

REPUBLIC OF SOUTH AFRICA



Not reportable

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: J 958/11

In the matter between:

NKOSINATHI LALA

Applicant

and

STANDARD BANK OF SOUTH AFRICA

Respondent

Heard: 19 October 2011

JUDGMENT

SAVAGE AJ

Introduction

[1] This is an application to review and set aside a settlement agreement entered into between the parties under the auspices of the Commission for Conciliation Mediation and Arbitration ("CCMA") on 11 March 2009. The application is made in terms of section 145 read with section 158 of the Labour Relations Act No 66 of 1995, as amended ("the Act").

[2] On 19 October 2011 I dismissed the review application with costs. My reasons for the order appear below.

[3] Section 145(1) of the Act provides:

‘[A]ny party to a dispute who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for an order setting aside the arbitration award...’ (my emphasis).

[4] A settlement agreement ‘is a written agreement in settlement of a dispute that a party has the right to refer to arbitration or to the Labour Court.’ This is apparent from a reading of section 158(1A) of the Act. Accordingly, a settlement agreement entered into between the parties does not constitute an ‘arbitration award’ for purposes of the Act, unless it has been made an arbitration award in terms of section 142A of the Act.

[5] An arbitration award is that which is issued by a commissioner in terms of section 138(7) within 14 days of the conclusion of arbitration proceedings, or an award made in terms of section 142A of the Act. No such arbitration award was issued by the CCMA in this matter.

[6] This Court does not have jurisdiction to review a settlement agreement in terms of the provisions of either section 145 or 158 of the Act. In the circumstances, this Court lacks jurisdiction in this matter. The review application is accordingly dismissed.

[7] The applicant argued that there should be no order as to costs, while the respondent sought costs. It is trite that a judicial officer has a discretion as to whether or not to award costs taking into account considerations of fairness. In exercising this discretion, ordinarily, it should be borne in mind that the party that is wholly successful in an action or application is awarded costs.

‘...In other words, the judicial officer may not, as he or she pleases, deprive a successful party of its costs. He or she must do so for reasons which he or she must set out or state. It similarly follows that, although ordinarily a successful party will be awarded its costs, it does not follow that that will always be the case.’¹

[8] I find no basis to conclude that costs should not be awarded in this matter, nor are there particular considerations of fairness which would justify such an order. In the circumstances, costs are to follow the result.

Order

[9] The review application is dismissed with costs.

K M Savage
Acting Judge

¹ *The Trustees of the Time Being of the Biowatch Trust v Registrar Genetic Resources and Others* (Open Democracy Advice Centre as Amicus Curiae) (A831/2005) [2008] ZAGPHC 135 (13 May 2008); 2008 JDR 0442 (T) at para 31

APPEARANCES

APPLICANT: Mr J Magodi

Instructed by: Madikizela Nyathi Attorneys

RESPONDENT: Mr Cithi,

Perrot Van Niekerk Woodhouse Matyolo

LABOUR COURT