



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

NOT REPORTABLE

Case no: JS439/22

In the matter between:

MAFENYA REINET NGOBENI

Applicant

and

BIDVEST PROTEA COIN (PTY) LTD

Respondent

Heard: 23 – 24 June 2025

Delivered: 6 October 2025

Summary: Claim by the applicant that his dismissal was based on age and is automatically unfair. Applicant failed to raise a credible possibility that he was dismissed based on his age. Claim dismissed. No costs.

JUDGMENT

DANIELS J:Introduction

- [1] The applicant contended he was dismissed by respondent, and his dismissal was automatically unfair, in accordance with section 187(1)(f) of the Labour Relations Act No. 66 of 1995 (the “LRA”). He contends that the reason for his dismissal related to his age. The respondent contended that there was no dismissal because the applicant was engaged on a fixed term contract and his contract terminated by effluxion of time. Having heard argument, the court found that the applicant had been dismissed. The trial proceeded thereafter.

Pleadings

- [2] The applicant’s pleaded case is that he was employed by the respondent as a security guard and stationed at the Midrand depot of Gautrain (operated by the “Bombela Operating Company”). The applicant pleads that in March 2022 he was called to the office of Mr Tendai Dion Manenze, together with another employee, where Mr Manenze told him that he was too old to continue working for the respondent and dismissed.

Evidence at trial

- [3] The respondent called four witnesses namely Messrs Tendai Dion Manenze, Fanafuthi Joseph Rammushi, Trevor Mncube, and Karel Johannes Britz. Their evidence is briefly summarized below:

- 3.1 Mr. Manenze ("Manenze") testified that he used to work for the respondent. He was the area manager on the Gautrain project until 2019, when he began working on the respondent's contract with Shoprite Checkers Distribution Centre ("Shoprite DC") at Centurion. Manenze testified that he had no authority to dismiss anyone, and he did not tell the applicant he was too old to continue working for the respondent. He had a good working relationship with the applicant. Manenze denied meeting with the applicant in March 2022. By March 2022, the Shoprite DC contract had come to an end, and he could not have offered the applicant alternative employment on that contract.
- 3.2 Mr. Joseph Rammushi ("Rammushi") testified that he was the former human resources contract administrator for the Gautrain project. He assisted the applicant with processing his paperwork at the end of his fixed term employment contract. The paperwork indicates that the applicant's services terminated because he had reached the end of his contract and that he was eligible to be reemployed. The applicant was offered alternative employment on the 'Nexon' contract, but he rejected the offer because transport was not included. The applicant was keen to end his contract and access his provident fund money. Rammushi recalls that Manenze had a meeting with the applicant and Ms. Lovedelia Hlongwane ("Hlongwane") but Manenze did not make any comment that the applicant was too old to work for the respondent.
- 3.3 Mr. Trevor Mncube ("Mncube") testified that he was the branch manager for the Gautrain project. During 2022, the area manager for the project was Mr. Reginald Cedras ("Cedras") who reported to him. When the Gautrain project came to an end it was terminated in phases. When any project comes to an end, the respondent tries to find alternative employment for employees on fixed term contracts and has a formal consultation process for those employees on indefinite term contracts. Manenze could not have terminated the applicant's employment in 2022

because, at that time, Manenze was not working on the Gautrain project. Manenze was the previous area manager for the Gautrain project, and he was replaced by Cedras.

- 3.4 Mr. Karel Johannes Britz (“Britz”) testified that he is the national labour relations manager for the respondent. Britz testified that the standard retirement age in the respondent is sixty-five and there is no discretion to dismiss employees earlier based on their age.

[4] The applicant, Mr. Mafenya Reinet Ngobeni (“Ngobeni”) testified as follows:

- 4.1 He was employed by the respondent as a security guard during 2013. During 2015, he was dismissed for sleeping on duty. He challenged his dismissal, and the CCMA found in his favor. The CCMA ordered the respondent to re-employ him. The CCMA process led to the deterioration of his relationship with his manager, Mr. Phillip Mahlangu (“Mahlangu”).
- 4.2 When Ngobeni was re-employed, during 2016, he was asked to sign a fixed term employment contract (the “contract”) which he did. That is why his contract states that his employment commenced in August 2016 and continues for the duration of the Gautrain project.
- 4.3 Despite signing the contract, indicating that his site was the Gautrain, he was posted to Nedbank’s Rivonia branch, where he worked for almost one year. Thereafter, he was transferred to the Gautrain (Midrand), where he worked for the next four to five years until he was dismissed during March 2022. At the time, he was fifty-one years old.

4.4 Ngobeni was informed, during October 2021, that the Gautrain project would terminate in January 2022, but this would be implemented in phases.

4.5 During October or November 2021, the respondent began looking for alternative sites for guards attached to the project. They had a list of the affected guards, but Ngobeni's name was not on the list. The Gautrain project was extended until February 2022, and thereafter until March 2022.

4.6 Ngobeni testified that, during 2022, Manenze was looking for four employees to work on the Shoprite DC project. Ngobeni was called to the office together with Hlongwane where they met with Manenze. Manenze found alternative employment for Hlongwane but told Ngobeni that he was unsuitable because he was too old. Under cross examination, it was suggested to Ngobeni that he was offered work on the 'Nexon' project (and not Shoprite DC) which he rejected. However, he confirmed that Hlongwane was offered employment on the Nexon project.

4.7 Ngobeni testified that he signed a benefits withdrawal form indicating that he had not been dismissed. He stated that someone else completed the document for him and he simply signed it. Under cross examination, Ngobeni confirmed he was keen to access his provident fund money.

[5] Despite the applicant's pleadings making no mention of this, during his cross examination of respondent's witnesses, Ngobeni suggested that he had been dismissed by Mahlangu when he failed to get vaccinated.

Legal principles

- [6] As previously mentioned, the applicant claims that his dismissal is automatically unfair because he was unfairly dismissed on the grounds of age, as contemplated in section 187(1)(f) of the LRA.
- [7] An applicant seeking to establish that a dismissal is automatically unfair on the grounds in section 187(1) must meet the requirements of factual and legal causation as articulated in *SA Chemical Workers Union & others v Afrox Ltd*¹:

“The first step is to determine *factual* causation: was participation or support, or intended participation or support, of the protected strike a sine qua non (or prerequisite) for the dismissal? Put another way, would the dismissal have occurred if there was no participation or support of the strike? If the answer is yes, then the dismissal was not automatically unfair. If the answer is no, that does not immediately render the dismissal automatically unfair; the next issue is one of *legal* causation, namely whether such participation or conduct was the “main” or “dominant”, or “proximate”, or “most likely” cause of the dismissal. ... It is important to remember that at this stage the fairness of the dismissal is not yet an issue. ... Only if this test of legal causation also shows that the most probable cause for the dismissal was only participation or support of the protected strike, can it be said that the dismissal was automatically unfair in terms of s 187(1)(a).”

- [8] Importantly, in disputes concerning section 187(1)(f), the applicant bears an evidentiary burden. The burden was described in *Kroukam v SA Airlink (Pty) Ltd*² as follows:

¹ (1999) 20 ILJ 1718 (LAC) at para [32]

² (2005) 26 ILJ 2153 (LAC)

“In my view, section 187 imposes an evidential burden upon the employee to produce evidence which is sufficient to raise a credible possibility that an automatically unfair dismissal has taken place. It then behoves the employer to prove to the contrary, that is to produce evidence to show that the reason for the dismissal did not fall within the circumstance envisaged in section 187 for constituting an automatically unfair dismissal.”

(own emphasis)

[9] To raise a credible possibility that the dismissal was automatically unfair the applicant must show, at the very least, that there is factual causation. To do so, the applicant must show that Manenze informed him that he was too old to be employed. However, in that regard, the court is faced with two mutually destructive versions. It is therefore necessary to canvass the applicable legal principles:

9.1 Where it must decide factual disputes, the court must consider the credibility of the witnesses, their reliability, and the probabilities.³

9.2 In a civil matter, the question is whether the plaintiff's evidence is, on the probabilities, correct. It is only where a consideration of the probabilities fails to indicate where the truth probably lies, that the court need have regard to the relative credibility of witnesses apart from the probabilities.⁴

9.3 The test is not whether a witness is truthful or indeed reliable in all that he says, but whether on a balance of probabilities the essential features of the story which he tells are true.⁵

³ *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others* 2003 (1) SA 11 (SCA)

⁴ *National Employers General Insurance Co Ltd v Jagers* 1984 (4) SA 437 (E) at 440 – 441

⁵ *Santam Bpk v Biddulph* 2004 (5) SA 586 (SCA) at para [10]

9.4 In *National Employers' General Insurance Co Ltd v Jagers*⁶ Eksteen AJP observed:

'It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the Court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance or probabilities favours the plaintiff, then the Court will accept his version as being probably true. If, however the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the Court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false.

It does not seem to me to be desirable for a Court first to consider the question of the credibility of the witnesses as the trial Judge did in the present case, and then, having concluded that enquiry, to consider the probabilities of the case, as though the two aspects constitute separate fields of enquiry. In fact, as I have pointed out, it is only where a consideration of the probabilities fails to indicate where the truth probably lies, that recourse is had to an estimate of relative credibility apart from the probabilities.'

9.5 While the evidence of a single witness in a civil matter need not be treated with caution⁷ the absence of corroboration may nevertheless be a factor in the assessment of the evidence.

⁶ 1984 (4) SA 437 (E)

Analysis of the evidence

[10] The applicant's evidence was unsatisfactory from several perspectives. There were numerous contradictions in his evidence. He raised issues that were not pleaded. He put versions during cross examination which were not pleaded and contradicted his own evidence. He seemed to have no independent recollection of many of the issues he testified about. In the circumstances, his evidence lacked credibility and reliability.

[11] However, his evidence is most deficient when it is considered in view of the probabilities. The probabilities simply do not favor the applicant's version. In this regard, the following must be noted:

11.1 The standard retirement age in the respondent is sixty-five. The applicant was fifty-one at the time. It is hard to understand why his age would have been selected as the reason to dismiss him, if indeed the respondent wished to dismiss him for an arbitrary reason.

11.2 The respondent offered the applicant alternative employment, whether it was Nexon or Shoprite DC.

11.3 The respondent regarded the applicant as eligible for re-employment and recorded this on his records.

⁷ *Blyvooruitzicht Gold Mining Co Ltd v Pretorius* [2000] 7 BLLR 751 (LAC) at para [10]

11.4 It is improbable that Manenze would have become involved in securing employees from the Gautrain project in the absence of the area manager at the time. Manenze was no longer involved in the project. It is unlikely that he would have wanted to tread on the toes of his colleagues. If he required employees for another contract, it would have been easier for him to simply ask the area manager for the Gautrain project to investigate this for him.

11.5 Manenze was not based at the head office, where he allegedly met the applicant.

11.6 The evidence showed that the applicant was keen to access his provident fund money.

[12] In the circumstances, the applicant has failed to raise a credible possibility that he was dismissed based on his age. The applicant's case must fail on this basis alone.

Costs

[13] The respondent did not actively pursue costs. I see no reason to depart from the rule that, in this court, costs do not follow the result. There is nothing in law or fairness which compels me to mulct the applicant in costs.

Conclusion

[14] In the result, the following order is made:

1. The dispute under case number JS439/22 is dismissed,
2. There is no order as to costs.

Reynaud Daniels
Judge of the Labour Court of South Africa

Appearances:

For the Applicant:
Self-represented

For the Respondent:
Ms S Lancaster
Lancaster Kungoane Attorneys