



LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS267/22

In the matter between:

SELLO SHADOW MAKOMANE

Plaintiff

And

BROLL PROPERTIES GROUP (PTY) LTD

Defendant

Heard: 17 October 2024

Delivered: 09 May 2025 This judgment was handed down electronically by circulation to the parties and / or their legal representatives by email. The date and time for handing-down is deemed 10h00 on 09 May 2025.

JUDGMENT

VUKEYA, AJ

- [1] The applicant, Mr Sello Shadow Makomane, (the plaintiff), was employed by the defendant as a Shopping Centre Manager stationed at Emalahleni Shopping Centre in Mpumalanga. He started working for the defendant on 18 December 2020 until 31 July 2022 when he was dismissed. Subsequent to his dismissal, which he alleges was substantively and procedurally unfair, the plaintiff referred the matter to the Commission for Conciliation, Mediation and Arbitration (CCMA) in terms of section 189 of the Labour Relations Act¹ (LRA). The CCMA issued a certificate directing that the matter be referred to the Labour Court.
- [2] According to the defendant, the owner of the business no longer required a Centre Manager but a Building Manager, a position that pays a lower salary than a Centre Manager. The plaintiff was offered the position of a Building Manager but he rejected it. It is also the version of the defendant that the plaintiff was also offered the position of a Centre Manager at a lower salary at other Malls but he rejected the offer. A Senior Property Manager's position was available at Alberton. The plaintiff applied for this position but he was not shortlisted as he did not meet the requirements. Subsequent to these, the plaintiff was retrenched.
- [3] The defendant's contention was that the trial would prove that the retrenchment did not amount to a substantive and procedural unfair dismissal and that there was a proper consultation process before the retrenchment happened. It then led the evidence of two witnesses while the plaintiff testified in his own and called no other witnesses.
- [4] The plaintiff placed on record that his retrenchment was an individual retrenchment and that it was substantively unfair. His contention was that no alternatives were place before him before the retrenchment and that the discussions held were not in good faith but were done with the purpose of ticking the section 189 boxes. He submitted that the evidence would show

¹ Act 66 of 1995, as amended.

that alternatives were from his side and were not considered by the defendant.

- [5] In terms of section 192 of the LRA, in any proceedings concerning any dismissal, the employee must establish the existence of the dismissal, and, if the existence of the dismissal is established, the employer must prove that the dismissal is fair. From the above background, it is apparent that the plaintiff's dismissal is common cause. This court therefore has to decide whether the dismissal was substantively fair and if so, whether it was procedurally fair. It is trite that in a dismissal dispute, the employer must lead evidence regarding the appropriateness of the dismissal as a sanction².
- [6] Mariam Omarjee told the court that she works for the defendant as a Portfolio Property Executive. The defendant manages buildings on behalf of clients and Emalahleni Shopping Centre is one of their clients. The plaintiff was the Centre Manager and his duties entailed overseeing daily operations of the building. He earned a salary of R28 000, 00 per month. According to Ms Omarjee, the property owner would pay the defendant a fee to be allocated to the building staff including the Centre Manager.
- [7] It is the witness' evidence that at some point the client elected to move from the position of a Centre Manager to Building Manager. The position of a building Manager has reduced responsibilities than that of a Centre Manager with a salary reduction of R12 000, 00 per month. The consequences of this was that the role of a Centre Manager became redundant. According to this witness, there were consultation between the defendant and the plaintiff regarding this position but she was not part of these consultations.
- [8] A position of a Senior Property Manager was advertised in Alberton and the plaintiff did not meet the requirements and although he applied, he was not short-listed. The role was a senior which was two levels higher than a Centre Manager; he would have been responsible for five Shopping Centres; he would have to manage a larger team with bigger responsibilities with a salary of R50 000. 00. It is the evidence of Ms Omarjee that the person who was

² See: *Edcon Ltd v Pillemer NO and others* [2010] 1 BLLR 1 (SCA).

successfully appointed in the position had relevant experience and was more qualified than the plaintiff.

- [9] Ms Omarjee further testified that although the plaintiff would have been assisted by giving him additional training, he would still not qualify because he needed 5 to 8 years experience in the position of a Senior Property Manager. The plaintiff refused to take other offers and those positions were filled. The position of a Building Manager was also filled. The witness told the court during cross examination that the plaintiff was offered the Building Manager position and he declined the offer and also declined Centre Manager positions in other shopping centres.
- [10] Ms Noleen Feddern, also an employee of the defendant and a Human Capital Executive, testified that she is responsible for the welfare of the staff, recruitment and retrenchments. She told the court that she was involved in the plaintiff's retrenchment from the time when the client started discussions about his position and throughout the whole process.
- [11] According to Ms Feddern, a Microsoft Teams Meeting was held on 12 April 2022 where the plaintiff was invited to attend to discuss the client's intended changes to the position of Centre Manager. The plaintiff did attend the meeting. On 13 April 2022, the discussions held in the meeting of the 12 April 2022 were reduced to writing via email to the respondent. The contents of the email are the following:

"In terms of the way forward I have summarized our meeting below:

Mariam mentioned that the client has requested changes in terms of Operations and downgrading the position to that of a building Manager and explained the reasons why, o(f) which you understood. This change affects your position directly as you currently are looking after the building, it affects in terms of the process and the way forward

- The new Job Description will be shared with you, which is attached for ease of reference

- You will have the opportunity to apply for this newly created position or not.
- Should you apply the normal internal recruitment process will run and should you be successful you will receive an addendum to your letter and you will be placed in that role and the process will come to an end
- Should you not be successful the process will run as follows in the 2nd phase, where business will be able to recruit the correct skill into the newly created position.
- Should you not want to apply please let me know we will then go straight to the process below to look for alternatives as mentioned in the meeting
- The process we will then follow is as follows:
- Weekly meetings will happen
- A notice month in terms of you (sic) letter of appointment should no alternatives be found
- Should alternatives not be found we will then retrench and go our separate ways
- Part of the process is to look for alternatives and externally (with permission)
 - We, during this process, will look for alternative types of positions you would like to be considered for and areas you can work in.

Should you be interested in being considered for the newly created position please indicate before 12 on Thursday 14th April 2022.”

[12] Several emails were exchanged between the plaintiff and the defendant and Ms Faddern also referred the court to one written by the plaintiff on 25 April 2022 in which he said:

“First of all, I have already shown my interest in the position of Centre Manager in Mbombela which, I also applied on the 14th of April 2022, which

position was advertised on the Company's website on the 12th of April 2022 whilst the closing date was reflected as the 15th of April 2022.

In light of the above, I would appreciate if I can be considered for a transfer to Nelspruit (Mbombela) take over the position of Centre Manager which was advertised by our company (Broll), which is the same position that I'm well conversant with at this present moment. I'm writing to you knowingly well of the financial as well as social impact this might have on my family since that would mean a complete isolation with the entire family, and therefore had to embark on double expenses.

Lastly, I wouldn't mind to apply for other positions of Building Manager, only if I'm assured and/or guaranteed that my current salary will not be negatively affected as a result of the proposed company's restructuring; hence I've already indicated on my first response that I'll be financial (sic) constrained.

Trust you find the above in order."

[13] It is Ms Faddern's evidence that the Emalahleni Building Manager's position was made available to the plaintiff but he wanted the position with the same salary of R28 000. 00 rather than take a salary cut. The plaintiff also applied for the Mbombela position and was successful. The salary was R15 000.00 but the defendant negotiated with the plaintiff for a salary of R18 000.00 with a severance package but he rejected the offer. He stated that the demotion amounted to unfair labour practice.

[14] The plaintiff's main area of concern was the salary reduction. On 4 May 2022, the plaintiff addressed an email to the witness as follows:

"I think last time I have indicated that, I wouldn't mind to apply for the other newly created position of Building Manager, only if I'm assured and/or guaranteed that my salary will not be negatively affected as a result of the proposed company's Enyuka Property Holding restructuring, and I never signed any employment contract with Enyuka Property Holding. I signed my employment contract with Broll Property Group: Hence I have already shown my interest of being transferred to Mbombela where there's vacant position of Centre Manager within the company Broll which I have already applied as well. For me this Building Manager position together with the salary R12 000.

00 which has been indicated here is a demotion to me of which its unfair labour practiced (sic). So I cant apply a demotion position, I will preferred to be transferre to vacant position of a Centre Manager at Nelspruit (Mbombela).”

[15] In response to the above email the witness advised the plaintiff that he may look for alternatives, however, should there be no alternatives the process could end up in a retrenchment. He also advised the plaintiff that a normal interview process would take place for any position he applies for. In another email addressed to the plaintiff, and dated 19 May 2022, Ms Feddern again advised the plaintiff about the process that was about to start as he had indicated he would not be applying for the new position of Building Manager at Emalahleni. She informed the plaintiff that:

“Based on this and as per our discussions the following process will start:

- The New Replacement Position will be advertised;
- As you have confirmed you will not be applying due to the salary being too low;
- You further confirmed you would like to look for other opportunities;
- Based on the above we will start our consultations on a weekly bases, I will set it up
- During these meetings we will look at alternatives.
- As mentioned before should we not find alternatives by end of June we may retrench with July being the notice month;
- Please can you send me an updated CV and areas you would like to be considered for positions, as well as the type of position you would like to be considered for. Can I have this by close of business today.”

[16] On 26 May 2022, according to the witness, a consultation meeting was initiated via Microsoft Teams, the plaintiff was invited to join. On 1 June 2022 the defendant sent to the plaintiff a notice in terms of section 189 (3) of the LRA confirming discussions and interviews held in person, via Teams and

Zoom platforms with the plaintiff since April 2022. This notice also informs the plaintiff that the process could possibly result in the termination of his services.

- [17] Ms Feddern testified that the plaintiff applied for the Alberton position but she was not involved, however, she could confirm that Alberton Mall has never had a Centre Manager but had a Senior Property Manager. She further testified that the Economic Freedom Fighters (EFF) requested a meeting with the defendant to take place on 27 July 2022 to discuss an alleged disregard of the section 189 guidelines by the defendant in dealing with the plaintiff's matter. In this meeting the EFF did not accept the previous discussions with the plaintiff stating that they were void and indicating that they were now representing him. The EFF suggested that the process should start from the beginning but according to Ms Feddern, it was too late as the process was at the end.
- [18] During cross-examination, the witness testified that when other positions became available, it was not a case of offering such to the plaintiff but everyone had to be given an opportunity to apply. She further stated that had the plaintiff accepted the position of a Building Manager, he would not have to go through the process of applying for it. She also explained that the position in Mbombela was not proposed to him as an alternative but it was a position he could apply for. This position was for a salary of between R12 000, 00 to R18 000, 00 per month but the plaintiff was not prepared to take it.
- [19] The plaintiff testified that he worked for the defendant and held the position of Centre Manager at Emalahleni, in Mpumalanga. He was dismissed on 31 July 2022 after being informed by the defendant that its client was phasing out his position as a Centre Manager and replacing it with that of a Building Manager. His evidence was that he was not aware of the business relationship between the client and the defendant. He also did not know how it was relevant to his employment. The plaintiff also stated that he did not know why the defendant's client decided to change his position from Centre Manager to Building Manager.

- [20] Commenting on the email dated 13 April 2022 which was a confirmation of a meeting held on 12 April 2022, the plaintiff told the court that nothing in the email indicated that he Could take up the position without applying for it. His understanding of the second light bullet in this email, stating: *"You will have the opportunity to apply for this newly created position or not."* was that he needed to apply for the position to be able to occupy it. His understanding was that should he be interested in applying, the normal recruitment processes would apply and that he would have to do so by sending his CV and be invited for an interview.
- [21] The applicant responded to the email by stating that he did not have a problem with the defendant's client intending to make changes that affect his position as a Centre Manager provided it will not affect his salary. He further stated that as it was, he was experiencing financial constraints and could not take the news of his demotion very well. In this email, the plaintiff included a list of his expenditures and made a request to be transferred to another shopping centre managed by the defendant anywhere around Gauteng, North West, Limpopo, Free State and Northern Cape Provinces.
- [22] He testified that his request was to be moved from the position he occupied to another building to avoid becoming a Building Manager and take a salary reduction. The plaintiff stated that although there were meetings between him and Ms Feddern, these according to him were instructions as he was just being informed of what would happen. The defendant placed no alternatives before him. He told the court that he, on his own, sent applications for employment for five positions that were vacant in Witbank, Mbombela, Everton, Alberton and North West Province. All these positions were for a Centre Manager.
- [23] Following these applications, the plaintiff was called for an interview only in the North West Province. Although the interview was successful, he could not opt for a salary of R15 000. 00. According to the plaintiff, the defendant did not inform him of these positions but he, on his own, saw pop-ups from the defendant's website of the advertised positions and applied. On 12 July 2022,

the plaintiff was offered a month's contract for the month of August 2022 penned by Ntombifuthi Shongwe, which he accepted.

- [24] He confirmed that Microsoft Teams meetings were held during June 2022 and stated that, during the meetings he proposed alternatives to the defendant to stay at his current salary of R28 900. 00. He was told that this was impossible. The plaintiff further told the court that during this process, he requested that he at least be paid his salary of R28 000, 00 for a period of three months pending a review of the situation and this was not successful. Therefore, his evidence is that he was prepared to take a salary reduction after at least three months and there should not have been a process of applying.
- [25] In essence, what the plaintiff asserted was that the defendant was never involved in his attempts to be placed in an alternative position in order to avoid his retrenchment. He was never informed about any employment opportunities and there was no form of assurance that he could be transferred to those positions. Despite the fact that his position was affected by the changes the client wanted to implement, he still had to go through the normal processes and apply for alternative positions and go through interviews while there were no guarantees that he would be appointed in any of the positions.
- [26] The following factors are common cause:
- 26.1. The plaintiff was the employee of the defendant;
 - 26.2. He started working for the defendant on 18 December 2020 until 31 July 2022 when he was dismissed;
 - 26.3. It was an individual dismissal for operational requirements;
 - 26.4. He was a Centre Manager and earned a salary of R28 900. 00 per month;
 - 26.5. Accepting the lower position of a Building Manager meant he had to take a salary deduction.

[27] The plaintiff disputed that before he was dismissed, the respondent entered into a proper consultation process with him and stated that the respondent failed to take any steps possible to mitigate the effects of retrenchment;

[28] In this trial, the court must determine the following issues:

28.1 Whether there was a commercial rationale for the decision to dismiss the plaintiff

28.2 Whether the plaintiff ought to have been offered another position or given a similar position elsewhere without taking a salary reduction;

28.3 Whether the provisions of section 189 of the LRA were complied with when the plaintiff was dismissed;

28.4 Whether the dismissal was fair, if so, whether it was procedurally fair under the circumstances.

[29] The LRA recognises the following grounds on which a termination of employment might be legitimate: the conduct of the employee; the capacity of the employee; and the operational requirements of the employer's business. It is stated in section 188 (1) of the LRA that a dismissal that is not automatically unfair, will be rendered unfair if the employer fails to prove that the reason for dismissal is a fair reason related to the employee's conduct or capacity or that it is based on the employer's operational requirements. The employer must also prove that the dismissal was affected by a fair procedure. If the employer fails to prove the above, or fails to prove that the dismissal was affected in accordance with a fair procedure, it renders the dismissal unfair.

[30] The LRA, permits dismissals based on the employer's operational requirements, and recognises that the employer may be justified to rely on its operational requirements to end the employment relationship with its employee; however, this must be done fairly. In *BMD Knitting Mills (Pty) Ltd v SA Clothing and Textile Workers Union*³ the Labour Appeal Court (LAC)

³ (2001) 22 ILJ 2264 (LAC) at para 19.

described the formula when assessing the substantive fairness of a retrenchment as follows:

“The word ‘fair’ introduces a comparator that is a reason which must be fair to both parties affected by the decision. The starting-point is whether there is a commercial rationale for the decision. But, rather than take such justification at face value, a court is entitled to examine whether the particular decision has been taken in a manner which is also fair to the affected party, namely the employees to be retrenched. To this extent the court is entitled to enquire as to whether a reasonable basis exists on which the decision, including the proposed manner, to dismiss for operational requirements is predicated. Viewed accordingly, the test becomes less deferential and the court is entitled to examine the content of the reasons given by the employer, albeit that the enquiry is not directed to whether the reason offered is the one which would have been chosen by the court. Fairness, not correctness is the mandated test.”

[31] It is common cause that the plaintiff’s dismissal was for operational reasons. It was alleged by the respondent that its client intended to downgrade the position of a Centre Manager at the Emalahleni Shopping Centre where the plaintiff was stationed. Although the plaintiff stated that he was not aware that there was another company acting as the respondent’s client, but that the respondent employed him, he did not dispute the averment that the respondent’s client was downgrading his position. Considering the fact that the respondent’s business involved managing business centres on behalf of their clients, it may be accepted that there was a commercial *rationale* for the decision taken to phase out the plaintiff’s position.

[33] Although this might be the position, the plaintiff contended that he should have been placed in another or a similar position elsewhere, without taking a salary reduction. Under these circumstances, this court is entitled to examine whether the decision taken to dismiss the plaintiff was taken in a manner that is fair to the plaintiff or not. This involves the application of a value judgment into fairness and therefore the court has to conduct this examination while

applying fairness and not correctness in order to strike a fair balance between the parties' respective interests.

- [34] In *casu*, while exercising the value judgment to balance the parties' competing rights and interests, it is clear that the decision to downgrade the plaintiff's position, which resulted in the plaintiff's dismissal, came from the respondent's client while restructuring his own business. It does not seem like the defendant had any say in their client's decision. All the defendant had to do was to find alternative positions to try and avoid a dismissal of the plaintiff especially because the dismissal had nothing to do with his conduct.
- [35] The evidence of the defendant was that the plaintiff was offered the position of a Building Manager at the same shopping centre with a reduction of more than 50% of his then salary. For the position of a Centre Manager he earned R28 000, 00 per month while the new position would have paid him R12 000, 00 per month. His evidence was that he suggested to the defendant that he could at least take a salary reduction after three months but this suggestion was in vain.
- [36] Mariam Omarjee's evidence was that the plaintiff refused to accept other offers until those positions were filled. The plaintiff had a few issues against this suggestion, firstly, for the positions suggested by the defendant, he would have to take a salary reduction of more than 50% of his salary. Secondly, the defendant still expected him to apply for the positions and go through an interview process, where, if unsuccessful he would not be hired. Thirdly, the positions he applied for were not suggested as an alternative to him by the defendant although they had been advertised in the defendant's website.
- [37] Although the defendant's version was that the position of a Building Manager at Emalahleni shopping Centre was there for the taking if the plaintiff wanted it, in an email sent to the plaintiff dated 13 April 2022, the defendant summarized what transpired in a meeting that happened on 12 April 2022. In this summary of the meeting, it is clear that the plaintiff is informed of the new changes as requested by the defendant's client to downgrade his position to that of a Building Manager.

[38] It is also clear that the way forward suggested by the defendant was that the plaintiff would have “*the opportunity to apply for this newly created position or not.*” In the same email, the plaintiff is informed that should he apply, the normal internal recruitment process will run and should he be successful he will be placed in that role and the process will come to an end. Furthermore, he is informed that should he not be successful, the business will be able to recruit the correct skill into the newly created position. This means that the position of a Building Manager was not there for the taking, even if the plaintiff was interested in it, he would have to go through the recruitment process and apply for it.

[39] Should the defendant have offered the plaintiff the position of a builder or any other position without following the recruitment processes? A similar issue was dealt with in *South African Breweries (Pty) Ltd v Louw*⁴, where the LAC accepted that scenario and held that it is permissible to use a competitive recruitment process in the course of providing for retrenchment avoidance measures and stated:

“An employer, who seeks to avoid dismissals of a dislocated employee, and who invites the dislocated employee to compete for one or more of the new posts therefore does not act unfairly, still less transgresses sections 189(2) (b) or 189(7). The filling of posts after a restructuring in this manner cannot be faulted. Being required to compete for such a post is not a method of selecting for dismissal; rather it is a legitimate method of seeking to avoid the need to dismiss a dislocated employee.”

[40] Regarding the employee’s failure to apply for the relevant position the LAC proceeded to remark as follows:

“To move to the impact of this issue on the substantive fairness contention, the so-called unfair selection criteria issue could have had no bearing at all on the failure to be appointed to the Aliwal North area manager post. Louw never applied for that post, despite an invitation to do so. The premise of the judgment a quo is that he should have been given it without competing. That finding is without foundation on the facts or on the law. If Louw applied for the

⁴ (2018) 39 ILJ 189 (LAC) at para 22. See also: *Telkom SA SOC Limited v van Staden and Others* (2021) 42 ILJ 869 (LAC).

George area manager post, he had no good reason not to apply for the Aliwal North post if he wanted the post. The evidence discloses that he declined the prospect of taking up the Aliwal North post by failing to apply for it. Moreover, as already addressed, a competitive process to seek to avoid retrenchment is not unfair.”⁵

- [41] It is the duty of the employer to demonstrate that retrenchment of the employee came as a last resort and that there were no other alternatives available to save his employment. Substantive fairness requires the employer to show that it has exhausted all other options before the decision to retrench the employee was taken. What is important in this assessment is whether there is any available work that the affected employee can perform to avoid being retrenched. If such a position exists, fairness dictates that the employer should offer it to the affected employee.
- [42] To try and avoid the plaintiff's retrenchment, the defendant offered the plaintiff a position at Emalahleni Shopping Centre which he refused to take because it meant taking a salary cut. The plaintiff applied for the position of Centre Manager at Mbombela and was successful, he refused to take that position with a salary of R15 000. 00. The defendant negotiated a salary of R18 000. 00 plus a severance package which the plaintiff still refused to accept. The plaintiff contended that he could have been offered the position at Alberton Mall, however, that position was of a Senior Property Manager for which he needed training and more experience. For these reasons, he did not qualify for the position of a Senior Property Manager at Alberton.
- [43] Furthermore, the plaintiff applied for a position at Mahikeng, North West, of a Centre Manager, he was invited for an interview and his application was successful. He rejected the position because the salary was R15 000. 00. Even though some of the positions were offered to the plaintiff and some he discovered on his own from the defendant's website, it does not seem like the plaintiff was focussed on saving his employment but his main area of concern was the salary reduction. He, in other words, chose to be retrenched rather than to take a salary reduction. My view is that there exists a reasonable basis

⁵ Ibid at para 26.

on which the decision to dismiss the plaintiff for operational reasons was predicated, and that the plaintiff's dismissal was substantively fair.

[44] Having found that the plaintiff's dismissal was substantively fair, I now have to determine if it was procedurally fair or not. Concerning procedural fairness, the main cause of disagreement between the parties pertains to whether the decision underpinning the section 189 process was taken before the plaintiff was consulted. The plaintiff contends that the meetings and discussions held with the defendant before his dismissal were not meaningful, they were not done in good faith and they were meant only to tick section 189 boxes.

[45] It must be borne in mind that an employer has the prerogative to accept or not to accept proposals of the other consulting party depending on the viability of the proposal to the business of the employer. The purpose of consultation is to seek consensus and there is no requirement that the parties should reach an agreement⁶.

[46] In *General Food Industries Ltd v FAWU*⁷ the court's remarks were that:

"The employer must afford the other party the opportunity to make representations on any relevant issue. Bona fide consultation necessarily implies that the employer must seriously consider and evaluate the representations. If the employer does not agree with them, he must state his full reasons for rejecting them. After consultations have been exhausted the employer must decide whether to proceed with the retrenchments or not. The loss of jobs through retrenchment has such a deleterious impact on the life of workers and their families that it is imperative that - even though reasons to retrench employees may exist, they will only be accepted as valid if the employer can show that all viable alternative steps have been considered and taken to prevent the retrenchments or to limit these to a minimum."

[47] In terms of section 189(1) of the LRA, an employer's obligation to initiate consultation is triggered when an employer contemplates dismissing one or more employees for reasons of the employer's operational requirements.

⁶ See: *Solidarity obo Members v Barloworld Equipment Southern Africa and Others* (2022) 43 ILJ 1757 (CC)

⁷ (2004) 7 BLLR 667 (LAC) at para 55.

Discussions between the plaintiff and the defendant relating to the defendant's client's intention to downgrade the plaintiff started during April 2022. During these discussions the parties discussed possible offers to the plaintiff to retain his employment and the plaintiff also made suggestions and applied for some positions, in some instances successfully and unsuccessfully in some.

[48] Section 189 (3) was triggered when the plaintiff rejected the offer to occupy the position of the Building Manager. It is common cause that a section 189 (3) notice was sent to the plaintiff and in this notice the plaintiff was informed of the following:

- 48.1. Reasons for the proposed retrenchment;
- 48.2. Alternatives to the retrenchment considered by Management;
- 48.3. Number of employees likely to be affected by the retrenchment;
- 48.4. Time and period during which the operational retrenchment could take place;
- 48.5. Severance benefits;
- 48.6. Assistance the company may offer such as possible alternatives to avoiding the retrenchment; minimizing the number of affected persons; time during which the retrenchment will take place; Severance pay; measures to mitigate the adverse effects of the retrenchment and the method of selecting the employees to be retrenched.

[49] The evidence in this trial revealed that consultations took place between the plaintiff and the defendant via several Zoom and Microsoft Teams meetings and some of the discussions were reduced to writing via emails exchanged between them. Most importantly is the email of 19 May 2022 written by Ms Feddern to the plaintiff in which she advises that she will be setting up for consultation meetings to take place on a weekly basis. According to Ms Feddern, these meetings would seek to find alternatives and advising that if

there are no alternatives, then the process of retrenchment might follow during July 2022.

[50] Several meetings were held and several emails exchanged. Through it all, it is clear, even from the evidence that the plaintiff would not accept a salary reduction, hence the dismissal. Due processes to avoid a dismissal, in my view, were adequately followed and meaningful consultations were held, however, the plaintiff was hell-bent on refusing to take a salary reduction even in positions that ordinarily paid a lower salary than his previous one. I am of the respectful view that the plaintiff's dismissal was substantively and procedurally fair.

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

Order

1. The Plaintiff's claim is dismissed;
2. Each party to bear own costs.

L. Vukeya

Acting Judge of the Labour Court of South Africa

Appearances:

For the Plaintiff:

KM Montjane

Instructed by

Mitti Attorneys Inc.

For the Defendant

Adv Van As

Instructed by

Fluxmans Incorporated

LABOUR COURT