



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: N
(2)	OF INTEREST TO OTHER JUDGES: N
(3)	REVISED: Y
(4)	Signature:  Date: <u>05/11/25</u>

CASE NO.:34583/2021

In the matter between:

SOUTH AFRICAN REVENUE SERVICE

First Applicant

COMMISSIONER OF SOUTH AFRICAN REVENUE SERVICE

Second Applicant

and

PUBLIC SERVICE ASSOCIATION

First Respondent

NATIONAL HEALTH EDUCATION ALLIED

WORKERS' UNION

Second Respondent

THE MINISTER OF FINANCE

Third Respondent

In re:

PUBLIC SERVICE ASSOCIATION

Applicant

And

SOUTH AFRICAN REVENUE SERVICE

First Respondent

COMMISSIONER OF SOUTH AFRICAN

REVENUE SERVICE

Second Respondent

THE MINISTER OF FINANCE

Third Respondent

JUDGMENT

Kumalo J

INTRODUCTION

[1]. This is an application by the First and Second Applicants for their Settlement Agreement entered into with the First Respondent, the Public Service Association ('PSA'), to be made an order of the Court. NEHAWU is resisting the application. It argues that the agreement is incapable of being made an order of the Court, and if it is capable of being made an order of the Court, the Court should decline to make it.

[2]. Briefly, SARS, PSA, and NEHAWU concluded a Wage Agreement on 3 April 2019. A dispute arose about the validity and implementation of the Wage Agreement. The PSA launched an application for an order compelling SARS to implement the Wage Agreement. SARS opposed the PSA application to enforce the agreement and simultaneously filed a counterapplication seeking to review and set aside the Wage Agreement.

- [3]. NEHAWU was cited as the Second Respondent in the main application, but it chose not to participate. However, it filed papers to oppose the SARS counterapplication.
- [4]. On 22 November 2023, Kubushi J granted the order sought by PSA and dismissed the counterapplication.
- [5]. On 12 December 2023, SARS applied for leave to appeal the court's decision of 22 November 2023, but the application was withdrawn the following day.
- [6]. It appears that after the delivery of the notice of application for leave to appeal, SARS, the PSA, and NEHAWU engaged in settlement discussions to resolve the dispute relating to the judgment that arose from the non-implementation of the third year of the Wage Agreement.
- [7]. SARS alleges that to facilitate the settlement discussions, as a measure of good faith and to build trust, it withdrew the notice of application for leave to appeal the following day.
- [8]. The settlement discussions commenced on 14 December 2023 and ended on 8 February 2024. The discussions broke down on 8 February 2024. Following the collapse of settlement discussions, SARS filed an application for leave to appeal on 22 February 2024.

[9]. Subsequently, on 15 March 2024, SARS and PSA entered into a Settlement Agreement, in terms of which they settled all residual disputes arising out of the judgment of 22 November 2023. The Applicants allege that the said agreement is also binding on the members of the Second Respondent (NEHAWU) in terms of section 23(1)(d) of the Labor Relations Act, Act 66 of 1995.

[10]. The Applicants applied for the Settlement Agreement to be made an order of court and for an order declaring that it is binding on NEHAWU's members. NEHAWU opposes the application.

[11]. NEHAWU is resisting the application and argues that the agreement is not capable of being made an order of court, and if it is capable of being made an order of court, the court should decline to do so.

[12]. The crux of the matter is whether this Court has the power to make the settlement agreement an order of court, and if so, whether it should.

[13]. NEHAWU argues that the applications for leave to appeal and the condonation application are contrived and that there is no genuine intention to pursue them. They have not been determined and are pending. It further argues that the true objective is to 'create' a dispute to trigger this Court's jurisdiction to make the settlement agreement an order of court.

[14]. The Applicants submitted that if this court upholds the settlement application, the application for leave to appeal will become moot. NEHAWU also recognised this fact and submitted in its heads of argument that should the addendum be made an order of court, the dispute between SARS and NEHAWU would become defunct.

[15]. It is a common cause between the parties that the Settlement Agreement, which is the subject of these proceedings, is a Collective Agreement as envisaged in section 213 of the Labour Relations Act, Act 66 of 1995 (the "LRA").

[16]. Section 23 of the LRA stipulates that a collective agreement may bind employees who are not members of the registered union if –

16.1 The employees are identified in the agreement.

16.2 The agreement expressly binds the employees; and

16.3 The members of the trade union that is party to the agreement make up a majority of the employees employed by the employer in the workplace.

[17]. It is also a common cause that these conditions are met in the present matter.

[18]. Clause 4.5 of the agreement refers to section 23(1)(d) of the LRA and stipulates that the Agreement binds all employees in the bargaining unit. The

agreement provides that the employees entitled to receive the payments reflected in the addendum are those covered by the Wage Agreement.

- [19]. NEHAWU contended that the Collective Agreement should not be made an order of court in that it constitutes an amendment of the Wage Agreement and is in breach of the terms of such agreement on account of the non-variation clause.
- [20]. Clause 8.5 of the Main Agreement makes provision that no amendment to the agreement shall be in force or effect unless it is reduced to writing and signed by all parties.
- [21]. The Applicants argue that the Settlement Agreement is not an amendment or variation of the Wage Agreement, but rather an agreement intended to resolve the dispute that led to the issuance of the Judgment.
- [22]. It was submitted that the conclusion of the agreement did not amend or vary the Wage Agreement but ensured that the terms were implemented in accordance with what the parties agreed was a sustainable manner.
- [23]. I agree with the Applicant's submission that once judgment was issued in relation to the dispute, it was open to the parties to decide how best to settle the dispute relating to the judgment, which in this case would have been the implementation of the third year of the multi-year Wage Agreement.

- [24]. It must be borne in mind that, although the Second Respondent was cited in the main application brought by the PSA, it chose not to participate in the proceedings and only entered the fray to oppose the SARS' counterapplication.
- [25]. The Settlement Agreement wording particularly suggests that the settlement was targeted at the judgment. Clause 1.4 recorded that the parties, being SARS and PSA, mutually agreed that the Addendum Agreement was to settle the dispute relating to the judgment, which settlement does not amount to the implementation of the Judgment, but to a sustainable alternative. It is a compromise that sought to resolve the dispute and end litigation.
- [26]. The Settlement Agreement in question, being a compromise between the warring factions, cannot, in these circumstances, be viewed as a variation of the Main Agreement.
- [27]. I therefore agree with the SARS submissions that it is not open to NEHAWU to prevent the parties from compromising their dispute and making the Settlement Agreement an order of court, given that NEHAWU elected not to participate in the proceedings between SARS and PSA.
- [28]. NEHAWU stated that it did not accept being a necessary party to the relief sought by the PSA and had no desire to participate in those proceedings. This was even though the relief sought by the PSA was for SARS to comply with

its undertakings in the main agreement of which it is a party, specifically the 6.2% increment for the third year.

[29]. It is common cause that the Settlement Agreement sought to be made an order of court is a collective agreement as defined in terms of section 213 of the LRA. NEHAWU opposes the application to make it an order of court on the basis that it is a collective agreement.

[30]. NEHAWU submitted that collective agreements should not be made orders of court and sought to rely on the judgment of the Labour Appeal Court in the matter of Public Servants Association of SA on behalf of members v Gwanya NO & Another¹.

[31]. I am of the view that the decision does not prevent a court from making a settlement agreement an order of court. The court has, at the very least, as pointed out by NEHAWU in its heads of argument, a discretion whether to do so².

[32]. Further, I accept that the settlement agreement between the parties was a compromise. It was open to SARS and PSA to decide how best to settle their dispute regarding the judgment, i.e., the implementation of the third year of the multi-year wage agreement. It therefore does not constitute a variation of

¹ (2015) 36 ILJ 1275 (LAC) at para 27.

² See Greeff v Consol Glass (Pty) Ltd (2013) Ltd 34 ILJ 2835 (LAC).

the main agreement in the strict sense. I accept the Applicant's submission that it does not fall foul of the non-variation clause in the main agreement.

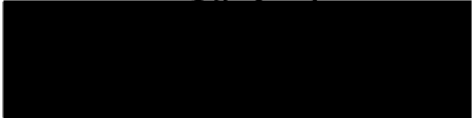
[33]. The agreement is in full and final settlement of the dispute arising from the non-implementation of the third year of the substantive agreement.

[34]. This court has discretion to make it an order of the court, and I am of the view that the circumstances in this matter call for it to exercise such discretion in the positive and make it an order of the court.

[35]. The agreement complies with all the requirements of section 23(1)(d) of the LRA and is binding on all employees in the bargaining unit, including those of the Respondent.

[36]. The following order is made: -

1. The Settlement Agreement between SARS and PSA dated 15 March 2024 is made an order of the court.
2. It is declared that the Settlement Agreement is binding on all employees in the Bargaining Unit, including NEHAWU members.
3. NEHAWU is ordered to pay SARS's costs occasioned by its opposition to this application.


MP Kumalo
Judge of the High Court, Pretoria

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicant: Adv W Trengove SC & Adv L Kutumela

Instructed by: Savage Jooste & Adams Inc

For the first respondent: Adv C Orr SC

Instructed by: Bowman Gilfillan Inc

For the second respondent: Adv GI Hulley SC

Instructed by: Lestoalo Manasoe Inc