



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 1556/17

In the matter between:

ROBERT MANSON

Applicant

and

**ORACLE CORPORATION (SOUTH AFRICA)
(PTY) LTD**

Respondent

Heard: 18 July 2017

Delivered: 18 July 2017

Edited: 20 July 2017

EX TEMPORE JUDGMENT

CELE, J:

Introduction:

- [1] The application before me is one brought in terms of section 158 (1) (a) of the Act in terms of it being urgent, but I believe it is premised on the provisions of

section 77 (3) of the Basic Conditions of Employment Act. Where the applicant then seeks to be granted an order which is couched in the following terms:

- [1.1] Declaring the applicant's resignation on 23 May 2017 to be invalid;
 - [1.2] Alternatively, declaring the applicant's retraction of his resignation on or about 5 June to have been accepted by the respondent. Whether tacitly or otherwise. And,
 - [1.3] Declaring the employment relationship between the applicant and the respondent to be on-going;
 - [1.4] Such further and alternate relief as the court might deem fit
 - [1.5] And the costs against the respondent on a punitive scale.
- [2] The application is opposed by the respondent in his capacity as the erstwhile employer, or even current employer according to the applicant, of the applicant.

Background:

- [3] Very briefly, on 18 May 2015 the applicant was issued with a notice to attend a disciplinary enquiry which was scheduled to proceed on 25 May 2017 before an independent chairperson who was identified. Later, that person turned out to be Advocate van As.
- [4] The applicant engaged his line manager and others in some discussions. As a result of those discussions, the applicant formulated an opinion that the intention of the respondent was to have him dismissed.
- [5] He then tendered a letter of resignation. That letter, to the extent relevant, reads:

"I do hereby tender by resignation from Oracle South Africa as the senior director for ZASADC effectively the 23 May 2017. My last working day will be 30 June 2017. I would like to state it on record that even though I will be officially on garden leave from 1 June 2017 till 30 June 2017, it is on this condition that I submit this resignation, that I must be compensated for my

backlog commission as well as for all the deals that will be booked on or before 30 June 2017. The failure to honour this agreement by Oracle will render this resignation null and void. It was great working for Oracle over the last two years.

I trust you will find the above in order.”

- [6] The document is dated 23 May 2017. On the same date, after some exchanges between the applicant and the respondent, there is similar letter, but adapted, which was handed in to replace the one I just read. It therefore reads, essentially:

“I do hereby render my resignation from Oracle South Africa as a senior director for ZASADC effectively, the 23 May 2017. My last working day will be 30 June 2017.

I would like to state it on record that even though I will be officially on garden leave from 1 June 2017 till 30 June 2017, it is on this basis that I submit this resignation. That I must be compensation for my backlog commission, as well as for all the deals that will be booked on or before 30 June 2017.

It was great working for Oracle over the last two years.”

- [7] What essentially is the different is then the withdrawal of the clause, *“The failure to honour this agreement by Oracle will render this resignation null and void.”* That is the essential difference between the two letters.
- [8] On 5 June 2017 the following letter was written at the instance of the applicant:

“Constructive dismissal of Robert Manson by Oracle Corporation.

We represent Robert Manson who informs us of the following:

1.1. On 18 May 2017 our client received a disciplinary notification containing a number of spurious charges. He was then informed that should he not resign, he will be dismissed. A lot of utterances and insinuations were made leading up to this indication that these charges were meant to force our client to resign. Due to this, he then resigned.

1.2. The spurious nature of the charges, together with the said threats and utterances make it clear that the employer was aware that it had no case, and instead of proceeding with the hearing coerced our client into resignation. This constitutes constructive dismissal in terms of section 186 (1) (e) of the Labour Relations Act.

2. You are notified that it is our client's intention to take up this matter with the CCMA, and to get to the Labour Court if necessary.

3. You are required to provide ourselves with the following documents by 6 June: Oracle Corporation's Code of Ethics; Oracle Corporation's Disciplinary Code, listing the penalties indicated for each type of misconduct."

- [9] It is clear from this letter, 5 June, that nowhere does the applicant clearly indicate that he then withdraws the letters of resignation, be they Item 1, as the first letter of resignation, or Item 2, as the second adapted letter of resignation. And it is clear from this letter what events had ensued after the tender of resignation. That the company indicated its intention to exercise its prerogative to discipline the employee. Here I refer to for instance, the letter dated 23 May 2017, which is an email written by Queen:

"Good day Robert,

As you know, you are invited to attend a hearing to discuss various allegations against you. On receipt of the invitation to that hearing, you asked whether you could resign instead of going through the disciplinary process. Please note your email below. The company agreed to that on the condition that you spend your notice period on garden leave. If you no longer wish to resign, we will proceed with the disciplinary hearing on 25 May 2017 at 09:00 to 13:00. To be clear, there is no settlement option on the table."

- [10] The email referred to below reads (it comes from the applicant):

"As discussed, I propose that I tender my resignation and work a month's notice, and leave Oracle end of June, so that I do not go through the enquiry process scheduled on 25 May. Queen said it is not possible. I am open to that."

- [11] This forms the essential factual basis of the case that is before me, save to add that there is a letter, email dated 23 May 2017, which reads:

“Your resignation is noted as accepted by Hurde. Please note points around commission on your resignation letter will be addressed, based on Oracle commission guidelines.”

Analysis

- [12] It is clear from the reading of the documents I have referred to that the applicant did not say that he was resigning on condition that he would never, ever be subjected to a disciplinary hearing. It is clear that he did not want to be subjected to that disciplinary hearing. One can understand that. But the applicant, on the first letter, Item 1, put two conditions under which he wanted to tender his resignation. One, related to the payment of the backlog money, and the second related to the honouring of what he referred to as an agreement.
- [13] But it is clear that there was never any such an agreement and I engaged Ms Govender for the Applicant on it, on a discussion here relating to that very issue, and it has been conceded that in fact there was no such agreement but the word ‘agreement’ in Item 1 relates to that discussion that took place between the parties.
- [14] But there never was any agreement entered into by the parties in terms of which the employee was supposed to resign. The employee now wants this court to declare his letter of resignation as being invalid, premised on the events that ensued. And yet, from all of the evidence that is tendered in the founding and in the replying affidavits, it does not appear to me that the employer did anything on the basis of which the applicant felt the condition for resignation was infringed by the employer.
- [15] The employer never said that there would be no disciplinary action if the employee resigned. But the employee indicated that if he does resign, he might not be subjected to a hearing. In other words, the prerogative of the employer in its capacity to discipline its employee remained, and in fact it did say he might not be disciplined, or the hearing might not proceed on 25 May 2017. It was not a final or definitive decision.

- [16] The employer clearly would have wanted to accept the resignation if the employee wanted to go, and put no conditions that were contrary to any policies of the company. And it is clear from what has happened, as chronology shows it, that the company did take a position that the backlog commission could possibly have been paid if it was in line with the policy of the company. So the backlog commission does not appear to be the basis for the application that is before me.
- [17] The applicant, simply put, has not shown therefore, or has not clearly established a right on the basis of which he seeks the relief that he has carved in the Notice of Motion. That is the first finding that I make.
- [18] The second finding relates to the absence of urgency. The applicant has an alternative, that is, of referring a dispute to conciliation for constructive dismissal or in whatever way the applicant considers or feels he has been dismissed.
- [19] In my view there is no urgency that is shown by the applicant in this matter because there is no indication in these papers as to exactly what the irreparable harm there is, that would be suffered by the applicant if the application that is before me is not granted.
- [20] I am of the view that this is a matter that clearly could very easily have been referred in terms of the LRA. I am not persuaded that there is shown to be the right, on the basis of which the application is premised, and also, I am not shown that there is the necessary urgency of the matter which, if it is not accorded to the matter, irreparable harm will be suffered by the applicant.
- [21] On those bases alone, this application is ill-begotten and in the premises, the following order is made:

Order:

1. The application is truck-off the roll;
2. The applicant is ordered to pay the costs thereof.

H Cele

Judge of the Labour Court of South Africa

LABOUR COURT

APPEARANCES:

For the Applicant:

Adv. T Govender

Instructed by:

Thapelo Kharametsane Attorneys

For the Fourth Respondent:

Mr. F Milan of Edward Nathan
Sonnenberg Inc.

LABOUR COURT