



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JS 1052/13

Reportable/Not Reportable

In the matter between:

SISA MARADONA GOBOMBO

Applicant

and

SERVEST (PTY) LTD T/A SERVEST SECURITY

Respondent

Heard: 05 November 2015

Delivered: 06 January 2016

JUDGMENT

MOLAHLEHI, J

Introduction

- [1] The applicant, in this matter seeks an order setting aside the settlement agreement concluded between him and the respondent.

- [2] The applicant who is a former employee of the respondent was prior to the termination of his employment contract employed as a security guard. He was employed on a fixed term contract.
- [3] It appears from the pre-trial minutes that the applicant challenged the termination of the fixed term contract on the basis that he had reasonable expectation that the fixed term contract would be renewed and that he would be offered a permanent employment with the respondent. It would appear it was for this reason that the applicant referred a dispute concerning an unfair dismissal to the CCMA. At the time of his dismissal he was earning R2643.25. In the mean time before the matter could be set down for arbitration hearing the parties signed the settlement agreement.
- [4] The matter was then set down for arbitration hearing on 23 October 2013. At that hearing the respondent raised a *point in limine* concerning the jurisdiction of the CCMA to entertain the dispute. The respondent contended that the CCMA did not have jurisdiction because of the agreement concluded between the parties. The settlement agreement reads as follows:
- ‘The “Parties” agree that Servest Security will pay SM Gobongo a settlement calculated in the amount of R2, 643.25, which includes an ex-gratia payment of R50.00 in full and final settlement of all monies due as a result of the employment/subsequent termination of employment with Servest Security. The agreement constitutes full and final settlement of all and any claim of whatsoever nature, whether directly or indirectly related to the Contract of Employment, arising by the operation of law, in delict, in contract, in equity, in terms of any statutory enactment or otherwise. This agreement is entered into by both parties freely and without duress. It is furthermore agreed that in the event of there being further tax liability in connection with this settlement, it will be for the account of Employee...’
- [5] The Commissioner upheld the point in limine, that the CCMA did not have jurisdiction to entertain the dispute. He reasoned that the CCMA did not have jurisdiction because the dispute was settled.

[6] It would appear that the applicant contended during the arbitration proceedings that he was forced to sign the settlement agreement. The Commissioner found that the applicant had failed to show that he was forced or that he signed the agreement under duress. He in this regard relied on the authority of *Arend v Another v Astra furnishers*¹ where the Court in dealing with the requirement of duress had the following to say:

‘...it is clear that a contract may be vitiated by duress (metus), the reason d’etre of the rule apparently being that intimidation or improper pressure renders the consent of the party subject to the duress no consent....Duress may take the form of inflicting fear by means of threats, Where a person seeks to set aside a contract, or resist the enforcement of a contract on the ground of duress based on fear, the following elements must be established:

- (1) The fear must be a reasonable one.
- (2) It must be caused by the threat of some considerable evil to the person concerned or his family.
- (3) It must be a threat of an imminent or inevitable evil.
- (4) The threat or intimation must be unlawful or *contra bonos mores*.
- (5) The moral pressure must have caused damage.’

[7] The Commissioner further relying on the case of *Makiwane v International Healthcare Distributors*², observed that where a party accepts the benefit in full and final, of the benefit owing to him by the employer he placed himself having the jurisdiction of the jurisdiction of the CCMA.

[8] The case of the applicant as set out in the statement of case is that:

- (1) The Commissioner did not have jurisdiction to determine the existence of the settlement agreement.
- (2) The findings made by the Commissioner are not supported by what he said during the proceedings.
- (3) He signed the settlement agreement believing that he was signing for the salary that he worked for.

¹ 1974 (1) SA 298 (C).

² (2003) 24 ILJ 2150 (LC).

[9] The legal issues which the applicant requires the Court to determine are:

- (1) The respondent deliberately concealed facts in order to induce him to sign the agreement.
- (2) The respondent took advantage of his mental state.
- (3) The respondent recklessly made the representation to him whilst knowing them to be untrue.
- (4) The respondent induced him to act upon the untruthful facts represented to him.

[10] In his testimony before this Court the applicant stated that on arrival on the day in question he was given a cheque and a document to sign. He further stated that he signed the document with the understanding that he was signing for his salary.

[11] The only witness of the respondent Ms Mulder testified that at the time she was amongst other things responsible as assistant pay clerk. She further stated that on the day in question she gave the applicant the settlement agreement to read and to come back if there was anything that he did not understand.

[12] The applicant accordingly to her came back after reading the settlement agreement and stated that he understands the document.

Evaluation

[13] It is clear from the reading of the Commissioner's ruling that the jurisdiction ruling was made on the basis of upholding the validity of the settlement agreement. In this respect the applicant contends that the Commissioner did not have jurisdiction to determine the existence of the settlement agreement.

[14] The applicant has not despite the contention that the Commissioner did not have jurisdiction to consider the existence of the agreement, challenged the ruling on review.

- [15] The issue that arises is whether this Court can ignore the decision of the Commissioner regarding the validity of the agreement and set it aside.
- [16] It is now trite that an invalid or unlawful decision of an administrator is enforceable until it is rescinded or reviewed and set aside. In the present matter the decision of the Commissioner, that the agreement concluded between the parties is valid and enforceable, has not been set aside. In the absence of the rescission or review of that decision this Court is bound to respect and uphold the decision. It follows from this reason that the applicant's application stands to fail.
- [17] It would however be inappropriate in the circumstances of this case to allow costs to follow the result.

Order

- [18] In the premises the applicant's application is dismissed with no order as to costs.

E, Molahlehi

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: In Person

For the Respondent: Adv. B Bezuidenhout

Instructed by: Fullard, Mayer & Morrison Inc.