REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: JS 25/2011

In the matter between:

DAVID MANKU MATHOPA **Applicant**

and

PIONEER FOODS (PTY) LTD T/A

SASKO MILLING AND BAKING

(GROBERSDAL BAKERY) **Respondent**

Heard : 15-16 August 2013

Delivered : 16 August 2013

Date edited : 30 April 2014

Summary : No dismissal on the basis of operational requirements. Parties have reached an agreement to terminate the employment relationship.

EX-TEMPORE JUDGMENT

AC BASSON, J

Introduction

[1] The applicant in this matter is Mr David Mathopa ('Mathopa') who claimed that he was unfairly dismissed on the basis of operational requirements. The

respondent is Pioneer Foods (Pty) Limited trading as SASCO Milling and Baking (Groblersdal Bakery).

[2] In light of the fact that the issues in this matter are extremely crisp, I intend to give brief *ex tempore* reasons for my order.

[3] According to the pre-trial minute the Court is required to decide the following issues: Firstly whether Mathopa's services were terminated by agreement as it is the respondent's contention that Mathopa was not dismissed in the context of section 186 of the Labour Relations Act[1] ('the LRA') and secondly, in the alternative, whether the retrenchment was procedurally and substantively fair.

[4] Mathopa contended that he was dismissed on the basis of operational requirements and that his dismissal was substantively and procedurally unfair. During the course of these proceedings Mathopa also indicated that he wished to be reinstated. He also made it clear that he was unhappy with the manner in which severance pay was calculated. His last working day was 30 September 2010, I will return to the issue of severance pay hereinbelow.

<u>Brief exposition of the relevant facts</u>

<u>The 2010 Dispute</u>

[5] According to the respondent Mathopa's employment was terminated by mutual agreement by way of the conclusion of a settlement agreement (the '2010 settlement agreement'). I will return to this settlement agreement herein below.

[6] The respondent contended that its Polokwane Bakery was upgraded and this bakery took over some of the production of the Groblersdal Bakery, this according to the respondent, resulted in one shift at the Groblersdal Bakery becoming redundant. According to the respondent retrenchment consultations were conducted with the staff.

[7] It appears from the evidence that Mathopa addressed a letter to the respondent acknowledging that he did not have a problem with the retrenchment and that he only needed a letter from the respondent giving an undertaking that he would be called back to work in the event a vacancy

[1] Act 66 of 1995.

arose within the next 12 months. It further appears from the evidence that the dispute between the parties is not about the unfair retrenchment of Mathopa but more about the manner in which his severance pay was calculated. According to Mathopa, his severance pay should have been calculated as from 1984. He based his argument on the fact that he had previously obtained relief from the CCMA in terms of a default judgment reinstating him to his previous position. (I will return to the terms of this settlement agreement herein below as it is in dispute what was agreed upon.) Accordingly his severance should be calculated as from 1984.

The 2007 Dispute

[8] Mathopa was initially employed on 26 May 1984 at the respondent's Bochum Bakery. At one stage Mathopa was dismissed by the respondent for misconduct. He, however, successfully obtained a default award from the CCMA and in terms of the arbitration award that was issued on 21 January 2007 he was reinstated. The award was certified on 11 April 2007. By the time the default award was received by the respondent, the Bochum Bakery had already been closed down and on 1 December 2007 Mathopa commenced work at the Groblersdal Bakery. Mathopa worked as a shift supervisor and received an annual package of R 137 960.00.

[9] Because the respondent was not in a position to comply with the terms of the default award, the parties concluded a formal settlement agreement in terms of which (according to the respondent) Mathopa was afforded the back-pay and interest as per the default arbitration award and *re-employment* into the position of a shift supervisor at the Groblersdal Bakery. According to the respondent Mathopa's entitlement to severance pay for the years 1984 – 2007 had accordingly been compromised by him entering into the settlement agreement which he never disputed.

[10] It is clear from the papers and the evidence before the Court that the parties have in fact reached a settlement agreement. What is, however, in dispute is what was contained in the 2007 settlement agreement that was signed by Mathopa on 12 November 2007.

[11] Two versions of the 2007 settlement have been placed before the Court. In the respondent's bundle the 2007 settlement agreement is reflected on page

6. This version of the settlement agreement comprises five paragraphs. Paragraph 4 states that Mathopa will be *re-employed* as from *01 December 2007*. It is common cause that Mathopa in fact commenced his employment a little bit earlier. Paragraph 5 of the settlement agreement provides for an undertaking that the respondent will assist with the furniture removal of Mathopa.

[12] Mathopa handed in his version of the 2007 settlement agreement and conspicuously absent from his version of the settlement agreement is paragraphs 4 and 5. In fact, half of the page is completely blank.

[13] At the outset I must point out that I find it highly improbable that there can be two version of the same settlement agreement especially where the most important part of the settlement agreement is missing from the one submitted by the party who has an interest in not having paragraph 5 contained in the settlement agreement. I have also listened carefully to the evidence of Mr Gouws who testified on behalf of the respondent in this regard. Gouws struck me as a very honest and straightforward witness: he answered every single question that was posed to him sometimes under very difficult circumstances. Gouws' evidence in this regard was clear: He was contacted by Human Resources and was informed that Mathopa would be *re-employed* in the bakery in Groblersdal where he (Gouws) was employed. Gouws testified that he received the settlement agreement and that he also attached his signature to the agreement not as a witness but to indicate that he was in agreement with what was contained in the settlement agreement. Gouw's evidence in this regard was clear: The agreement was that Mathopa would be *re-employed*. His evidence, which I also accept, was that he had spoken to Mathopa on various occasions about the fact that he (Mathopa) was re-employed.

[14] In respect of the settlement agreement concluded on 12 November 2007 I therefore make the following findings. Firstly, I accept that the settlement agreement was signed by Mathopa despite contradictory evidence by Mathopa on the issue of signing the agreement. In the end Mathopa conceded that he did in fact sign the settlement agreement. Secondly, I accept that the settlement agreement contained paragraphs 4 and 5 (as reflected on the copy submitted by the respondent), and I accept that the

agreement was that Mathopa would be *re-employed*.

[15] Having therefore made this factual finding that Mathopa was in fact *re-employed* it follows in my view that severance pay had to be calculated with reference to the date on which he commenced his employment in terms of the 2007 settlement agreement - which was November 2007.

[16] There is a further aspect that is important and that is the fact that Mathopa had signed this settlement agreement on 12 November 2007 (accepting a monetary settlement and re-employment). It was submitted on behalf of the respondent that if Mathopa had wanted to dispute this settlement agreement he ought to have challenged its validity within three years from the date of its conclusion. Mathopa served the present claim against the respondent on 17 January 2011, more than three years from the date of the conclusion of the settlement agreement. Mathopa’s claim to change the validity of the 2007 agreement had thus prescribed and as a result his claim that his severance pay be calculated from 1984 has also prescribed.

[17] This brings me to the last issue and that is the agreement reached on 11 September 2010 in respect of Mathopa’s retrenchment. I do not intend to set out the factual position that preceded the conclusion of this agreement as it is succinctly recorded in the respondent's heads of argument. What is clear from the evidence (the documentary evidence and the evidence of Bouwer), is that the parties had reached a mutual agreement that Mathopa would accept his retrenchment. It is important to point out that on 10 September 2010 Mathopa, in his own handwriting, wrote a letter (which is co-signed by the shop steward) stating unequivocally that he did not dispute the retrenchment: "I do not have the problem of retrenchment".

[18] Soon thereafter, on 11 September Mathopa signed a settlement agreement which was also co-signed by two witnesses in which it is recorded that Mathopa accepted his retrenchment. The agreement also provided for a severance package of one week’s remuneration for every completed year of service.

[19] In light of this agreement, I am therefore of the view that Mathopa was not dismissed as contemplated by the LRA but that the employment relationship came to an end by consensus. In this regard it is clear from case law that once parties enter into a settlement agreement it puts to rest the dispute

between the parties. See in this regard: *Ngwathe Local Municipality v South African Local Government Bargaining Council and others*[2] See also *Buthelezi v Liberty Group Ltd*[3] In this decision the court noted as a general rule the following:

> "[7] Is the settlement agreement valid and binding between the parties? If yes *cadit quaestio*. 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*. 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)."

[20] There is nothing before this Court to show that this agreement is not binding. Firstly the documentary evidence supports the fact that the agreement is binding, and secondly the evidence of Bouwer, which I accept over the evidence of Mathopa, also confirm that the agreement was properly entered into.

<u>Order</u>

[21] In the event the applicant's claim is dismissed. In respect of costs I have taken note of the evidence that Mathopa is currently unemployed. I therefore make no order as to costs.

AC BASSON, J

Judge of the Labour Court

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[2] [2011] 12 BLLR 1206 (LC).

[3] (2012) 33 ILJ 607 (LC).

APPEARANCES:

For the Applicant	: Mr David Mathopa in person
For the Respondent	: Advocate F Boda
Instructed by	: Vermaark Attorneys

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