



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: J 738/13

In the matter between:

JOHN MKHULU MAYA

APPLICANT

and

D B THERMAL (A DIVISION OF DBT TECHNOLOGIES)

RESPONDENT

Heard: 29 January 2015

Delivered: 22 July 2015

Summary: application to make settlement agreement an order of court

JUDGMENT

WHITCHER J

Introduction

- [1] This is an application to make a settlement agreement concluded between the Applicant and Respondent under the auspices of the MEIBC under case number **MEGA 36921** an order of court in terms of section 158 (1)(c) of the LRA.

- [2] It is common cause that the terms on which the dispute (MEGA 36921) were settled are housed in two signed agreements, namely the DBT Settlement Agreement and the MEIBC Agreement. It is also common cause that the dispute arose from the dismissal of the Applicant and one Mr Siwedi and the settlement agreements were in respect of both of them.
- [3] There is a dispute concerning what the parties intended by the use of the term "reinstatement" in the MEIBC document.
- [4] In essence the Applicant's case is that given the reference to the term 'reinstatement' in the MEIBC document, one of the terms of the settlement agreement is that the Respondent was required to reinstate him on the same terms and conditions of employment as existed prior to his dismissal.
- [5] It is the Respondent's case that the DBT and MEIBC documents must be read together in order to give effect to the intention of the parties.
- [6] The Respondent contends that the salient terms of the settlement agreement as contained in the DBT document were that the Respondent would pay the Applicant and Mr Siwedi two months wages each and the Applicant and Mr Siwedi would be re-employed on a contractual basis for not less than 12 months by AMT Africa (Pty) Ltd t/a AMT Placement.
- [7] The Respondent further contends that the MEIBC agreement was concluded subsequent to the DBT agreement in order to make provision in the DBT agreement for a term requested by the Applicant and Mr Siwedi that their years of service with the Respondent be recognized and included in the settlement agreement. It is for this reason that paragraph 1 of the MEIBC document which refers to reinstatement were included.
- [8] For the reasons set out below, I accept that on a purposive interpretation of the two agreements and the surrounding circumstances that the facts illustrate that the parties understood the purpose for which the two agreements were concluded and that the purpose of the MEIBC agreement was limited to the recognition of years of service.

- [9] The veracity of this fact is confirmed by Mr Siwedi who has confirmed in an affidavit that the parties did not agree or intend that the Respondent would reinstate him and the Applicant but that the intention was to be employed by AMT Placements with recognition of their years of service.
- [10] The Applicant accepted the payment of the two months' salary in terms of the DBT document.
- [11] On 5 November 2012, four days after the conclusion of the settlement agreement, the Applicant signed an AMT Placement Engagement form and Limited Duration Contract of Employment with AMT Placements.
- [12] AMT Placements issued a letter confirming that the Applicant's years of service with the Respondent would be recognised for reference purposes and package calculations in the event of restructuring.

Conclusion

- [13] In the circumstances, I find that the Respondent has complied with the settlement agreement which is the subject of the application.

Order

- [14] The application is dismissed with no order as to costs.

Whitcher J

Judge of the Labour Court of South Africa

APPEARANCES:

FOR THE APPLICANT: J Mthimunye instructed by Mncedisi Ndlovu &
Sedumedi Attorneys

FOR THE RESPONDENT: P Fouche: Fasken Martineau incorporated in SA as
Bell Dewar Inc

LABOUR COURT