



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case no: **JS 297/14**

In the matter between:

HENDRICK MAVUNDLELA

Applicant

and

MATLOSANA CITY COUNCIL

Respondent

Heard: 2 March 2017

Delivered: 7 June 2017

JUDGMENT

RABKIN-NAICKER J

- [1] This matter was enrolled for trial on the 2 March 2017. On that day the parties agreed to set out the common cause facts and the applicant testified on a very

limited basis. The parties were also requested to include the issue of jurisdiction, raised *mero moto* by the Court, in their written submissions.

[2] It is not disputed that the applicant was appointed by the respondent by means of an appointment letter dated 17 May 2004. He had applied for the position of senior security guard and the appointment letter correctly recorded his salary as being in the range of R41 688 to R45 900 per annum. He had applied for the job after responding to an advertisement that both parties agree contained a mistake i.e. the remuneration was stated as being in the range of R104 352 to R115 236.

[3] The applicant had worked for the respondent for some seven years when he referred a dispute to the Bargaining Council. He was granted condonation. A jurisdictional issue was raised by the respondent and he withdrew the matter from the Council and filed his claim in this Court. The statement of case records the legal issues arising from the statement of claim as follows:

“3.1 It is expected that it will be the case of the First Respondent that the salary as reflected in the advertisement was a mere mistake. Further, that the salary level of the Applicant was initially a level 14 which was over the years escalated to a salary level 16, and in terms thereof, the Applicant is currently earning an annual salary on that level. The Respondent will allege that this is in line with all other security personnel on the same level.

3.2 The Applicant intends to defeat this defence by means of estoppel.

3.3 It is the Applicant's case that the Respondent is estopped from denying that the advertised salary of R104 352.00 – R115 236.00 was the incorrect amount. Further, that the post was supposed to be on a level 14, whereas it was not advertised as such. . .”

[4] The pleadings make no reference to the basis on which the jurisdiction of this Court is founded. The applicant seeks to be remunerated retrospectively in terms

of the lowest figure of the advertised amount, together with annual increases thereon and interest on those amounts. The applicant now submits that the main issue between the parties is: *“whether or not the Applicant is entitled to the advertised salary, as opposed to the salary contained in his appointment letter. The nature of this dispute therefore falls squarely with the ambit of the terms of his contract, whether or not such was reduced to writing.”* In other words, the applicant submits that this court has jurisdiction in terms of section 77(3) of the Basic Conditions of Employment Act.¹

[5] The statement of claim does not contain any plea to the effect that the advertisement was an offer which the applicant accepted. The submission that the cause of action is found on section 77(3) of the BCEA is therefore an afterthought. Section 77(3) provides that: *“The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract.”*

[6] In *Randwater v Stoop & Another*² the Labour Appeal Court considered the meaning to be given to section 77(3) as follows:

“1 The word 'concurrent' in s 77(3) places the Labour Court in exactly the same position as the High Court with the same powers and authority in relation to matters concerning a contract of employment.

2 The last part of s 77(3) provides the Labour Court with jurisdiction irrespective of whether any basic condition of employment constitutes a term of the employment contract. This demonstrates that the Labour Court has jurisdiction over any claim as long as it involves a contract of employment

¹ 75 of 1997, (BCEA).

² [2012] ZALAC 32; (2013) 34 ILJ 576 (LAC); [2013] 2 BLLR 162 (LAC).

- 3 The words 'concerning a contract of employment' mean about or in connection with an employment contract. The pleaded claim clearly falls within this categorization.
- 4 The words 'any matter' in s 77(3) are broad and the literal interpretation does not limit the claims, in relation to a contract of employment, to a specific category. Damages, both liquid and illiquid, are included."³

[7] The pleaded claim in this matter contains none of the material averments necessary to establish that the advertisement and subsequent application by the applicant for the post amounted to an express, implied or tacit employment contract or that a contract was concluded at all, prior to the letter of appointment signed by the applicant.⁴ For this reason I am of the view that the Court has no jurisdiction to hear the claim.

Order

[8] I make the following order:

1. The referral is dismissed for want of jurisdiction.

H. Rabkin-Naicker

Judge of the Labour Court of South Africa

³ Id at para 39.

⁴ See Amler's precedents of pleadings 6th edition at p110-114.

Appearances

For the Applicant:

Henk Wissing of Henk Wissing Inc. Attorney

For the Respondent:

X.D. Matyolo

Instructed by:

Kgomo Attorneys.

LABOUR COURT