitable, the threat was unlawful and that the contract was concluded as a result of a threat (*Arend v Astra Furnishers (Pty) Ltd*).⁴ The applicant before me failed to show that. On the contrary at the CCMA proceedings she testified as follows:

“Ms Nkuna took out the documents which turned out to be the severance package calculations annexed to the settlement agreement. She explained the figures to me and some of the clauses, whereafter she advised me to sign. **She indicated that I had an option, I could sign and receive the package or I could decline to sign in that event I would be dismissed and go away empty handed.**”

This version she repeated in this Court. Nowhere did she mention any threat

2 1949 (4) 105 (E).

3 1915 AD 426.

4 1974 (1) SA 298 (C).

whatsoever. She had an option. A person who is under threat will ordinarily be without an option. Although the applicant paints a picture that she had no choice, was confused and traumatised, the evidence above proves otherwise. The Court accepts the version of Nkuna. The Court accepts that the applicant had an opportunity to read and actually left with the agreement for 45 minutes as testified. The applicant failed to show any compulsion. This is a case of a person who afterwards felt that she made a mistake to sign. Her actions of seeking to enforce the agreement are totally inconsistent with her assertion of compulsion.

[9] This case is distinguishable from that of *Roberts and Others v WC Water Comfort (Pty) Ltd.*⁵ In this matter a detailed settlement agreement was signed by both parties. In clause 3 of the agreement reference is made to mutual agreement to terminate for operational requirements on 31 May 2010. In clause 5 the applicant waived her rights to claim unfair dismissal.

[10] Therefore, the agreement is valid and binding between the parties. In the result, I make the following order:-

- 1 The settlement agreement is valid and binding between the parties.
- 2 The applicant's claim is hereby dismissed
- 3 There is no order as to costs.

⁵ (1999) 1 BLLR 33 (LC).

G. N MOSHOANA

Acting Judge of the Labour Court

Appearances

For the Applicant: ADV M B MATLEJOANE Instructed by L J Bam Attorneys

For the Respondent: ADV G I HULLEY Instructed by Hlatswayo du Plessis Van
Der Merwe Nkaiseng.