



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JS98/25

In the matter between:

SOLLY MARUMO SELLO

Applicant

and

**THE COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

First Respondent

COMMISSIONER TANYA ROBERTS-KRUGER

Second Respondent

THE FALCONS BODY CORPORATE

Third Respondent

Heard: 7 May 2025

Delivered: 13 August 2025

JUDGMENT

ENGELBRECHT, AJ

Introduction

[1] This is an application to set aside a settlement agreement concluded between the applicant (Mr Sello) and the third respondent (Falcons) as a result of conciliation efforts of the second respondent (Commissioner) who had been appointed to conduct an arbitration under the auspices of the first respondent (CCMA), pursuant to Mr Sello's unfair dismissal dispute initially remaining unresolved. Mr Sello asks that, in consequence, his dispute be set down for arbitration afresh before a different commissioner.

[2] The application is not opposed, despite clear evidence that:

2.1. It was served on the CCMA and Falcons on 20 March 2025; and

2.2. The notice of motion called upon the respondents to notify Mr Sello of any opposition within 10 days of receipt of the application, as well as to serve and file an answering affidavit in the event that the application was to be opposed.

[3] Of course, the mere fact that the application is not opposed does not entitle Mr Sello to the relief he seeks: this Court must be satisfied that a proper case for the relief Mr Sello prays for has been established.

Background

[4] For 18 years, until his suspension in January 2024 and his dismissal for misconduct in February 2024, Falcons employed Mr Sello as a "*general worker and in-house access control officer*". From about November 2018, Mr Sello also assisted a previous caretaker to prepare shift time sheets and calculate shift allowances following prescribed rates set by the Private Security Industry Authority (PSIRA). It appears that he was paid an additional R750 per month to perform these extra duties, because the previous caretaker "*did not have the necessary skills and expertise to use a computer*" and to perform these tasks.

[5] In 2023, Falcons appointed a new caretaker. This marked the end of Mr Sello's role in performing the additional work, and he was reportedly instructed to

assist with the handover, including explaining the PSIRA fee structure and helping Falcons with his formulas and calculations so the new caretaker could assume the duties. According to an annexure to the founding affidavit, he was offered R300 for his service to assist with the handover.

[6] Mr Sello's account of what happened is that he handed over his file and provided the PSIRA formula. He states that he refused to train the new caretaker, reasoning that it was not part of his usual duties. He also believed there was little else he could do beyond supplying the formulas, which he had already done. An annexure to the founding affidavit indicates that Mr Sello was *"unhappy with the situation because he had been complaining about his salary for some time and he felt the R300 payment was unfair. There was never a proper sit down or conversation where everything was properly discussed with him"*. Evidently, due to Mr Sello's reluctance to assist, no timesheets were submitted for a period, leading to mistakes in the calculations.

[7] The then chairperson of the Falcons Board of Trustees filed a complaint against Mr Sello, leading to his summons to a disciplinary hearing. An external labour consultant chaired the hearing. Her finding was that Mr Sello had been guilty of not completing timesheets during a period when he remained responsible for the task, and of not following a lawful and reasonable instruction without good reason. She concluded that he was *"angry at management structures about his salary and the amount he would receive to assist. Thus, the instruction was ignored maliciously and intentionally"*. Furthermore, she found that Mr Sello *"acted insolently and with a poor attitude toward the new management structures and refused to be helpful and assist"*, as well as *"refusing to follow instructions and help with his task to ensure a smooth handover"*. Her conclusion was that, if Mr Sello *"submitted and assisted [Falcons] with the handover and breakdown of how salaries and overtime were calculated, the salaries would not have been done incorrectly. The Chairperson did not want to take over the task. It was a necessity due to [Mr Sello's] actions and refusal to assist"*.

[8] Mr Sello states that he was suspended without pay and warned to train the new caretaker, failing which he would face a further disciplinary hearing. During his

suspension, Mr Sello received a text message to attend a second disciplinary hearing at short notice. He explains that he did not attend because he had been instructed not to go to the workplace. After his suspension, Mr Sello was informed that he had been dismissed. On 27 February 2024, Mr Sello was formally issued with a written notice of termination of employment.

[9] On 22 March 2024, Mr Sello referred a dispute to the CCMA, claiming unfair dismissal due to misconduct. In the section where he was asked to outline the facts of the dispute, he stated: *"I was employed as a security guard. So I get dismissal when I refuse to teach a new complex manager Administration Work. When I commend [sic] about salary, Chairperson said am talking nonsense"*.

[10] The dispute remained unresolved after the conciliation meeting of 12 April 2024. The matter was then referred to arbitration, and on 12 July 2024, Mr Sello was informed by text message to attend an arbitration on 2 August 2024.

[11] The arbitration was set down before the Commissioner. However, she indicated that she would attempt conciliation again. Mr Sello states that he did not give his consent for this. Nevertheless, he participated, allegedly because he *"was confused and did not want to interrupt the Commissioner"*. He asserts in his founding affidavit that -

11.1. He explained to the Commissioner that he had been unfairly dismissed, maintaining his stance that *"training of a caretaker who was in fact his superior was not part of his employment contract"*, and telling her that *"he refused to train a new white caretaker to perform the core managerial duties for which she was appointed"*.

11.2. When asked what he wanted, he is said to have explained that *"he was unfairly dismissed for misconduct and wanted to clear his name, that he wanted his job back, back pay from January 2023 [sic] to 2 August 2024 when he was suspended for two weeks without pay and for loss of income, and service benefit of which he is legally entitled as an employee in normal service. The applicant gave an amount of around R50 000, which he thought was the approximate amount owing to him if he were reinstated"*.

[12] Apparently, the Falcons representative stated that he *“could not give him his job back”* because all the access control in-house security officers had been retrenched effective from 31 July 2024. According to Mr Sello’s account, the Commissioner and the Falcons representative then proceeded to hold *“bilateral discussions and discussed [his] retrenchment and severance pay as a settlement without [Mr Sello’s] participation in those discussions”*. The Falcons representative is said to have then indicated that he needed to speak to the Falcons’ legal representative and another trustee (presumably to take instructions), and was given an opportunity to leave the room for that purpose. Upon his return, the legal representative accompanied him and *“did the calculations”*. Then, so Mr Sello claims, *“The Commissioner completed the form, a settlement agreement and gave it to [him] and [the Falcon’s representative] to sign. During this time she spoke directly to [Mr Sello] in English. The Commissioner gave him a copy... [Mr Sello] was confused, misled by the Commissioner, and did not realise that the arbitration concerning his dispute for unfair dismissal for misconduct had not been resolved and that he could no longer pursue his referral. The Commissioner’s Outcome Report leaves blank the notes for the dispute concerning misconduct”*.

[13] The outcome of the Commissioner’s intervention was the conclusion of a settlement agreement, which both Mr Sello and the Falcons representatives signed. Mr Sello was to be paid R25,698.05 in three instalments. This amount was equivalent to one week’s salary for each year of service, representing the severance pay that would have been payable in the event of retrenchment.

[14] Now, Mr Sello states that the amount *“is not compensation as intended in s193(1)(3), s194, and more specifically, s195 of the Labour Relations Act”*. He claims that the dispute over his unfair dismissal was never resolved. He states that he would have rejected the settlement if he had been properly informed. The Commissioner allegedly spoke English to him and did not give him a proper explanation of the consequences of signing the settlement agreement, including clarifying that there would be no arbitration regarding his unfair dismissal dispute. In summary, he asserts that *“the Commissioner unfairly, unreasonably and unduly influenced the applicant to sign the piece of paper put before him which he did without taking independent advice and without his informed consent and knowledge*

of the adverse and prejudicial consequences to the applicant". Mr Sello says he did not participate in negotiations or in calculating the severance pay and was not involved in drafting the settlement agreement. He alleges that he was "*unduly influenced by the Commissioner to sign this impugned agreement*", that he would not have signed this impugned agreement if he had received independent legal advice, and that the elements of a valid contract under common law between the parties have not been satisfied. Consequently, "*the impugned settlement agreement is void ab initio*".

[15] In this application, Mr Sello argues that the settlement agreement did not resolve the *issue* between the parties, which was unfair dismissal for misconduct.

Legal principles

[16] A contract or agreement exists if there is acceptance of an offer made between parties who have the intention and capacity to enter into an agreement.

[17] As a general rule, contractual arrangements must be honoured. In *Mohamed's Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interests (Pty) Ltd*¹ the Supreme Court of Appeal (SCA) underscored that the "*privity and sanctity of contract entails that contractual obligations must be honoured when the parties have entered into the contractual agreement freely and voluntarily. The notion of the privity and sanctity of contracts goes hand in hand with the freedom to contract. Taking into consideration the requirements of a valid contract, freedom to contract denotes that parties are free to enter into contracts and decide on the terms of the contract*".

[18] In *Baedica*² the Constitutional Court made it clear that the rule of law requires that the law of contract should result in predictable outcomes, "*enabling individuals to enter into contractual relationships with the belief that they will be able to approach a court to enforce their bargain*".³ Therefore, the "*enforcement of contractual terms does not depend on an individual judge's sense of what fairness,*

¹ 2018 (2) SA 314 (SCA); [2017] ZASCA 176.

² *Bediaca 231 CC and others v Trustees for the Time Being of the Oregon Trust and others (Baedica)* 2020 (9) BCLR 1098 (CC); [2020] ZACC 13.

³ *Baedica* at para 81.

reasonableness and justice require. To hold otherwise would be to make the enforcement of contractual terms dependent on the 'idiosyncratic inferences of a few judicial minds'. This would introduce an unacceptable degree of uncertainty into our law of contract. The resultant uncertainty would be inimical to the rule of law".⁴

[19] In doing so, it restated the approach in *Pridwin*,⁵ including that public policy *"demands that contracts freely and conscientiously entered into must be honoured"*.⁶

[20] The judgment of the Constitutional Court in *Gbenga-Oluwatoye v Reckitt Benckiser SA (Pty) Ltd & another (Gbenga-Oluwatoye CC)*⁷ further gives effect to the sanctity of contracts. The apex Court noted that *"we must consider the importance of giving effect to agreements, solemnly concluded, by parties operating from the necessary position of approximate equality of bargaining power... What is at issue here is a powerful consideration of public policy – the need for parties to settle their disputes on terms agreeable to them. That need arises in their own interests and in the interests of the public"*.⁸ It continued:

‘The public, and indeed our courts, have a powerful interest in enforcing agreements of this sort. The applicant must be held bound. When parties settle an existing dispute in full and final settlement, none should be lightly released from an undertaking seriously and willingly embraced.’⁹

[21] The sum of the precedent on contract is that a party should not easily escape one that is voluntarily entered into. Nonetheless, an agreement may be set aside if it was fraudulently obtained or on the grounds of *iustus error*, provided that the error vitiated true consent, and did not merely relate to motive or to the merits of a dispute which it was the very purpose of the parties to compromise.¹⁰ The burden upon an applicant who wants to have an agreement set aside is high.

⁴ *Id.* Footnotes omitted.

⁵ *AB and Another v Pridwin Preparatory School and Others (Pridwin)* 2019 (1) SA 327 (SCA); [2018] ZASCA 150.

⁶ *Pridwin* at para 27.

⁷ (2016) 37 ILJ 2723 (CC); [2017] 1 BLLR 1 (CC).

⁸ *Gbenga-Oluwatoye CC* at para 22.

⁹ *Gbenga-Oluwatoye CC* at para 24.

¹⁰ *Gollach & Gomperts (1967) (Pty) Ltd v Universal Mills & Produce Co (Pty) Ltd and others* 1978 (1) SA 914 (A).

Analysis

[22] The first basis for seeking relief in this application appears to be the suggestion that the Commissioner somehow acted improperly in reverting to conciliation, even though the matter had reached the arbitration stage, because Mr Sello had not consented.

22.1. Section 138(3) of the Labour Relations Act¹¹ (LRA) specifically provides that a commissioner may at any time suspend the arbitration proceedings and attempt to resolve the dispute by conciliation. That the Commissioner in the present case did so right at the outset is not, in and of itself, a cause for complaint.

22.2. However, reverting to conciliation requires the consent of the parties.

22.3. Mr Sello states that he did not give his “*informed consent*” to attempt conciliation a second time. The inclusion of the word “*informed*” indicates that Mr Sello did consent, but not with full knowledge of the possible consequences. His own account of events shows he engaged in the conciliation discussions, even explaining to the Commissioner what he would want the outcome to be. The Commissioner would have been justified in relying on Mr Sello’s actions to at least infer his consent to another attempt at conciliation.

22.4. The question that arises is: what potential consequences of engaging in conciliation was Mr Sello required to have been made aware of, and which he was not, that would have invalidated his consent due to it not being “*informed consent*”? Mr Sello does not assist the Court in this regard. If the conciliation had not succeeded, that might have resulted in consequences (such as referral to a different commissioner, to prevent later allegations that the Commissioner obtained information during the conciliation that could have influenced her assessment of the claim). But that is not the situation here. The difficulty for Mr Sello is that the act of engaging in conciliation itself was not what had consequences in this case; rather, it was the conclusion of the settlement agreement that led to consequences. In the circumstances of the

¹¹ Act 66 of 1995, as amended.

case, this Court cannot conclude on the available facts as pleaded that relief can be granted on the basis of the Commissioner proceeding to conciliation.

[23] If the relief is to be granted, it must be found in the events relating to the conclusion of the settlement agreement that followed upon the conciliation process. In that respect, this Court understands Mr Sello's position to be that there had not been true consent when he signed the agreement, because –

- 23.1. The Commissioner misled him;
- 23.2. He was confused; and
- 23.3. He did not appreciate the consequences of signing the agreement.

[24] Regarding the claim that the Commissioner misled Mr Sello, this Court notes that while the affidavit provides detailed information, including the times at which certain events occurred, Mr Sello offers no description of what the Commissioner actually said to him. He merely states that the Commissioner spoke to him in English but makes no effort to detail what was communicated, which could have been misleading.

[25] The issue for Mr Sello is that there is no factual foundation pleaded for the conclusion he advances – that he was misled. Questions arise. What did the Commissioner say to mislead him? What about what the Commissioner said, or her conduct, caused him to sign the settlement agreement presented to him, despite stating that he was confused? Since these allegations have not been pleaded, there is no factual basis for the Court to determine that the Commissioner misled Mr Sello.

[26] Mr Sello's allegation that the Commissioner "*unfairly, unreasonably and unduly influenced [him] to sign the piece of paper put before him*" suffers from the same shortcoming. What did the Commissioner do to influence him? What did she say? Did she bring pressure to bear? In what way? The Court is not told. The same goes for the allegation that Mr Sello did not sign the agreement voluntarily. That suggests he was coerced. How? By whom? Mr Sello does not take the Court in his confidence.

[27] It must be borne in mind that Mr Sello approaches this Court on motion. In application proceedings, the affidavits serve not only as substitutes for pleadings (as would be filed in action proceedings) but also as the essential evidence that would have been presented at trial if action proceedings had been initiated. The deponent thus “*testifies*” in motion proceedings. From this, it follows that generally, relief may only be granted in motion proceedings if it is supported by admissible evidence contained in the affidavits.

[28] The Constitutional Court in *President of the Republic of South Africa and Others v M & G Media Ltd*¹² confirmed criticism of the Supreme Court of Appeal (SCA) in that litigation where deponents to affidavits offered “*no more than bald assertion*” and “*perfunctory conclusions*”. Although the context is quite different, the criticisms remain valid in motion proceedings more generally: an applicant cannot rely on “*bald assertions*” and “*perfunctory conclusions*”, with no evidential basis to support those assertions and conclusions.

[29] This Court takes Mr Sello’s allegation that he was confused seriously. Upon examining this claim, the key question is: what was the nature of his confusion? The confusion is alleged to have existed from the beginning, when the Pedi interpreter present in the room is said to have explained that the Commissioner intended to attempt conciliation once more, as well as at the time of reaching the settlement agreement (that is, when the agreement was presented for signature and signed). And if, as he claims, he was confused, why did he sign the agreement? In raising this question, I make the following observations.

29.1. The settlement agreement is a simple, one-page document that requires very little legal knowledge to understand. The parties confirm that they read the agreement and that they understand it, record that the agreement is in full and final settlement, and that the dispute was settled by agreement to pay certain monies in instalments that are recorded. The wording of the agreement leaves little room for confusion.

29.2. This Court has only Mr Sello’s version of events. His own account of the background facts shows that he tends to assert his rights when he

¹² 2012 (2) SA 50 (CC); 2012 (2) BCLR 181 (CC).

believes he has them. That appears to have led to disciplinary proceedings. Why did he not speak up and ask questions before signing a settlement agreement, to ensure he would not be surrendering his rights upon signing it?

29.3. In the founding affidavit, Mr Sello explains that the representative of the Falcons *"told the Commissioner that he needed to consult his legal representative"* and was allowed to do so. Why, if he was confused, as he claims he was, did he not ask for the same opportunity? According to his own version, he consulted an attorney when he first received the set-down notice for the arbitration. Why did he not at least try to contact that attorney? He cannot complain, as he does, that the Commissioner did not give him a chance to call his attorney if he did not request such an opportunity, just as the Falcons representative did.

29.4. Finally, the settlement agreement, in terms, records that *"By signing this agreement, the parties acknowledge that the agreement was read to them and interpreted (where necessary) and that they understand the content thereof. This agreement is in full and final settlement of the dispute referred to the CCMA"*. If Mr Sello read the agreement, there could have been no confusion on his part that the agreement would bring to an end his dispute of unfair dismissal before the CCMA. His complaint that *"the Commissioner did not tell [him] that there would be no arbitration of his dispute for reasons of misconduct"* rings hollow in light of the express and simple wording of the settlement agreement.

[30] From an examination of the papers filed, it is clear that Mr Sello is an intelligent and well-informed man. After all, he was entrusted with doing PSIRA calculations that his superiors apparently could not complete correctly without his help. According to the founding affidavit, he and a colleague showed a Falcons trustee the relevant Government Gazette, the Basic Conditions of Employment Act, and the PSIRA rates to demonstrate why the formula he used was correct. Someone capable of navigating legislation and regulations in this way is not a layman with no understanding of the law and its consequences. It appears unlikely that someone with such an understanding of legal matters would sign a settlement agreement without knowing what it involved or its implications.

[31] Added to that consideration is the fact that the notice of motion states that, at least when the application was launched, Mr Sello was representing himself as a litigant in person. In the founding affidavit, he also states that he is “*a layperson and a litigant-in-person*”. However, the affidavit includes an explanation of legal principles, including references to Constitutional Court jurisprudence in cases such as *Eke v Parsons (Eke)*.¹³ As deponent, Mr Sello uses terminology like “*the review gateway*”, “*lis*”, “*domicilium citandi et executandi*”, “*impugned agreement*”, “*burden of proof*”, “*informed consent*”, “*fait accompli*”, “*op cit*”, “*ab initio*” and similar terms, and even quotes foreign law. From this, I must infer that (i) Mr Sello received assistance from a legal practitioner in preparing his papers; (ii) he is capable of navigating the legal landscape; or (iii) a combination of these.

[32] Assuming in favour of Mr Sello that, despite his assertion on oath that he was self-representing, he did not draft the founding affidavit without assistance from a legal practitioner, this Court cannot conclude that Mr Sello is the type of person who would have signed a settlement agreement if he did not agree to its terms and understood its effect.

[33] In this regard, the Court takes guidance from the unreported judgment of the LAC in *Aveng Trident Steel, a Division of Aveng Africa (Pty) Ltd v Thembeke Nkonyane*.¹⁴

‘In an attempt to escape the consequences of... an agreement, the respondent argued that the contents of the agreement were never explained to her and as such, she is not bound by the terms thereof. I disagree... The agreement is a simple two-page document...

The argument by the respondent’s counsel that she was in a disadvantaged bargaining power with fewer resources compared to the appellant holds no water... She is an educated person and had demonstrated an ability to negotiate for herself as evident from the pleadings. She signed the retrenchment agreement and her signature serves as proof that she was aware of the content of the document. By signing the agreement, her intentions were to be bound by the terms thereof. We have to deal with her as

¹³ 2016 (3) SA 37 (CC); 2015 (11) BCLR 1319 (CC).

¹⁴ Case No JA16/2022, judgment of 17 April 2023.

the sort of person she is and she is not entitled to escape the consequences of the agreement on the basis that she was of less bargaining power than the appellant.¹⁵

[34] There is a further consideration.

34.1. The settlement agreement was entered into on 2 August 2024. It required payment to Mr Sello of instalments of R8 566.02 on 31 August, 30 September and 31 October 2024.

34.2. Mr Sello says that, as at 31 October 2024, he had received two of the three instalments (after tax deduction), and he now tenders to repay the monies that he had received. The Court is not told what the position is in respect of the third instalment (i.e. whether it was paid subsequent to 31 October, or not paid at all, or any of the circumstances surrounding the payment or non-payment of the third instalment). All that is said is that, since the third instalment had not been paid by 31 October 2024, Falcons is in breach.

34.3. The application was launched on 20 March 2025, more than seven months after the conclusion of the settlement agreement. This Court understands that the delay was occasioned by Mr Sello initially instituting review proceedings sometime in 2024. Ostensibly, Mr Sello was then told that he could not review a settlement agreement that had not been made into an arbitration award, and he was advised to bring the present application.

34.4. This Court does not know when the review application had been launched (other than to deduce from the case number that it was sometime in 2024) or when Mr Sello received the advice that he ought rather to bring the present application. What this Court is not told is when and how Mr Sello came to the conclusion that, on his version, he had been improperly compelled to enter into a settlement agreement, and that the settlement agreement did not reflect his intentions.

34.5. Tellingly, there is no allegation in the founding papers that Mr Sello, having signed the settlement agreement and/or receiving payments under it, sought to enrol for determination his unfair dismissal dispute, which, if his

¹⁵ Ibid at paras 17 and 18.

position is understood, he considered not to have been settled by entering into the settlement agreement. If he verily believed that the settlement agreement did not settle that dispute, why is there no evidence of him pursuing the dispute, only to be told that he can no longer do so?

34.6. What is clear is that Falcons made at least two payments that Mr Sello accepted at the time. There is no indication that, at the time those payments were made, Mr Sello objected to them, or expressed the view that the settlement agreement fell to be set aside on account of the various objections he now raises.

[35] Mr Sello's reliance on *Eke*, making the point that the settlement agreement must (i) relate directly or indirectly to an issue or *lis* between the parties; (ii) not be objectionable and accord with the Constitution and the law; (iii) no be at odds with public policy; and (iv) hold some practical or legitimate advantage, does not provide a basis for the grant of the relief sought.

35.1. The settlement agreement resolved a dispute between the parties. Mr Sello wished to challenge his dismissal as unfair, and he sought compensation and re-instatement. Re-instatement was not an option, given the re-organisation of the workplace following his dismissal. Mr Sello could receive compensation. Falcons proposed a calculation based on a formula commonly used in retrenchment cases as a guide for determining the settlement amount they would offer. The fact that this was presented as the basis of the calculation did not change the fact that the amount paid as compensation in settling the unfair dismissal dispute was final. In other words, the formula Falcons used to calculate the settlement amount is irrelevant to whether the dispute before the CCMA was settled; it could have been any amount, derived from whatever basis Falcons chose to base their offer on. By signing, Mr Sello accepted the compensation and payment terms, which were expressly recorded as constituting "*full and final settlement of the dispute referred to the CCMA*".

35.2. There is nothing legally objectionable about the settlement agreement. It provided for a sum of money to be paid to Mr Sello as compensation to resolve his unfair dismissal dispute. He now appears to believe that the amount settled upon was too low, and/or that he would like another

opportunity to seek reinstatement before a different commissioner. However, the fact that he desires a different outcome from the one he agreed to does not make the settlement agreement unlawful. In this context, I note that Mr Sello's assertion that he did not participate in the negotiations does not seem credible: as shown by the factual background above, he explained to the Commissioner what outcome he sought *after* she initiated a further attempt at conciliation. That is not what he received in the end, but that is because he agreed to accept less.

35.3. Insofar as there was not an "*equality of arms*", because the Falcons representative consulted a legal representative and Mr Sello did not, that does not vitiate the agreement reached. Mr Sello could have asked for time to speak to a legal representative, or even requested the Commissioner directly to explain to him the implications of the agreement before signature, if he was unsure.

35.4. The settlement agreement held the practical advantage of resolving the issue between Mr Sello and the Falcons without the need to engage in a full-fledged arbitration. Arbitration outcomes are unpredictable. Yes, Mr Sello might have obtained a more favourable outcome if he had succeeded in proving that his dismissal had been unfair. Equally, the possibility existed that the Commissioner might have concluded that Mr Sello's dismissal had not been unfair, in which event he would have walked away with nothing. The settlement agreement ensured that Mr Sello received some compensation and, for him, avoided the uncertainty and unpredictability of the outcome of the arbitration. Mr Sello may now think that he has been short-changed, but he ignores that the possibility existed that he might have received nothing at all if he were unsuccessful in an attempt to convince the Commissioner that his dismissal had been unfair. The law reports are strewn with ostensibly "*open and shut*" cases that turned out not to be so. Mr Sello cannot assume that he would have been successful.

35.5. Mr Sello cannot complain that his right to court access has been trampled upon. It is legitimate for parties to enter into a settlement agreement to bring disputes to an end. This is what happened here, because Mr Sello elected to sign the agreement.

[36] In the circumstances, I make the following order:

Order

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

MJ Engelbrecht
Acting Judge of the Labour Court

Appearances:

For the applicant: R Naidoo (*pro bono*)

For the respondents: No appearance