



IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Not Reportable

Case no: D 455/15

In the matter between

KRZYSTOF IMIOLO

Applicant

and

REPROPLAST (PTY) LTD

First Respondent

PREMJITH JUGDEO N.O

Second Respondent

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

Third Respondent

Heard: 10 May 2017

Delivered: 19 May 2017

JUDGMENT

SALOOJEE, AJ:

Introduction

- [1] This is an application to review and set aside a Certificate of Outcome at conciliation and to substitute the conciliating commissioner's insertion that the dispute was resolved on 5 February 2015 with an insertion that the dispute remains unresolved. The applicant also seeks leave to refer the dispute to the CCMA for arbitration.

Background

- [2] The first respondent (*“employer”*) employed the applicant as a factory manager from 1 October 2012.
- [3] During November 2014, the employer contemplated dismissals for operational reasons. The applicant was informed that his post would become redundant and the parties entered into negotiations.
- [4] On 8 December 2014, the parties concluded a written agreement settling the applicant’s dismissal for operational reasons (*“the settlement agreement”*).
- [5] The settlement agreement deals with the applicant’s dismissal, severance pay and the standard clauses relating to the agreement being the sole agreement, variation, waiver and the agreement being in full and final settlement of the disputes between the parties.
- [6] The applicant then became aware that other positions became available for which he would have been suited on the same day (8 December 2014) contacted a company that assists employees with labour disputes to refer an unfair dismissal dispute to the CCMA. The next month the applicant terminated his mandate with this company.
- [7] On 8 January 2015, the applicant referred an unfair dismissal dispute with the MEIBC. The employer has admitted that it is registered under the auspices of the MEIBC.
- [8] The applicant claims that he did not know that the representatives he engaged in December 2014 referred a dispute to the CCMA and that the matter was set down for conciliation. As a result, the applicant did not attend conciliation.
- [9] At conciliation, the employer’s representatives produced the settlement agreement and the conciliating commissioner was satisfied that the dispute

was settled. Hence, the Certificate of Outcome reflects an insertion that the dispute is resolved.

- [10] At the MEIBC, the employer did not attend conciliation and the dispute was referred to arbitration. At arbitration, the employer successfully raised three preliminary points that; the MEIBC does not have jurisdiction over the dispute, the matter was *res judicata* and that the matter was settled.

The grounds of review

- [11] The applicant's grounds of review are not easily ascertainable from the founding affidavit. The applicant's complaints that can broadly constitute grounds of review are:

1. The employer did not act in good faith in concluding the settlement agreement by misleading and misrepresenting to the applicant the true state of the employer's affairs.
2. The settlement agreement does not deprive the applicant of the right to refer a procedurally unfair dispute to the CCMA.
3. The conciliating commissioner misdirected himself in accepting the settlement agreement as proof of the fairness of the applicant's dismissal.

Analysis

- [12] The applicant seeks to review and set aside a Certificate of Outcome at conciliation.

- [13] In *Bombardier Transportation (Pty) Ltd v Mtiya N.O. & others* [2010] 8 BLLR 840 LC (confirmed in *BMW South Africa v NUMSA obo members* [2012] 3 BLLR 274 (LAC)) the ground to review a Certificate of Outcome is confined to jurisdiction. There is no jurisdictional point raised in the affidavit and the Certificate of Outcome cannot be reviewed.

[14] Further, the applicant's first complaint is based on contractual principles, more particularly, the applicant's reasons for resiling from the settlement agreement. The CCMA cannot determine this issue and this review should fail.

[15] The applicant's other grounds of review relate to the fairness of the applicant's dismissal. It was stated in Hunter v Reillys Attorneys [1995] 1 BLLR 29 (IC) that:

"Suffice it to say that, at the end of the day, I am quite satisfied that the termination of applicant's employment with respondent, was, as respondent contends, the result not of a retrenchment, but of a valid and binding agreement.

What then are the consequences which attach to such a finding? Implicit in respondent's case is the contention that where, as here, the employment relationship is terminated by reason of a valid and binding agreement to that effect there can be no question of such termination giving rise to any unfair labour practice. I agree with this contention. As much is apparent not only from the application of ordinary principles of both law and equity, but, also, from the judgment of Van Niekerk SM in Dawson v AFI Manufacturing (Pty) Ltd (1994) 5 (3) SALLR 33 (IC) in which the learned senior member declined to find a retrenchment unfair in circumstances where the whole issue of such retrenchment had been settled by agreement between the employer and the retrenchee. On the other hand, the position might well be different where the agreement to terminate the employment relationship is itself patently unfair or tainted with illegality. In that event, this Court would give no effect thereto (cf G Kammies v Golden Arrow Bus Services, unreported, NHK 11/2/2354, especially at para 7.5, again a judgment of Van Niekerk SM) and the fairness or otherwise of the termination of the employment relationship would have to be assessed afresh."

[16] The settlement agreement is valid and binding until set aside. Clauses 1 and 2 of the settlement agreement record the applicant's dismissal in terms of the agreement.

[17] The applicant's complaints that he was misled into concluding the settlement agreement are unconvincing as the applicant has not alleged that he was qualified or experienced for any of the posts made available by the employer.

[18] There is no patent unfairness or illegality and the applicant's other grounds of review also fail.

Order:

[19] In the premises the following order is made:

1. The application is dismissed.
2. Each party to pay their own costs.

Y.F Saloojee

Acting Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: A.P Van Der Westhuizen of Pool
Gaffoor, Parasram & Associates

Heads of argument drafted by: Adv. A.J Boyle

Instructed by: Beker Attorneys

LABOUR COURT