



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: JS 04/2025

In the matter between:

DIEKETSENG MINAH ZWANE

Applicant

and

NQATSHANA HOLDINGS (PTY) LTD

Respondent

Heard: 29 May 2025

Delivered: 13 June 2025

Summary: Special Plea of Res Judicata. For Res Judicata the parties must be the same; The Applicant was clearly not included in the settlement agreement. The special plea is dismissed with costs.

JUDGMENT

KRUGER, AJ

Introduction

[1] The Applicant in this matter filed a statement of case on 13 January 2025. In the statement of case, she alleges that her dismissal was unfair in that the

Respondent did not comply with section 189 (1) d of the Labour Relations Act¹ (LRA).

[2] The Applicant asked for the following relief –

2.1 The Respondent to pay the Applicant her severance pay;

2.2 The Respondent to pay the Applicant the money owed to her;

2.3 Alternatively, the Respondent to compensate the Applicant for unfair dismissal.

[3] The Respondent filed a special plea of (1) *lis pendens* which was abandoned during the proceedings, and (2) *res judicata*.

[4] Paragraph 1.13 of the special plea reads as follows:

The terms of the agreement were that in respect of those employees who could not be placed into the new Retailer at MVN and MVS, they will be paid retrenchment in three instalments. However, those former employees who would be placed with the new Retailers, would not be entitled to the retrenchment payments. This settlement agreement constituted a binding agreement for NUMSA members including the Plaintiff.

[5] In the reply the Applicant stated in paragraph 8.2 that:

“By virtue of the Plaintiff being removed as a party to the proceedings before conciliation, the alleged settlement agreement that was concluded by NUMSA was on behalf of the employees that the union was representing and certainly not the plaintiff”

The Settlement Agreement

[6] The Respondent and NUMSA obo its members entered into a settlement agreement on 22 July 2024. In terms of clause 1 of the settlement agreement:

“The Respondent shall pay the Applicants, mentioned in the attachment (Annexure A) hereto, the amounts specified under collum 70% settlement offer in three equal instalments as follows:”

¹ Act 66 of 1995.

[7] It is common cause that the Applicant was not part of Annexure A and that she did not receive any payment from the Respondent in terms of the settlement.

Applicable Legal Principles

[8] *Res judicata* means that a matter that has been finally determined by a court of competent jurisdiction cannot be re-litigated by the same parties. If the respondent wants to rely on this defence, they must prove all the elements, i.e. that the parties were the same; it was the same relief; on the same cause.²

Analysis

[9] The settlement agreement is clear. NUMSA entered into an agreement on behalf of their members as mentioned in the list. The Applicant's name was not on the list, therefore the parties could not be the same. It is also common cause that the Applicant was not paid in terms of the settlement agreement.

[10] In addition to the settlement agreement that clearly showed that the Applicant was not part of the dispute that got settled, the Respondent failed to show that they have met any of the requirements of *res judicata*.

[11] For these reasons the special plea must be dismissed.

Costs

[12] Costs should be considered against the requirements of the law and fairness. The requirement of law has been interpreted to mean that the costs would follow the result.

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

Order

1. The special plea is dismissed.

² See: *Democratic Alliance v Brummer* [2021] 2 All SA 818 (WCC).

2. The respondent must pay the applicant's costs on a party and party scale;

W. Kruger

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

C Geshaba

Instructed by:

MM Mitti INC Attorneys

For the Respondent:

Adv Tshabalala

Instructed by:

Strauss Daly Attorneys