



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS693/2021

In the matter between:

SOLIDARITY obo HEYNEMANN

Applicant

and

PRINO CONSTRUCTABILITY AND PROJECTS (PTY) LTD **First Respondent**

LEKOBA RESOURCES (PTY) LTD **Second Respondent**

Heard: 6 February 2025

Delivered: 14 April 2025

Summary: Special Plea re compromise – Settlement agreement that forms basis of the special plea is subject to pending litigation for it to be set aside – Material disputes regarding scope and interpretation of settlement agreement exist – The validity or otherwise of the settlement agreement must be held over for determination by the trial court – Special plea dismissed.

JUDGMENT

KENT, AJ

Introduction

[1] This is a special plea filed by the second respondent, Lekoba Resources (Pty) Ltd in response to an amended statement of claim filed by Solidarity on behalf of its member, Mr Clifford Heynemann.

[2] Solidarity on behalf of Mr Heynemann opposes the special plea.

Background

[3] The detail of the factual background of the matter is largely unimportant in the context of the special plea. To the extent that they provide some context, the relevant background facts are as set out briefly below.

[4] My Heynemann is a former employee of the second respondent, having transferred from the first respondent to the second by way of a transfer in terms of section 197 of the Labour Relations Act¹ (LRA) that took effect from 1 August 2020.

[5] During October 2020 the first and second respondent entered into an agreement in terms of section 197(7) of the LRA. The agreement provides, at clause 2.7:

“For the purpose of complying with Section 197(7)(b) of the LRA, the Parties agree that Prino, and not Lekoba, shall be liable for the payment of all amounts referred to in clause 2.4 as updated in terms of clause 2.6, and shall pay such amounts to Lekoba within 3 (three) months from the Transfer Date...”

[6] The reference to “all amounts referred to in clause 2.4” includes, *inter alia*, pay for accrued annual leave.

¹ Act 66 of 1995.

[7] Mr Heynemann was subsequently dismissed by the second respondent and referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) under case number NWRB2-21.

[8] On 23 April 2021, Mr Heynemann and the second respondent entered into a settlement agreement recorded on the CCMA's standard settlement agreement template.

[9] The settlement agreement provides, *inter alia*:

“5. ...

The amount of R36 230.00 is for the leave owed by the Respondent for the period of 01 August 2020 to 03 December 2020

6. ...

The parties agree that there are no statutory payments due and owing to the applicant.

7. OTHER

1. ...

2. *Parties agree that the Applicant is/could be owed leave days by his previous employer, Prino Mining. Parties agree that the Respondent is not responsible to pay any other amounts or leave days owed as stated and that the Respondent will assist the Applicant with an external audit as an attempt to recover the leave days owed by his previous employer. Parties agree that the Respondent will attempt to assist the Applicant with the audit up until 31 May 2021. Parties agree that the Applicant reserves his right to refer the matter in terms of section 73 of the BCEA if not all outstanding monies is paid within the period.”*

[10] Solidarity, on behalf of Mr Heynemann, has referred a dispute to this Court seeking payment of leave pay alleged to be outstanding. In addition, Solidarity, by way of a subsequent amendment, seeks an order setting the above-mentioned settlement agreement aside on the basis that it is unlawful and/or on the basis of a misrepresentation.

[11] The second respondent's special plea is pursued in response to the amended statement of claim.

The Special Plea

[12] The special plea raised by the second respondent is that, when entering into the settlement agreement, Mr Heynemann and Lekoba reached a compromise that was designed to prevent and end litigation between them. So the special plea goes, the effect of the compromise is that further proceedings against Lekoba are barred and that the matter is *res iudicata*.

[13] The second respondent further submits that where the compromise allegedly reached has the effect of *res iudicata*, citing the second respondent in the main action constitutes a misjoinder.

[14] Solidarity opposes the special plea, and argues, *inter alia*, that at the least, a material factual dispute regarding the interpretation of the settlement agreement exists, pertaining to the scope (and exclusions) of the settlement agreement. Solidarity also alleges that the settlement agreement was negotiated on the basis of a misrepresentation by the second respondent, and that it stands to be set aside for this reason.

[15] Both parties delivered comprehensive heads of argument, which I have considered in preparing this Judgment.

Evaluation

[16] On the papers (and bearing in mind that the second respondent has not pleaded) there appears to be a dispute of fact pertaining to what precisely was settled between Mr Heynemann and Lekoba. While the majority of the settlement agreement is clear, there are instances in which it is unfortunately not a model of perfect clarity.

[17] In this regard, the settlement agreement provides that the payment provided for therein relates to leave. It also states that no statutory payments are due. Further, it goes on to reserve Mr Heynemann's right "*to refer the matter in terms of section 73 of the BCEA if not all outstanding monies is paid within the period*" – no reference is made as to against whom such referral may (or may not) be made. It is evident that the parties do not agree on what was and was not settled between them.

[18] Further, it is clear that according to Solidarity and Mr Heynemann, "*all outstanding monies*" have not been paid.

[19] Still further, as can be gleaned from the amended statement of claim, the applicant alleges that the settlement agreement was concluded on the basis of a misrepresentation regarding the section 197(7) agreement and in particular, what the two respondents had agreed in relation to liability for the payment of leave pay. For this reason the applicant has included a prayer for the settlement agreement to be set aside. That action is still pending.

[20] In circumstances where the applicant's prayer for the settlement agreement to be set aside has not yet been determined, I have difficulty with the idea that his claim insofar as it relates to the second respondent should be disposed of on the basis of that same settlement agreement, particularly where there are disputes around its effect and interpretation.

[21] In the premises, I am not inclined to uphold the special plea. Clearly the validity or otherwise of the settlement agreement is a subject of dispute, which dispute is still pending. Whether the settlement agreement stands to be set aside or whether it ought to remain in place and/or whether it absolves Lekoba of Mr Heynemann's claim are matters that must come before the trial Court to be determined after the presentation of evidence.

Costs

[22] I am of the view that it would be appropriate for the costs of the special plea to be determined along with the costs of trial, if any.

[23] In the premises, the following order is made:

Order

1. The special plea is dismissed.
2. The second respondent is given leave to file its response, if any, to the applicant's amended statement of claim within 15 days of this order.
3. Costs of the special plea will be costs in the cause.

J. Kent

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Annika Labuschagne of Solidarity

Instructed by:

For the Respondent: Adv J Raubenheimer

Instructed by: