



**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT DURBAN)**

Not reportable

Case Number: D1001/12

In the matter between:

NAVEEN BHOODRAM

Applicant

and

LEGAL AID SOUTH AFRICA- NEWCASTLE

Respondent

Heard: 19 March, 15 – 16 May 2015 and 22 and 24 June 2015.

Delivered: 7 June 2016

Summary: Contract. Applicant claiming misrepresentation leading to consent to the amendment of the original employment contract. Claim dismissed.

JUDGMENT

GUSH J

Introduction

1. The applicant in this matter, an attorney employed by the respondent, applies for the amendment affected to his contract of employment, to which he had consented in January 2009, to be set aside and the terms of the contract that existed prior to the amendment to be enforced.

2. The applicant had applied for condonation for the late filing of his claim and to amend his statement of claim. Condonation had been granted.
3. On 19 March 2015 when the matter came to trial the court made an order, by consent, regarding the issue in dispute. The parties agreed and the court so ordered that the only issue to be determined was whether the applicant was unduly influenced by the respondent to sign the amendment to his contract of employment.
4. The applicant had entered into a contract of employment with the Respondent on 1 December 2008 as a Professional Assistant. Prior to this, the Applicant had served his articles of clerkship for two years with the Respondent. The contract was in writing and inter alia specified the applicant's salary scale.
5. During January 2009, the Applicant was advised by the respondent that he had been appointed at the incorrect salary scale. The respondent advised the applicant that the salary level at which he had been appointed should have been R136 176 per annum as opposed to R140 247.71. The Applicant was informed that the salary scale at which was incorrect and his consent was sought to amend the contract accordingly.
6. The applicant consented to amend the contract of employment in order to rectify the mistake. It was clear from the contract and the amendment that a consequence of the amendment was to reduce the salary scale at which the applicant was to be remunerated.
7. The applicant averred that he had consented to the amendment due to a misrepresentation made to him by the respondent's Ms Fathima Buckus.
8. The Applicant alleged that had he been told the truth about how the SOD system works he would not have signed and consented to the amended contract, thus alleging undue influence.
9. At the commencement of the matter the applicant indicated that he sought to prove on a balance of probabilities that he had only signed the amendment to the contract as a result of the misrepresentation by Ms Buckus.
10. Both parties adduced evidence regarding the background to the contracts of employment salary scales and the circumstances surrounding the need to amend the contracts.
11. In essence the issue is whether the applicant was able to establish his averment that Ms Buckus had misrepresented the effect of the amendments

to him and that on the strength of this misrepresentation he had been induced into signing the amendment to his contract.

12. A Mr. Biyela gave evidence for the applicant as did the applicant himself. Both had signed the amendments to the contracts of employment after discussions with Ms Buckus. The applicant was not present during the discussion Biyela had had with Ms Buckus nor was Biyela present during the applicants discussion with Ms Buckus.
13. During his evidence the applicant conceded that Ms Buckus had advised him that his contract contained a mistake regarding the salary scale at which had been appointed and that applicant wished to remedy that mistake in the contract. The applicant suggested that he believed that an occupational specific dispensation would apply to him and signed the amendment to the contract.
14. That is clear from the amended contract that no reference was made to or regarding any occupational specific dispensation and that the amendment simply dealt with the salary scale. It transpired that the occupational specific dispensation did not apply to the applicant and when this became apparent some years later the applicant became aggrieved and launched this application
15. Ms Buckus, the employee of the respondent the applicant alleged had induced him into signing the amendment gave evidence on behalf of the respondent. Ms Buckus gave her evidence clearly and unequivocally and I am satisfied that she made no misrepresentation that would have induced the applicant into signing the amended contract and specifically that she made no representation regarding the occupational specific dispensation at all.
16. It was clear from the applicant's evidence that the amendment to the contract contained no representations whatsoever or any reference to what the applicant averred he had been represented he would have been entitled to.
17. In contrast to Ms Buckus's evidence the applicant was unable to explain why he had not raised with Ms Buckus prior to signing the amendment that representation he supposedly relied upon, specifically as no reference to it was included in the contract or the amendment sought by the respondent.
18. The Respondent's alleged misrepresentation that according to the applicant induced him into signing the amendment to his employment contract, related

to the occupational specific dispensation, a matter that was conspicuous by its absence.

19. The applicant bore the onus of establishing that he had signed the amendments under duress and or undue influence and as a result of a misrepresentation.
20. The Respondent cogently argued that there was no misrepresentation made; the mistake was detected within a month of the signing of the contract of employment; the issue was discussed with the applicant and that he had understood and consented to the amendment to the contract.
21. I am not satisfied that the applicant has established on a balance of probabilities or at all that he was induced into signing the amendment to his contract by the respondents misrepresentations and undue influence.
22. Although it did not form part of the dispute in question it became clear that the overpayment made to the applicant had continued for some time before being reclaimed. This and the fact that the applicant was still employed by the respondent I have taken into account in considering the question of costs.
23. For the reasons set out above I make the following order:
 - a. the applicant's application is dismissed;
 - b. there is no order as to costs

Gush J

Judge of the Labour Court of South Africa.

APPEARANCES:

For the Applicant:

M Sewpal

Instructed by K M C Attorneys

For the Respondent:

V T Seboko
Instructed by Legal Aid South Africa

LABOUR COURT