

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS 393/18

In the matter between:

NGOYI RAY MARIGA

Applicant

and

GLOBAL SUPPLY CHAIN SERVICES (PTY) LTD

Respondent

Heard: 05 September 2019

Delivered: 20 September 2019

JUDGMENT

MABASO, AJ

Introduction

- [1] At the heart of this application lies a claim for the breach of a settlement agreement (the agreement) entered into between the applicant and the respondent following the termination of the employment contract that existed between the parties until 30 August 2017. The applicant seeks an order, *inter alia*, that the agreement is still valid and enforceable, that the respondent be

ordered to pay him an amount R860 000.00, the respondent must return to him a laptop and the respondent to furnish him with the service certificate. The trial was scheduled to commence on 5 September 2019.

Jurisdiction

- [2] The respondent raised a special plea in that “ It is denied that this honourable Court has jurisdiction to declare that the Settlement Agreement has not been validly cancelled and/or grant relief sought by the applicant and/or hear the applicant’s claim/s generally” . Before this Court, Mr Lennox argued that this Court lacks jurisdiction as it was not specifically pleaded in the applicant’s case . The respondent delivered heads of argument in support of its special plea ,however, the applicant provided no heads of argument on this point. In support of its point the respondent contends that the applicant does not state in the Statement of case on what “authority” this Court has jurisdiction to entertain the claim. The Constitutional Court *Gcaba v Minister of Safety and Security and Others*¹ explained the word jurisdiction as one which should be understood as power or competence of the Court to hear and determine issues between the parties.
- [3] The respondent, further, contends that section 158 of the Labour Relations Act 66 of 1995(the LRA) may be a possible source of jurisdiction, however, the reliance of any provision of a section would need to be pleaded and tested. In support of this contention this Court was referred to *SACWU v Engen Petroleum Ltd and Another*². This Court was further advised that the applicant has not relied on the provisions of section 77(3) of the Basic Conditions of Employment Act³ (the BCEA). It is also contended by the respondent that the applicant has failed to state in its papers as to which section it relies on and it was urged that the supporting authority is *Schoeder and another v Pharmacare Ltd t/a Aspen Pharmacare*⁴ , where Van Niekerk J held thus:

¹ (2010) 31 ILJ 296 (CC).

² [1999] 1 BLLR 37 (LC).

³ No 75 of 1997.

⁴ [2015] 2 BLLR 168 (LC) at para 9.

"It is well-established that the court's jurisdiction is to be determined on the basis of the applicant's pleadings. In the referral made by the applicants, I find no reference to any provision of the LRA that confers jurisdiction on this court to determine the validity of a settlement agreement, in the context of a termination of employment."⁵ To the extent that the relief sought by the applicants is the setting aside of the agreement, this court has jurisdiction to make a settlement agreement an order of court in defined circumstances. (See s 158(1) (c).) The court is not empowered, without more, to enquire into their validity. The court may determine whether an agreement induced by duress or misrepresentation ought to be set aside in the context, for example, of an alleged dismissal for a reason related to the employer's operational requirements. But the court exercises jurisdiction in that instance by virtue of the employee asserting a reason for dismissal that falls within the court's jurisdictional ambit".

Further, the court has jurisdiction in terms of s 77 (3) of the BCEA in respect of matters that arise from employment contracts. This is not the basis on which the present claim has been referred. Whether a dispute about the validity of an agreement that has the effect of terminating employment is a matter that arises from an employment contract is therefore an issue that I need decide."

- [4] The applicant argued that this Court has the necessary jurisdiction to hear this matter. Counsel for the Applicant averred that the matter of *Nthite v Reitzer Pharmaceuticals (Pty) Ltd*⁶ supported his contention.
- [5] This court's jurisdiction is founded in terms of section 157(1) of the LRA which provides that subject to the Constitution Act 108 of 1996 this Court has "exclusive jurisdiction in respect of all matters elsewhere in terms of this Act or in terms of any other law are to be determined by (this) Court."
- [6] Before this Court, in both pleadings (Statement of case and Statement of response) it is common cause that the respondent employed the applicant and that on or about 30 August 2017 the parties entered into the agreement, wherein it was agreed upon that:

⁵ Court own underlining.

⁶ Unreported decision. Case number (JS450/13) [2014] ZALCJHB 326 (21 August 2014).

“2.2 have agreed to the mutual termination of the employment relationship with effect from 30 August 2017.”

[7] The agreement further states that the applicant has elected to resign from his employment with the respondent. The agreement is a full and final settlement, as paragraph 8.1 provides that :

“8.1 Save for the obligations contained in this agreement, this agreement is in full and final settlement of all and any claims which the employee may have against the company or any entity within the supply chain services group of Companies including its subsidiary companies and sister companies, whether such claims arise from contract, delict, operation of law or otherwise including, but not limited to, any claims that the employee may have arising from his contract of employment or the termination of the employment relationship.”

[8] In the High Court, a party may institute an action by way of simple or combined summons. A simple summons is used in respect of a liquidated claim a plaintiff may deliver a declaration, and in respect of combined summons , particulars of claim have to be attached. However, in this Court, parties do not have such choice and will have to state their case in a document called a referral. The applicant herein has opted to approach this Court by way of an action, in terms of Rule 6 of the Rules of the Labour Court. This Rule amongst others provides that an applicant has to clearly and concisely state material facts and legal issues that arise from the material facts.

[9] As the statement of case is a pleading in this Court, there are specifics as to what is required be set out in it. One has to remember that the purpose of pleadings is to bring to the attention of the Court and the other party as to what the issue is so that the other party can respond to it and the Court can then determine that dispute. As Rule 6 requires that a party must plead *"a clear and concise statement of legal issues that arise from the material facts"*, it is for the Court to determine whether it has jurisdiction to hear the matter or not. Therefore, it has to concentrate on the substantial issues between the parties.

The late Steenkamp J, in *Abrahams v Drake & Scull Facilities Management (SA) (Pty) Ltd and another*⁷, held thus:

"it concerns a contract of employment: the respondent has breached its terms of amending it unilaterally, and the applicant seeks specific performance of the contract. Maybe the applicant would have done better, the attorney to spell it out, but the fact that she does not allege incident with particularly that this Court has jurisdiction in terms of section 77(3) does not deprive the Court of the jurisdiction."

[10] In this Court, the parties are not expected to specify as to which section they rely upon. It is for the Court to determine as to whether the matter falls within its jurisdiction or not. I have taken into account that the respondent relies on the matter of *Schoeder supra* in that it urges that the applicant has failed to state which section he relies upon. I conclude that the reliance on *Schoeder* herein is incorrect, taking into account that Van Niekerk J did not find that a failure to plead the section of the relevant legislation a party relies on will then strip a Court of its jurisdiction, instead the Learned Judge mentioned this in passing(which is not binding). As I have indicated above, the Court will determine jurisdiction based on the papers before it of its own accord.

[11] By way of an example: for the High Court to determine if it has jurisdiction in a breach of contract dispute in respect of a cause of action, it depends on whether the contract was entered into in that particular jurisdiction of the High Court, which is commonly referred to as common law jurisdiction. On other issues, the High Court will have jurisdiction to hear the dispute based upon specific legislation which states that it has jurisdiction to hear such matters. The Labour Court will have jurisdiction to hear matters, wherein the cause of action emanates from a contract of employment, therefore, its legislative jurisdiction will be section 77 (3) of the BCEA.

[12] Therefore, in conclusion it was not necessary for the applicant to state the exact section he relies on, taking into account further that the parties are not expected

⁷ [2012] 5 BLLR 434 (LC).

to plead the law but the legal issues that arise from the facts of the case. The Labour Court's jurisdiction is determined by the provisions of sections 157 and 158 of the LRA. However, statutes such as the BCEA, specifically section 77(3) gives this Court jurisdiction to entertain such a matter in that this section provides that:

"The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning the contract of employment, irrespective of whether any basic conditions of employment constituted a term of that contract."⁸

[13] One of the reliefs sought is the issue of a certificate of service, and this aspect is dealt with by section 42 of the BCEA, stating among other things that at the termination of employment an employer has to issue a certificate of service which same has to indicate the duration of service of an employee, title of the job of the employee, and brief description of the work for which the employee was employed at the date of termination. Therefore, if an employee is not provided with this certificate, there is no other way but may approach this Court in terms of 77(3) of the BCEA because that will be an issue arising from an employment contract.

[14] Considering that the provisions of section 77 (3) of the BCEA refer to a contract of employment, either oral or written, there can be no doubt that the agreement emanates from the contract of employment, I say this because under introduction it is stated that "*the employee is employed by the company as its operational director*" and "*the parties have agreed to the mutual termination of employment relationship*" and further in clause 3, it is stated that "*by affixing his signature hereto the employee hereby resigns from any and all the offices... with effect from the termination date*".

[15] Furthermore, in interpreting section 77(3) of the BCEA, it clearly applies to *any* dispute that arises from the contract of employment. Therefore it cannot be said

⁸ Court emphasis.

that for this Court to entertain an issue relating to an employment contract, same must still be in place. All that needs to be shown to find jurisdiction is that there existed an employment contract and the issues in dispute arise from the employment contract. Even after termination of the employment contract, either of the parties has a right to take legal action against the other if they allege that the dispute relates to the employment contract, as the legislature was clear in stating that "any matter concerning" the employment contract and not only an existing employment contract.

[16] Therefore it is concluded, taking into account the mutual separation agreement in question, that it arises from the contract of employment, which was terminated. Consequently this Court has jurisdiction to hear a matter wherein the applicant alleges that the other party reneged on a settlement agreement because such dispute arises from the contract of employment terminated by the mutual agreement. The prayers in the referral, should the applicant prove his case, this Court may grant them. Thus I find that this Court has the jurisdiction to hear this matter in terms of these provisions.

[17] In respect of costs, it is trite that costs do not automatically follow the results in this Court, this court has to be guided by the provisions of section 162 of the LRA. I have taken into account that the point raised by the respondent herein is misplaced, and this resulted to the postponement of the trial which had been set down for 2 days. I conclude that it will be fair to order costs.

[18] In the result the following order is made:

Order

1. The special plea, that this Court has no jurisdiction, is dismissed.
2. The Respondent is ordered to pay costs.

S. Mabaso

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate Maunatlala

Instructed by : Wakaba and Partners Inc.

For the Respondent: Advocate M A Lennox

Instructed by: Eversheds Sutherland Attorneys

LABOUR COURT