



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable
CASE No: JS 249/20

In the matter between:

SIBUSISO BLESSING VEZI

Applicant

and

ESKOM HOLDINGS SOC LTD

Respondent

Heard: 25 November 2024 & 28 January 2025

Delivered: 23 October 2025

JUDGMENT

MAHALELO, AJ

Introduction

[1] This matter relates to a claim of unfair discrimination filed by Mr Sibusiso Blessing Vezi (“the applicant”) against Eskom Holdings SOC Ltd (“the respondent”) under section 6(1) of the Employment Equity Act¹ (EEA). The applicant claims that the respondent unfairly discriminated against him based on race, after it refused to purchase his residential property following his

¹ Act 55 of 1998.

transfer to Kusile Power Station. In contrast, a white colleague in similar circumstances had his property purchased.

Factual background

- [2] The applicant was employed by the respondent as a Shift Manager at Grootvlei Power Station. In 2016, he applied for and was appointed to a similar position at Kusile Power Station.
- [3] Following his transfer, the applicant entered into a deed of sale with the respondent for the purchase of his residential property. However, the respondent later declined to proceed with the transaction, citing policy limitations and audit findings.
- [4] The applicant's colleague, Mr Jock Haasbroek (Haasbroek), also transferred to Kusile Power Station under similar circumstances and had his property purchased by the respondent. The applicant contends that this differential treatment constitutes unfair discrimination based on race.
- [5] The applicant lodged internal grievances and referred the matter to the CCMA and subsequently to this Court, seeking declaratory relief, enforcement of the deed of sale and costs.
- [6] The respondent denies any discriminatory conduct and raises a jurisdictional objection, arguing that the applicant's claim is contractual in nature as he is seeking enforcement of a deed of sale, and does not fall within the scope of the EEA.
- [7] The respondent contended that the applicant did not qualify for the property purchase benefit under its Conditions of Service, as his transfer was voluntary and not a forced transfer, which is a prerequisite for the benefit.
- [8] The respondent acknowledged that Mr Haasbroek's property was purchased in error and attributes the discrepancy to timing and oversight, not race, and confirmed that the decision to purchase Mr Haasbroek's property was based solely on policy non-compliance and that race played no role.

The evidence led

- [9] In support of his claim the applicant testified that he was employed by the respondent on 1 December 2006 as Shift Manager stationed at Grootvlei Power Station in Mpumalanga. Towards the end of 2016, the respondent advertised a Shift Manager position at Kusile Power Station and he together with his colleague Mr Haasbroek applied. They were both successful and were appointed as Shift Managers at Kusile Power Station. He made an application to the respondent to have his immovable property bought by the respondent. He entered into a deed of sale agreement with the respondent. When the respondent delayed purchasing his property he made numerous follow ups but was directed to the procurement department. He lodged a grievance and was informed that the procurement department had implemented some changes following audit findings and thus could no longer approve certain transactions such as purchasing residential properties, the basis for which was recorded as the applicant not meeting the requirements of paragraph 7.1.5H of the Conditions of Service. When he enquired why Mr Haasbroek's property was purchased by the respondent despite him being in the same position with him, he was told that Mr Haasbroek's application was approved in error at the local power station in contravention of the Conditions of Service because it was never escalated or flagged.
- [10] During cross examination the applicant could not formulate any reasonable basis for alleging that the respondent's decision not to purchase his property was discrimination based on his race. The applicant tendered speculation why he thought Mr Haasbroek's application was finalized without difficulty because he is white. He was asked pointedly in cross examination, and he conceded that he has no evidence other than his assumptions, that Mr Haasbroek was favoured because he is white. Further, during cross examination the applicant speculated that Mr Haasbroek's name was deliberately omitted from the list of queried applications. He however could not substantiate this speculation with any evidence about who deliberately omitted Mr Haasbroek's name and for what reason. The applicant could not dispute that at the time when the query was raised Mr Haasbroek's application was already processed and would

therefore not have formed part of such a query. He also did not dispute Ms Funston's explanation that the difference in the way that his and Mr. Hasbroek's applications were handled was their timing, had to the applicant's application been processed together with Haasbroek's before the query about compliance was made it is likely that his application also would have been granted erroneously.

- [11] The respondent relied on the evidence of Ms Evrille Funston (Ms Funston), who is a manager in the respondent's Rewards and Benefits Center of Excellence. She has worked in Rewards and Benefits since 2016, but has been employed at the respondent for 30 years. She is responsible for managing and updating the respondent's Conditions of Service and associated policies and procedures.
- [12] She stated that the respondent's decision not to buy the applicant's property was not based on his race. The decision was solely due to the fact that the applicant did not qualify for the benefit under the respondent's Conditions of Service. She testified that the respondent's Conditions of Service recognise three types of transfers, which include, among others, when an employee is transferred by the respondent's decision (forced transfer) and when an employee is transferred because they responded to an advertisement (job application transfer). According to paragraph 7.1.5H of the Conditions of Service, the respondent only purchased employees' properties when they are transferred through a compulsory transfer.
- [13] When the applicant and Mr Haasbroek applied for the purchase of their properties, Deeds of Sale Agreements were concluded with them. During or about September 2018, the office of the respondent's General Executive presented Ms Funston with the names of five employees, including the applicant, who had applied for the respondent to purchase their properties. Ms Funston was asked to confirm whether the conditions of service were complied with in the five applications. Mr Haasbroek's name was not part of the names that were presented in the enquiry, as his application and the purchase had been finalised. On 14 September 2018, Miss Funston provided feedback to the General Executive's office regarding each of the five employees. Insofar as the applicant is concerned, she explained that he does not meet the requirements

for his property to be purchased because his transfer was not a compulsory transfer. His transfer fell outside the scope of paragraph 7.1. 5H of the Conditions of Service. Ms Funston stated that the five employees who were the subject of the inquiry are of different races, and she supported the purchase of the properties of two black employees on the list, namely Mr Dlamini and Mr Rughoonan, because they met the requirements of the Conditions of Service. Amongst them, one other person of colour's application, i.e Gobingca, was not supported because no supporting documentation was provided.

[14] In October 2019, the applicant instituted a grievance process regarding the respondent's failure to purchase his property. The basis for not purchasing the applicant's property was recorded as the applicant not meeting the requirements of paragraph 7.1.5H of the Conditions of Service. The respondent's decision was upheld on this basis. The applicant's transfer letter stated expressly what benefits he was entitled to upon his transfer and relocation. The benefits did not include the purchase of his property. The applicant was entitled to a once-off payment for the removal of his furniture from his old to his new house, an establishment allowance, and a subsidy on his rental for six months. Mr Haasbroek's letter reflected that he was afforded the same benefits as the applicant upon his appointment. There was no differentiation or discrimination in the respondent's transfer policy and practice based on either employee's race. Neither the applicant nor Mr Haasbroek was entitled to have their properties purchased, and Mr Haasbroek's application proceeded to finality because it was dealt with at the local level and was never flagged or escalated.

Legal Principles

[15] Section 6 (1) and (4) of the EEA read:

- '(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 burden of proof required in a case brought in terms of section 6 of the EEA is set out in section 11(1):

- '(1) 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.'

[17] The term 'discrimination' is defined as follows in an International Labour Organization Convention²:

- '1. For the purpose of this Convention the term *discrimination* includes:
- (a) Any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction, or social origin which has the effect of nullifying, or impairing equality of opportunity or treatment in employment or occupation...'

[18] The Constitutional Court in *Prinsloo v Van Der Linde and Another*³ explained that discrimination principally means treating people or categories of people differently in a way that impairs their fundamental dignity as human beings.

[19] The Court further explained that:

'The proscribed activity is not stated to be "unfair differentiation" but is stated to be "unfair discrimination". Given the history of this country we are of the

² Article 1 of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

³ 1997 (6) BCLR 759 (CC) at para 31.

view that “discrimination” has acquired a particular pejorative meaning relating to the unequal treatment of people based on attributes and characteristics attaching to them...’

[20] In *Leonard Dingler Employee Representative Council v Leonard Dingler (Pty) Ltd & others*⁴, discrimination based on race is defined as follows:

‘Direct race discrimination occurs where a person is treated differently because of their race or on the basis of some characteristic specific to members of that race. It is incorrect to equate discrimination with actual prejudice. Discrimination occurs when people are not treated as individuals. To discriminate is to assign to them characteristics which are generalized assumptions about groups of people... .

... Whether the discrimination is unfair is a separate enquiry...’

[21] The Court in *National Union of Metalworkers of SA & others v Gabriels (Pty) Ltd*⁵, with approval, quoted the following test from *Harksen v Lane NO and others*⁶ (*Harksen*), where the Constitutional Court established a two-pronged test for determining whether differentiation between people or categories of people amounted to unfair discrimination:

- ‘(i) Firstly, does the differentiation amount to ‘discrimination’? If it is on a specified ground, then discrimination will have been established. If it is not on a specified ground, then whether or not there is discrimination will depend upon whether, objectively, the ground is based on attributes and characteristics which have the potential to impair the fundamental human dignity of persons as human beings or to affect them adversely in a comparably serious manner.
- (ii) If the differentiation amounts to ‘discrimination’, does it amount to ‘unfair discrimination’? If it has been found to have been on a specified ground, then unfairness will be presumed. If on an unspecified ground, unfairness will have to be established by the complainant. The test of

⁴ (1998) 19 ILJ 285 (LC) at 289E - F. See also *Department of Correctional Services & Another v Police & Prisons Civil Rights Union & Others* (2011) ILJ 2629 (LAC).

⁵ (2002) 23 ILJ 2088 (LC) at para 9.

⁶ 1998 (1) SA 300 (CC) at para 54.

unfairness focuses primarily on the impact of the discrimination on the complainant and others in his or her situation.’

[22] The court in *Harsken* further stated that:

‘... whether there has been differentiation on a specified ground or an unspecified ground must be answered objectively. ... If in either case the enquiry leads to a negative conclusion then s 8(2) has not been breached and the question falls away. If the answer is in the affirmative, however, then it is necessary to proceed to the second stage of the analysis and determine whether the discrimination is “unfair”.’⁷

Analysis and conclusion

[23] The question in this matter is whether the respondent, by failing to purchase the applicant’s immovable property and in buying that of Mr Haasbroek upon both employees taking up voluntary transfers after the parties signed deeds of sale agreements, constituted discrimination against the applicant based on his race. Put differently, do the factors relied upon by the applicant establish any discrimination? In my view, they do not. The evidence presented by both parties does not show that the case that the applicant raised as the basis for comparison justifies the conclusion that the respondent refused to purchase the applicant’s immovable property and purchased that of Mr Haasbroek because the differentiation was based on a prohibited ground of discrimination.

[24] It is not enough for the applicant to merely allege that Mr Haasbroek’s immovable property was bought by the respondent because of his race (white). Something more is required to prove discrimination. The unequal treatment must be based on attributes and characteristics attaching to a person before it can fall within the meaning of ‘discrimination’. The applicant did not establish discrimination on the grounds of race. The respondent proved that the applicant’s immovable property was not bought because of its policy on Conditions of Service. The applicant was not entitled to have his property bought by the respondent because he took up voluntary transfer. On a conspectus of the evidence before this court, the decision not to purchase

⁷ Ibid at para 48.

applicant's property was based on the common cause fact that the applicant did not qualify for this benefit under the respondents Conditions of Service. The applicant's allegation that the respondent did not purchase his property because he is black, on the applicant's own version, is premised on unmerited presumptions and assumptions. Having heard the respondent's explanation for its decision, the applicant conceded that he cannot dispute any of it. There is no evidence or any suggestion that the respondent's policy is discriminatory because the respondent has honoured the purchase of two of its employees properties who were compliant and who were people of colour, just like the applicant.

[25] In conclusion, the applicant has failed to make the minimum sufficient allegations to sustain a claim for discrimination based on race within the meaning of section 6(1) of the EEA.

Costs

[26] As to costs, considerations of fairness and the law are best served by making no order as to costs.

[27] In the result, I make the following order:

Order

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

MB Mahalelo

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: G. Leshaba

Instructed by: Mitti Attorneys

For the Respondent: Adv FJ. Nalane SC; Adv F Sangoni

Instructed by: Ramatshila-Mugeri Attorneys Inc.

LABOUR COURT