



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JS1028/2016

In the matter between:

GODFREY KOTI PHILLIP MANATO

Applicant

and

**MEDIA, INFORMATION AND COMMUNICATION
TECHNOLOGIES SECTOR AND TRAINING
AUTHORITY**

Respondent

Heard: 19 May 2025

Delivered: 04 September 2025

JUDGMENT

DJAJE, AJ

Introduction

[1] In this action, the applicant alleges that he was discriminated against based on age by the respondent, who unilaterally adopted a retirement policy that excluded him.

Background

[2] The common facts between the parties were outlined as follows:

(a) The applicant commenced his employment with the respondent, in a temporary position, on 1st March 2006 as an Accountant: LPD and Fixed Assets Register.

(b) The applicant, pursuant to his employment as above, was permanently employed, in the said position from during or about July 2006 until 11 August 2008.

(c) As a result of a company restructuring, the respondent's finance division was outsourced to Deloitte and Touche in and during August 2008.

(d) The applicant, as such and from 11 August 2008, remained employed with the respondent as an LDP Administrator until 31 March 2011.

(e) On 1 April 2011 the applicant concluded an agreement of employment with the respondent, being employed as an LPD Administrator. This agreement of employment would endure for 5(five) years.

(f) The applicant is not in possession of the aforesaid contract of employment.

(g) On or about 14 November 2013, the applicant and the respondent concluded a written addendum employment contract, a true copy of which is attached hereto marked as annexure "A". In terms of this addendum, the employment contract was amended from being a fixed term contract to an open-ended contract.

(h) From the period 14 November 2013 until 18 May 2017, the applicant remained employed with the respondent.

(i) On or about 30 May 2016, the applicant was provided with a written retirement policy document in terms of which the respondent's normal age retirement was adopted as being 60 (sixty) years of age. A true copy of the written retirement policy document referred to is attached hereto marked as annexure "B" (the policy).

- (j) The adoption of the policy was preceded by the following events:
- In and during February 2016, the applicant was advised by the respondent that the respondent intends to adopt a formal retirement age of 60 (sixty) years.
 - At a general meeting held on 26 February 2016, the adoption of the retirement age, as referred to above, was discussed. The nature and extent of the discussion are set out in the attached minutes of the meeting, as annexure "C".
 - At a meeting of 12 May 2016, a draft policy was introduced during a retirement consultation meeting.
 - The applicant, on 29 September 2016, sought clarity on inter alia the events which had transpired above but received no response in respect thereof.
- (k) At all material times prior to the adoption of the policy,
- The respondent did not have a formal retirement age policy.
 - The agreed alternative normal retirement age for the applicant, during his employment with the respondent, was 65(sixty-five) years of age.
- (l) The respondent approved and adopted the policy.
- (m) The applicant referred the matter to the CCMA who declared dispute on 23 November 2016.'

Applicant's case

[3] The applicant testified that he is now on pension and is 69 years old. He worked for the respondent under various contract forms from 2006 to 2017. He signed an addendum to his employment contract in 2013, intended to transition from a fixed term to an open-ended contract. According to the applicant, the retirement age, known to all employees, was 65 years. There was no written retirement policy for the respondent; instead, they followed the retirement age information provided by the pension administrator. The applicant stated that during his employment, employees who reached the age of 65 were assisted with the retirement process.

[4] The applicant's evidence was that he did not recall receiving an email from the respondent regarding the adoption of the retirement policy. However, he was

aware that the respondent had developed a retirement policy, although no formal meetings were held, only informal discussions with Mr. Gama. At that time, Mr. Gama just informed him that he was still busy drafting the policy. He received a notice of retirement on 26 July 2016 without being allowed to express his views on the new policy. The only people affected by the new policy were himself and Mr. Sebeko, who was already 63 years old. To his surprise, Sebeko continued working until he was 65. At that time, the applicant had already left employment. The applicant explained that he only received the approved retirement policy on 8 August 2016, and he addressed a letter to the human resources department on 29 September 2016, stating that he was not satisfied. He did not receive any response from the human resources department.

[5] The applicant felt discriminated against based on age and decided to approach the CCMA because some individuals were allowed to work until the age of 65. He explained that his retirement disrupted his life, as he had planned to retire at 65. His financial situation was severely impacted; he still had bills to pay, and his vehicle was repossessed. His health was also affected, leading to treatment for depression. When asked if he approached the Chief Executive Officer for an extension as provided in the policy, he indicated that he did not, as he felt unwelcome in the company.

[6] During cross-examination, the applicant stated that he knew he could request an extension to age 65 from the CEO but chose not to pursue it. He was unable to explain why Sibeko was allowed to remain until age 65. He admitted to attending consultation meetings on 26 February 2016, 1 July 2016, and 12 May 2016, but described himself as a passive participant. It was suggested to him that he was consulted about the retirement policy.

Respondent's case

[7] Ms. Gugu Goodness Sema testified that she has been working for the respondent since January 2012 and has served as a monitoring specialist for seven years. She later advanced to a senior manager. Her testimony was that the respondent's retirement policy was shared with all employees. General employee

meetings were used to inform employees and to hold workshops on the retirement policy. She attended the meeting on 26 February 2016, where the applicant was also present. He participated in discussions about the policy by asking questions to the human resource officials.

[8] The respondent called a second witness, Mr. Ernest Nemugavhini, who has been the Senior Manager of Learning Programs with the respondent since 2021. He began working for the respondent in July 2007 as an Administrator. He confirmed that he attended the meeting on 26 February 2016, and the applicant was present as well. The purpose of the meeting was to discuss developments related to policies, including one concerning the respondent's retirement policy. Initially, the respondent did not have a retirement policy, and employees depended on the provisions of the Sanlam Provident Fund. The new retirement policy was adopted at the Employee General Meeting and subsequently recommended to the governing structure.

Issue

[9] The issue herein is whether the respondent's retirement policy was adopted and approved without consulting the applicant, and whether it was discriminatory toward the applicant because of his age.

Submissions

[10] The applicant denies that the retirement policy was ever discussed with him during a formal consultation meeting. He also asserts that he never consented to the policy's adoption and that the respondent unilaterally enforced it. Furthermore, the applicant argues that the policy is unfair and constitutes age-based discrimination, as he was dismissed at age 60 instead of 65. He claims this discrimination is unjust under section 6(1) of the Employment Equity Act¹ (EEA). As a result of this unfair discrimination, the applicant seeks R1,080,000 in compensation for non-patrimonial loss, including solatium.

¹ Act 55 of 1998.

[11] In contention, the respondent argued that the applicant attended the consultation meeting on 12 May 2016, where the retirement policy was discussed. Additionally, the applicant, on 29 September 2016, sent a letter to the respondent acknowledging that the policy was introduced at the consultation meeting of 16 May 2016. This suggests that the applicant was present at the consultation meetings and aware of the retirement policy. The respondent's witnesses, Sema and Nemugavhi, both confirmed that the employees adopted the policy at the meeting of 26 February 2016, which the applicant attended.

Law and application

[12] Although the applicant attended the meeting on 26 February 2016, where the retirement policy was discussed, he claims that the respondent did not consult him prior to implementing the policy. The respondent's witnesses confirmed that the applicant actively participated in the meeting, and this testimony was not challenged. There is no evidence that the applicant in that meeting raised any objections to the implementation of the policy.

[13] In an instance where an employee fails to object to workplace policy changes following consultation, the Labour Appeal Court in *Legal Aid South Africa v Theunissen*², expounded that an employee acquiesces to such a change and must be held to their election.

[14] In dealing with acquiescence, the Appellate Division in *McWilliams v First Consolidated Holdings*³ held that:

'I accept that "quiescence is not necessarily acquiescence" ... and that a party's failure to reply to a letter asserting the existence of an obligation owed by such party to the writer does not always justify an inference that the assertion was accepted as the truth. But in general, when according to ordinary commercial practice and human expectation firm repudiation of such an assertion would be the norm if it was not accepted as correct, such party's silence and inaction, unless satisfactorily explained, may be taken to

² [2020] 4 BLLR 370 (LAC) at para 48.

³ 1982 (1) All SA 245 (A) at 10E - G.

constitute an admission by him of the truth of the assertion, or at least will be an important factor telling against him in the assessment of the probabilities and in the final determination of the dispute. And an adverse inference will the more readily be drawn when the unchallenged assertion had been preceded by correspondence or negotiations between the parties relative to the subject-matter of the assertion. ...'

[15] The applicant alleges that he was discriminated against based on age. In terms of section 6(1) and 6(4) of the EEA:

'(1) No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or on any other arbitrary ground.

...

(4) A difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in subsection (1), is unfair discrimination.

[16] The applicant testified that he was discriminated against because Mr. Sibeko was allowed by the respondent to work beyond the retirement age specified in the new policy. During his testimony, the applicant stated that he did not apply for an extension to work past retirement age as outlined in the policy. Therefore, he is barred from claiming that Mr. Sibeko was treated differently, as he lacks knowledge of the circumstances surrounding Sibeko's extension.

[17] The applicant submitted that the policy was adopted to target him; however, after he had referred his dismissal to the CCMA in 2017, a settlement agreement was reached between the parties. In terms of the said agreement, the applicant was paid an amount of R90 000.00, and the reason for termination of employment was retirement. The result of this agreement was that the applicant agreed to retire. The

claim that the implementation of the policy targeted him cannot be sustained and falls short of establishing that he was discriminated against.

[18] In terms of section 11(1) of the EEA:

'If unfair discrimination is alleged on a ground listed in section 6 (1), the employer against whom the allegation is made must prove, on a balance of probabilities, that such discrimination –

- (a) did not take place as alleged, or
- (b) is rational and not unfair, or is otherwise justifiable.'

[19] The respondent's employees testified that the applicant knew about the policy and was consulted, raising no objections. Additionally, the applicant was not the only employee notified of retirement and did not seek a work extension beyond retirement age. This evidence adequately shows that the alleged discrimination did not occur as claimed. Since the applicant's claim of discrimination is not supported, it is unnecessary to evaluate whether the discrimination was rational or justified.

[20] The applicant has not demonstrated, on a balance of probabilities, that the adoption of the retirement policy was unfair or that it was implemented without proper consultation. Therefore, he has not proved discrimination based on age.

Costs

[21] Considering the relationship between the parties in this matter, I see no reason to make any adverse order against the applicant, and I order that there be no order as to costs.

[22] Consequently, I make the following order:

Order

1. The applicant's claim is dismissed.
2. There is no order as to costs.

J T Djaje

Acting Judge of the Labour Court Of South Africa

Appearances

For The Applicant: Adv W A De Beer

Instructed by: G J Brits Attorneys

For The Respondent: Adv M Mthombeni

Instructed by: Mbeki Nene Mbatha Incorporated

LABOUR COURT