



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case No: JS128/2014

In the matter between:

QUINTON GRIESEL

First Applicant

CHANTELLE GRIESEL

Second Applicant

~~and~~ And

AAA HOME SERVICES CC

Respondent

Heard: 12 March 2015

Delivered: 16 March 2015

Summary: Claim for unfair dismissal following a retrenchment based on alleged operational requirements; Respondent delivering a notice of intention to oppose but no response to the statement of case; trial Respondent raising a point *in limine* that the matter was settled between the parties; On the version before court the alleged settlement found to be non-existent; Matter proceeding by way of default; Claim succeeding with costs

JUDGMENT

VOYI, AJ

- [1] This is a claim for unfair dismissal following the retrenchment of the Applicants on account of alleged operational requirements. The Applicants are both former employees of the Respondent.¹ They were retrenched on 29 November 2013.
- [2] The Applicants' statement of case was filed with this court on 28 February 2014. Based on the affidavit filed in support of proof of service, the statement of case was served on the Respondent by fax at approximately 09:04 on 25 February 2014.
- [3] On 28 March 2014, the Respondent filed its notice of intention to oppose the Applicants' claim.
- [4] The Respondent had a period of ten (10) days from the date of service of the statement of case to deliver its response thereto. This is in terms of Rule 6(3)(c) of the Rules of the Labour Court. However, no response was delivered to the statement of case as it is required by the said Rule 6(3)(c).
- [5] In light of there being no response to their statement of case, the Applicants filed an application for default judgment on 9 April 2014. It would appear that this application was not pursued any further.
- [6] On 22 July 2014, the parties filed the minute of their pre-trial conference on the matter. The minute reflects that the Respondent was represented at the conference by its attorney, being Mr Craig Harvey. In the minute filed and under the rubric 'The Resolution of Preliminary Points', it is recorded that the Respondent '...will seek condonation for the late service and filing of its response to the applicant's statement of claim'. That never occurred. The Respondent never filed its response to the Applicants' statement of case.
- [7] When the matter came before this court for trial, there was appearance for the Respondent. The Respondent's Counsel, Advocate T L Jacobs requested a postponement of the matter.

¹ The First Applicant was employed on 7 May 2013 and the Second Applicant on 28 November 2012

- [8] The application for a postponement, moved orally from the bar, was rather brief and it alluded to witnesses either having been unallocated or not being available for the hearing. There was even reference to a witness being ill to attend court.
- [9] Having heard the application, I took the view that it was simply destitute of merit and I refused same. The application was, to me, a transparent manoeuvre to frustrate finalisation of the matter. If there was a genuine challenge with the availability of witnesses, nothing prevented the Respondent from bringing a substantiated written application for a postponement of the matter.
- [10] After having refused the application for a postponement, the Respondent's Counsel indicated that it was the Respondent's desire to argue, based on the Applicants' own papers, a preliminary point *in limine*. Although this was not foreshadowed in the pre-trial minute, I allowed the Respondent to argue its preliminary point.
- [11] I made this allowance alive to the fact that the Respondent was, effectively, in default and not properly before me in light of the fact that no response had been delivered by it. It occurred to me that if indeed the point *in limine* was evident from the Applicants' very own papers, I should, at the very least, be alerted to it.
- [12] It was the Respondent's stance, in support of its preliminary point, that, on the Applicants' own version, the matter was amicably settled between the parties. I duly considered the relevant paragraphs in the Applicants' statement of case from which the Respondent's Counsel was arguing that settlement of the matter becomes evident.
- [13] Having heard the Respondent's Counsel, I had no hesitation in concluding that, on the Applicants' own version, no settlement of the matter was reached. At best, there were discussions on an amicably resolution of the matter. These settlement discussions collapsed when, on the Applicants' version, the '...Respondent reverted in a threatening manor stating that the First and Second Applicants should not mess with him (more vulgar language was

used), he will see them in court and it would take a long time before they see any money.'

- [14] Having found that the Applicants' own version did not support the allegation that the matter became settled, I rejected the Respondent's preliminary point *in limine*.
- [15] I, thereafter, proceeded with the matter as the hearing of default judgment application as contemplated by paragraph 10.1.6 of the Practice Manual of the Labour Court of South Africa.
- [16] In the default judgment hearing, both Applicants testified. It was their case that they were unfairly retrenched by the Respondent. They testified as to the sequence of events that led to them being ultimately dismissed by the Respondent. There was no opposing version to contradict their evidence. I duly accepted their version of events and, to me, such version reveals a clear instance of an unfair dismissal.
- [17] The Applicants testified that their retrenchment came after they stood their ground to allegations that the First Applicant was using prohibited substances. Immediately after they insisted on being told who was spreading these rumours about the First Applicant, the Applicants were called into a meeting wherein they were informed that the process pertaining to their possible retrenchment was being commenced with.
- [18] According to the Applicants, there were three meetings that were held regarding their retrenchment. What to me, renders, Applicants' dismissal unfair is their uncontradicted evidence that two new employees were employed in their respective positions whilst the retrenchment process was underway.
- [19] It seems that the Respondent could not wait to replace the very employees it was retrenching ,purportedly, on the basis that it had financial difficulties. That, on its own, renders the dismissal unfair.

- [20] The Applicants also disputed that there was an economic rationale for their retrenchment. During the so-called consultations, they went as far as pleading with the Respondent to, at least, retrench one of them if the employer was hell-bent on proceeding with the retrenchment regardless. It is also strange that the retrenchment exercise only targeted the two Applicants and no one else.
- [21] On the evidence before me, I, therefore, come to the considered conclusion that the dismissal of the Applicants, by the Respondent, was both substantively and procedurally unfair. The Respondent had made up its mind to get rid of the Applicants. With the so-called consultation meetings, the Respondent was simply going through the motions. The retrenchment process was simply used as a pretext to do away with the two Applicants.
- [22] The Applicants are, accordingly, entitled to the relief they seek. The Applicants did not ask for reinstatement but for compensation. Considering the unfair manner in which they were dismissed, they definitely deserve the compensation they seek. The appropriate relief under the circumstances would be compensation equivalent to six (6) months' salary for each. There is no reason why costs should not follow the results. The Applicants had to come before this court in order to obtain relief. They should be reimbursed for the legal costs incurred to that end.
- [23] I, therefore, order as follows:
- (i) The Applicants' dismissal, by the Respondent, was both substantively and procedurally unfair.
 - (ii) The Respondent is ordered to pay to the Applicants compensation equivalent to six (6) months' salary each, calculated as follows:
 - (a) for the First Applicant : R55,425.60 (being R2309.40 x 4 x 6);
and
 - (b) for the Second Applicant : R55,425.60 (being R2309.40 x 4 x 6)
 - (iii) The Respondent is ordered to pay the Applicants' costs.

N P Voyi

Acting Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicants: Advocate D N Lundström

Instructed by: Ken McDade Attorneys

For the Respondent: (In default)