



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JS690/2020

In the matter between:

TEBOGO JOSIAH MOLOI

Applicant

And

**BARLOWORLD EQUIPMENT SOUTHERN
AFRICA (PTY) LTD (A DIVISION OF BARLOWORLD
LIMITED)**

Respondent

Decided: In chambers

Delivered: 06 May 2025

This judgment was handed down electronically by consent of the parties' representatives by circulation to them via email. The date for hand-down is deemed to be 06 May 2025

JUDGMENT: RESPONDENT'S APPLICATION FOR LEAVE TO APPEAL

GANDIDZE, AJ

Introduction

[1] On 14 January 2025, this Court handed down a judgment which found that the dismissal of the applicant, Mr Moloi, was substantively unfair, and ordered the respondent to pay the maximum compensation of twelve months and the applicant's costs. The respondent seeks leave to appeal against the entire Judgment and Order. The application is brought in terms of Rule 67 of the Rules Regulating the Conduct of Proceedings of the Labour Court¹, as well as section 17(1)(a)(i) of the Superior Courts Act 10 of 2013, with the respondent contending that another Court would arrive at a different conclusion to that arrived at by the Court. In *Member of the Executive Council for Health, Eastern Cape v Mkitha and Another*², the court stated that the test in these applications is whether there are reasonable prospects that the appeal would succeed.

Site Performance Manager Role Offer

[2] The respondent submits that the Court ought to have found that the parties were bound by the pre-trial minute, which recorded that the applicant was offered the position of Site Performance Manager, which he declined, opting for a retrenchment package instead. In arriving at the conclusion reached, the Court had regard to what was contained in the pre-trial minute, together with the applicant's uncontested evidence that he was informed of the position at the end of May 2020, after he raised a concern that the termination of his services, as per the letter issued to him on 8 May 2020, meant the discontinuation of the medical aid benefits in circumstances where his son required medical treatment due to being diagnosed with COVID-19. Therefore, the evidence provided by the applicant did not contradict what was contained in the pre-trial minute but instead painted a fuller and more precise picture of what had transpired and when.

¹ GN 1665 of 1996: Rules for the Conduct of Proceedings in the Labour Court, repealed with effect from July 2024.

² [2016] ZASCA 176; [2016] JOL 36940 (SCA).

[3] The respondent's submission that the Court ought to have confined itself to the contents of the pre-trial minute, and ignore the applicant's evidence, fails to account for the contents of the termination letter it issued to the applicant on 8 May 2020, that, as of that date, no alternatives had been found to avoid the applicant's retrenchment. The question that arose, which the Court was required to decide, was when the parties discussed the role of the Site Performance Manager. The applicant tendered evidence on the issue, which was not controverted, and his version was supported by the contents of the termination letter dated 8 May 2020. To arrive at its conclusion, the Court was legally obliged to have regard to all the evidence fully canvassed during the trial.

[4] A further consideration, though of less significance on the facts of this matter, was the applicant's undisputed version that he was informed that he could apply for the role, as opposed to the role being offered. On those facts, there can be no talk of an offer of alternative employment which the applicant rejected.

[5] There is no prospect that the appeal Court would arrive at a different conclusion on whether the applicant opted to accept a retrenchment package instead of taking up the position of the Site Performance Manager.

The compromise or settlement

[6] The respondent submits that the Court erred in law and in fact when it found that the termination letter did not constitute a settlement agreement.

[7] First, the respondent takes issue with the finding that the applicant was paid only statutory payments. That the applicant was paid only statutory payments is factually correct.

[8] Second, the respondent submits that the applicant was not entitled to severance pay as he was offered and declined a reasonable offer of alternative employment. The termination letter says the contrary, and the respondent is shying away from addressing the elephant in the room. The main judgment addressed the

invitation to apply for the Site Performance Manager role after the applicant was issued a termination letter. In any event, the role was not reasonable for the reasons set out in the main judgment. The applicant was within his rights to decline the invitation to apply.

[9] Thirdly, the respondent submits that the termination letter constitutes a settlement agreement because it records that the acceptance of the retrenchment package is in full and final settlement of any and all disputes between the parties. The respondent placed no credible evidence before the Court that the dispute was settled, and whatever views Schoeman held based on the contents of the termination letter (as submitted in the respondent's closing submissions) were of no assistance because, on Schoeman's own version, he was not involved in the process that led to the applicant's termination. The 'waiver' argument, also forming part of the respondent's submissions, was not supported by any facts or legal argument as required.

[10] The Court is also said to have ignored the 'purpose' of the retrenchment package. The retrenchment package was comprised of mandatory statutory payments.

[11] The parties signed a termination letter and did not settle any disputes. *Natal Joint Municipal Pension Fund v Endumeni Municipality*³ enjoins this Court to read the words used in the context of the document as a whole and in light of all the relevant circumstances. On the facts, to regard the termination letter as a settlement agreement results in absurdity. An appeal Court would not find differently.

Bumping as a selection criterion

[12] This half-hearted argument is being presented for the first time on appeal. The first guiding principle for the restructuring was that where a position remained unchanged/unaffected, the incumbent would be confirmed and not be permitted to

³ 2012 (4) SA 593 (SCA); [2012] ZASCA 13 at paras 19 and 24.

apply for other positions. The applicant fell into this category, rendering 'bumping' inapplicable and unnecessary. But even if bumping was applied, the respondent did not provide any evidence to explain what it had done and why, in circumstances where it bore the burden to prove that the dismissal was for a fair reason. Instead, it was content to put versions to the applicant in cross-examination and left its case at that, thereby failing to discharge the onus of proof. On the evidence, it remained unknown why the applicant needed to be retrenched so that another employee could occupy his position, unaffected by the restructuring. There is no prospect that the appeal Court would arrive at a different conclusion.

Relief granted

[13] The respondent takes issue with the Court's decision to award the maximum compensation when the applicant had declined a reasonable offer of alternative employment and in circumstances where he was offered an enhanced severance package. These contentions were addressed in the main judgment and in this judgment. Section 195 of the Labour Relations Act No 66 of 1995 is clear that compensation is in addition to, and not a substitute for, any other amount to which an employee is entitled. Therefore, the fact that the applicant had received statutory payments when he was terminated did not preclude the Court from awarding the maximum compensation as contemplated in section 194(1) of the LRA. Moreover, the main judgment sets out why maximum compensation was awarded. There is no suggestion that the Court did not exercise its discretion judicially or relied upon wrong facts or acted upon a wrong principle or committed a misdirection, or that the decision was capricious, which would justify an appeal Court interfering with the exercise of the Court's discretion on the compensation award. This ground for leave to appeal must fail, too.

Costs order

[14] The respondent takes issue with the Court's decision to grant costs against it. The decision was substantiated for the reasons set out in the judgment. In addition,

both parties sought costs against each other, and the Court exercised its discretion judicially.

Conclusion

[15] The respondent does not have reasonable prospects of success, which would lead the appeal Court to arrive at different conclusions on the issues addressed in the main judgment. There was only one credible version before the Court, that of the applicant, which was not controverted, and the Court accepted it.

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

Order

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.

T Gandidze
Acting Judge of the Labour Court of South Africa