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- (1) REPORTABLE: YES ☒ NO
(2) OF INTEREST TO OTHER JUDGES: YES ☒ NO
(3) REVISED.

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JS 556/16

In the matter between:

NKABELA RICHARD KOBUA

Applicant

and

AVK VALVES SOUTHERN AFRICA

Respondent

Heard: 17 January 2020

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives on the 08 June 2020.

Summary: Quantification of compensation - Judgement granted in favour of the Applicant to be compensated in an amount equivalent to remuneration payable from the date of dispute until date of final adjudication of this matter. Period exceeding 20 months and exceeding the prescribed limitations per Section 194 of the Labour Relations Act,1995. Compensation of 12 months' salary granted with costs.

JUDGMENT

RAMDAW, AJBackground

- [1] On 26 January 2018 Mamosebo AJ handed down judgement wherein she found that the Applicant was unfairly dismissed and made the following order:

- "1. The dismissal of the Applicant was both procedurally and substantively unfair.
2. The Respondent is ordered to pay the Applicant compensation for the remuneration he would have been paid between the date of dismissal and the last day of adjudication of this case calculated at the employee rate of remuneration.
3. The Respondent is to pay the costs of the application on a party and party scale."

- [2] This application was set down on the opposed roll on 14 January 2020. The Respondent sought a postponement to file opposing papers/heads. The matter was adjourned to 17 January 2020 and costs were reserved.

- [3] The Applicant filed his Heads of Arguments and also filed supplementary Heads. The Respondent filed a notice to oppose the application but did not file any opposing papers nor heads of arguments. Leave to appeal against the initial order was made to the Labour Appeal Court but was refused with no orders as to costs.

- [4] The Applicant seeks the following order:

- "1. Declaring that the Judgement and consequent court order dated 26 January 2018 ordered by the Honourable Acting Judge Mamosebo is quantifiable and has been quantified as per annexure "C" to this Application.
2. Declaring that the amount calculated and quantified per annexure C is the capital amount due to the Applicant in terms of the judgement and

consequent court order dated 26 January 2018 and that the Respondent pays the same with interest from the date of the said order.

3. That the costs of this Application be paid by the Respondent.
4. Further or alternative relief.

[5] The Applicant was employed by the Respondent as a Supply Chain Manager on 1 February 2016 and his employment was terminated on 3 May 2018 for operational requirements.

[6] He earned R55,482.54 per month and with effect from 1 July 2016 he would have received a salary increase of 10%, thereby making his salary R61,146.29 per month. As per the quantification affidavit the salaries owing from 3 March 2016 to 30 June 2016 is R106,891.22. The salary owing from 1 July 2016 to 30 July 2017 is R61,146.28 per month which includes a 10% increment and totals R733,755.48.

[7] The salary from 1 January 2017 to 26 January 2018 is R67,260.92 per month and total R470,826.44. The total claim is R1,303,185.87. The prescribed interest rate as applicable is 10,25% per annum.

[8] The salary payable for a maximum period of 12 months as per section 194 of the Labour Relations Act¹ including any increments will be R106,891.22 plus R611,146.90 totalling R718,354.12.

[9] The Court has to quantify the judgement of the Honourable Acting Justice Masebo, delivered on 26 of January 2018.

[10] As per Annexure C to the quantification affidavit the Applicant's salary as at date of dismissal was R55,487.54 which is decisive per the wording of section 194 of the LRA.

¹ No 66 of 1995, as amended.

- [11] The maximum compensation payable in terms of section 194 of the LRA is 12 months for an unfair dismissal and 24 months for an automatically unfair dismissal. It is common cause that this matter does not relate to an automatically unfair dismissal and as such the compensation is limited to 12 month's remuneration calculated at the employers rate of remuneration on the date of dismissal.
- [12] The Applicant's Counsel argued for an amount exceeding 12 month's compensation whilst the Respondent Counsel argued that the maximum which can be awarded is 12 months which in fact is still excessive. A judgement has been handed down and this Court is not sitting as a Court of Appeal and as such I cannot interfere with the order made. I need to quantify the said order and such quantification has to be in compliance with legislation in particular section 194 of the LRA.
- [13] In *Engen Basson's Service Station v Vanqa*² the Labour Court set out the following:
- "A Writ of Execution will be set aside as incompetent if the judgement was not definite and certain, as where the amount payable can be ascertained only after deciding a further legal problem."
- [14] The submission as to the amount owing has been made by way of an Affidavit by the Applicant. The Respondent did not file any answering affidavit and I am obliged to accept what is before me to adjudicate on a "further legal problem".
- [15] The Judgement is capable of being quantified within the ambits and limitations as set out in section 194 of the LRA which is clear that compensation must be just and equitable in all circumstances but may not be more than the equivalent of 12 months' remuneration.

² (2014) 35 ILJ 1568 (LC) at para 14.

[16] In determining the maximum compensation of 12 months, the salary as at date of dismissal is of paramount importance and this was R55,587.54 per month. The total for a 12 months period will be R667,050.48 and any increments are not taken into consideration for purposes of this quantification given the wording of Section 194 of the LRA.

[17] As this amount is a Judgement debt, same attracts interest at the prescribed rate of 10,25% per annum calculated from 26 January 2018 to date of payment.

[18] The Applicant was entitled to bring this application for quantification and as such is entitled to the costs including the costs of 14 January 2020 which is now unreserved.

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

Order

1. The Respondent AVR Valves Southern Africa (Pty) Ltd is hereby ordered to pay to the Applicant the sum of R667,050.48 being the equivalent of 12 months' remuneration calculated at the rate of R55,587.54 per month together with interest thereon at the rate of 10,25% per annum calculated from 26th January 2018 to date of payment.
2. The Respondent is to pay the costs of this application which includes the cost of the 14th January 2020.



A. Ramdaw

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr A Goldberg of Goldberg Attorneys

For the Respondent: Mr IT Allis from Allis Attorneys