



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

NOT REPORTABLE
CASE NO: JS619/23

In the matter between:

SERKAN CAYDAVUL

First Plaintiff

IBRAHIM KINYAS GURCU

Second Plaintiff

and

KAMAL CAPE TOWN IRON AND STEEL CO (PTY) LTD

Defendant

Heard: 22 April 2025

Delivered: 9 June 2025

Summary: Contractual claim for unpaid remuneration. Defendant conceding breach of contract, but disputing damages. Claim successful, and granted with costs.

JUDGMENT

DANIELS J:

Introduction

[1] This is contractual claim brought under section 77(3) read with section 73A(3) of the Basic Conditions of Employment Act No. 75 of 1997 (the “BCEA”). The plaintiffs claim their unpaid remuneration from the defendant for the period 26 May 2020 to 12 December 2023, excluding the period from 17 November 2020 to 10 December 2021. It is common cause they were both employed by the defendant, and were not remunerated during the relevant periods.

Amendment of citation

[2] The parties agreed that the correct citation of the defendant was Kamal Steel Ltd (Tanzania). The court was informed that the defendant, against whom the plaintiffs instituted the action, Kamal Cape Town Iron and Steel Co. (hereafter “CISCO”) had been purchased as a going concern by Kamal Steel Ltd (Tanzania). The citation was amended accordingly.

Material facts

[3] The principal business of the defendant is the local manufacture of steel billets, thereafter, exported to Tanzania. The business falls within the scope of the Metal and Engineering Industries Bargaining Council (hereafter the “Bargaining Council”) and is bound by the Main Collective Agreement (“the MCA”) concluded by parties to the Bargaining Council and routinely extended to non-parties.

[4] The first plaintiff, Mr. Serkan Caydavul (“Mr. Caydavul”) was employed by CISCO, during 2018, as its Divisional Manager. Mr. Caydavul was based at the branch office, located in Johannesburg, employed at a gross remuneration of R54 868, 10 per month. He was entitled to fifteen days of paid annual leave but, on termination, was only entitled to payment for fifteen days.¹

¹ Clause 10.3 of his employment contract, page 22 of Bundle A

[5] The second plaintiff, Mr. Ibrahim Kinyas Gurcu ("Mr. Gurcu") was employed by CISCO, during 2018, as its Raw Materials Purchasing Manager. Mr. Gurcu was based at the Cape Town offices but transferred to Johannesburg shortly commencing employment. His gross remuneration was R 131 583, 68 per month. He was entitled to thirty days of paid annual leave, but on termination was only entitled to payment for 15 days.²

[6] Arising from CISCO's alleged financial troubles, the plaintiffs, together with various other employees, were placed on layoff on 31 March 2020. Annexure A of the MCA states that, absent agreement, employees in the metal and engineering industry may be laid off, without pay, for a maximum period of eight weeks. It is common cause that the eight-week period lapsed on 26 May 2020, and plaintiffs did not agree to any extension of the lay-off. Despite this, the plaintiffs lay-off continued until they were notified of their dismissal, for operational reasons, effective from 12 December 2023.

[7] CISCO was placed under business rescue between November 2020 and December 2021. It is common cause that, during this period, the plaintiffs were not required to work but were remunerated. During that period, the Johannesburg offices of CISCO remained closed.

[8] The business rescue process came to an end during December 2021, when Kamal Steel Ltd (Tanzania) purchased CISCO's business as a going concern. However, for unknown reasons, the new owners believed that the employees in the Johannesburg offices were not transferred to it.

[9] On 12 December 2021, Mr. Caydavul emailed the human resources manager of the defendant to ask when he could begin work given that the business rescue had ended. Sometime thereafter, the human resources manager acknowledged receipt of his email and told him she had forwarded his request to management. Thereafter Mr. Caydavul heard nothing further from the human resources manager.

² Clause 10.3 of his employment contract, page 7 of Bundle A

Once again, during March 2022, he enquired about his employment status, with similar results.

[10] During August 2022, the defendant informed the plaintiffs that it would like to commence a consultation process regarding the operational requirements of the business. The defendant issued a notice, to the second plaintiff, in terms of section 189(3) of the Labour Relations Act No. 66 of 1995 (hereafter “the LRA”) however the process was delayed, once again, for reasons which remained unclear.

[11] On 20 December 2022, Mr. Gurcu received a letter informing him that the consultation process would begin during 2023 and he should inform the defendant when he would be available to consult. Between January and June 2023, the plaintiffs corresponded with the defendant, repeatedly complaining that the consultation process was being dragged out. During that time, the parties considered a mutual separation but could reach no agreement.

[12] On 23 June 2023, Mr. Gurcu, through his attorney, addressed a letter of demand to the defendant in which he demanded payment of his salary and information about the status of the consultation process.

[13] On 27 June 2023, the defendant’s chief executive officer (the “CEO”) sent a letter to Mr. Gurcu stating, inter alia, that he remained on lay off and the defendant was still considering his retrenchment. The CEO indicated that Mr. Gurcu was not entitled to his remuneration because he had received payment of R45 130, 29 in full and final settlement and he had not objected to such payment.³

[14] On 11 July 2023, the plaintiffs both referred a dispute to the MEIBC alleging that the defendant’s refusal to employ and remunerate them constituted an unfair labour practice. The dispute was enrolled for arbitration on 16 October 2023, when the defendant raised a jurisdictional point. A ruling was issued on 1 November 2023, upholding the point.

³ This allegation was not repeated in the defendant’s pleadings, or captured in the pre-trial minute.

[15] On 21 November 2023, the defendant addressed letters to both the plaintiffs offering them alternative employment at its Cape Town office. The remuneration proposed was significantly less than their existing remuneration.

[16] On 8 December 2023, both plaintiffs rejected the offers of alternative employment.

[17] On 12 December 2023, the defendant issued notices of dismissal to plaintiffs. In respect of Mr. Caydavul, the defendant reflected that his remuneration was R41 151, 08 per month. In respect of Mr. Gurcu, the defendant acknowledged that his remuneration was R131 583, 38 per month.

Evidence at trial

[18] Mr. Caydavul, testified that, except for the business rescue period, he had not been paid his remuneration between 26 May 2020 and 12 December 2023. Mr. Caydavul testified that he had not agreed to any extension of the lay-off. He stated that, after his retrenchment, he was paid for 15 days of annual leave. Under cross, defendant's representative did not suggest to Mr. Caydavul that he had agreed to reduce his remuneration to R41 151, 08 on 31 July 2019, as pleaded.

[19] Mr. Gurcu, testified that, except for the business rescue period, he had not been paid his remuneration between 26 May 2020 and 12 December 2023. He also testified that he had not agreed to any extension of the lay-off.

[20] Ms. Dyan Lee testified for the defendant. She was employed as the defendant's human resources manager with effect from July 2023 and had no knowledge of whether Mr. Caydavul had agreed to reduce his remuneration during July 2019. She testified that Mr. Gurcu's work permit expired on 31 October 2022 and his services had terminated automatically because he could not lawfully work in South Africa. She pointed to clause 6.1 of his employment contract⁴ which requires

⁴ Clause 6.1 states: "The Employee confirms that he/she is suitably qualified and competent to perform the work for which he/she is employed, in terms of this contract. It is further a condition of

that he be eligible to work. Under cross, it was put to her that Mr. Gurcu's work permit had lapsed in October 2022 and been renewed from 1 February 2023. Furthermore, it was put to her that, despite this issue, the defendant treated him as an employee and terminated his services in December 2023. She conceded this.

Analysis

[21] The defendant conceded that the plaintiffs remained employed until their termination on 12 December 2023. It conceded further that the plaintiffs had not agreed to extend their layoff. The defendant did not plead that the second plaintiff had settled his dispute, and presented no evidence to that effect. Nor did it present evidence that the first plaintiff agreed to reduce his remuneration.

[22] In *National Electronic Media Institute of South Africa v Buthelezi*⁵ my brother Willis JA⁶ aptly summarized the applicable law:

"At common law, until an employee's services have lawfully been terminated, an employer is obliged to remunerate the employee upon the tender, by the employee, of his or her services but the employer is not, however, obliged to make use of the employee's services. (See, for example, *Smit v Workmen's Compensation Commissioner* 1979 (1) SA 51 (A); at 56F-G; *Toerien v Stellenbosch University* 1996 (1) SA 197 (C) at 201B-C; *National Union of Textile Workers v Jaguar Shoes (Pty) Ltd* 1987 (1) SA 39 (N) at 45H-46I. In this matter the employee's claim is dependent, essentially, upon whether there was a valid and enforceable contract of employment between himself and the appellant during the relevant period and whether, during that same period, he tendered his services. It is common cause that he did, indeed,

employment that the Employee will at all times comply with his/her obligations with regard to medical fitness, eligibility to work in South Africa and, if applicable, licensing and statutory requirements. The Employee agrees to provide the Employer with proof of the above as may be required from time to time. Any misrepresentation thereof will be considered to be a breach of this contract on the part of the Employee and, therefore, may lead to termination hereof."

⁵ (JA19/03) [2004] ZALAC 7 (9 July 2004) at para [9]

⁶ The learned judge, now retired, is my brother within the legal fraternity, but he is also my brother-in-law. He is, thus, both my brother and my brother-in-law.

tender his services. It is common cause that the employer did not accept this tender. In these circumstances, the employee would be entitled to payment of his remuneration provided there was a valid contract of employment between the parties. The employer's defence is that the employee had been dismissed during the relevant period and, because of this, it was not, so the argument went, obliged to pay the contested remuneration."

(own emphasis)

[23] Given the common law principle that an employee is entitled to his remuneration, provided he has tendered his services, any period (such as a period of lay-off) during which he will accrue no remuneration must be agreed upon. Here, the employer does not allege that there was any such agreement.

[24] The defense of the defendant is limited to the following:

24.1 It contends the first plaintiff was paid for the fifteen days of annual leave to which he was entitled.

24.2 It contends the second plaintiff is entitled to payment for only fifteen days of leave.

24.3 It contends the second plaintiff is not entitled to payment for the period when he had no valid work permit – between October 2022 and February 2023.

[25] While I accept the contentions in para 24.1 and 24.2, I reject the argument in para 24.3. That issue has previously been considered by this court. Van Niekerk AJ (as he then was) dealt with the issue thoughtfully and decisively in *Discovery Health Ltd v CCMA and others*.⁷ The learned Acting Judge (as he then was) found that an employment contract concluded in violation of section 38(1) of the Immigration Act⁸ does not have the effect of rendering the employment contract a nullity. Section

⁷ [2008] 7 BLLR 633 (LC) at para [29] and [30]

⁸ Immigration Act No. 13 of 2002 as amended

38(1) does not penalize the conduct of any person who performs work that is not authorized, but it does penalize the conduct of the employer. Section 38(1), unamended after *Discovery Health*, must be understood in the context of the constitutional right to fair labour practices. I see no reason to depart from the approach adopted in *Discovery Health*. The argument that the second plaintiff's contract terminated, simply because his work visa lapsed, is rejected.

[26] In the circumstances, both plaintiffs are entitled to their remuneration from 26 May 2020 to 12 December 2023 - excluding the period from 17 November 2020 to 10 December 2021. During this time, the first plaintiff earned R54 868, 10 per month and the second plaintiff earned R131 583, 68 per month. Defendant offered no objection to the plaintiffs' allegations that this amounts to R1 676 426, 76 in respect of the first plaintiff and R4 020 376, 32 in respect of the second plaintiff.

Costs

[27] This is a contractual claim brought under the BCEA. The considerations in section 162 of the LRA are inapplicable. The plaintiffs have been substantially successful, and there is no reason why the defendant should not bear the costs. The defendant, despite having no defense on the substance of the claims, forced the plaintiffs to come to court to vindicate their rights. It is therefore fitting that the defendant should bear the costs.

Conclusion

[28] The plaintiffs have satisfied the onus. The following order is made:

Order

1. The defendant is ordered to pay first plaintiff the sum of R1 676 426, 76 (one million, six hundred and seventy-six thousand, four hundred and twenty-six rand, and seventy-six cents).

2. The defendant is ordered to pay second plaintiff the sum of R4 020 376, 32 (four million, twenty thousand, three hundred and seventy-six rand, and thirty-two cents).
3. The damages, reflected in paras 1 and 2 above, is payable within thirty (30) days of the date of this judgment, failing which it will attract interest at the prescribed rate,
4. The defendant is ordered to pay the plaintiffs' costs.

Reynaud Daniels
Judge of the Labour Court of South Africa

Appearances:

For the Plaintiffs:

Mr Ngobeni

Ngobeni Attorneys

For the Defendant:

Adv Du Plessis

De Beer Attorneys