



(1) Reportable Yes/No
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case No: D67/24

In the matter between:

SITHEMBISO INNOCENT KHUMALO

Applicant

and

KANSAI PLASCON (PTY) LTD

First Respondent

VANSHEE NAIDOO N.O

Second Respondent

NATIONAL BARGAINING COUNCIL

FOR THE CHEMICAL INDUSTRY

Third

Respondent

Heard: 04 December 2025

Delivered: 28 January 2026

JUDGMENT

SEERY, AJ

[1] The applicant seeks the review and setting aside of an arbitration award (CHEM 47-21/22, dated 31 May 2022) and, if successful, a declarator that the

third respondent has jurisdiction to deal with and determine his unfair labour practice referral made under the same case number.

[2] The applicant further seeks condonation for his late referral of the review application.

[3] What follows is a chronology of relevant events:

3.1 31 May 2022 – the arbitration award (referred to above – CHEM 47-21/22) was handed down with the second respondent finding that the third respondent lacked jurisdiction to deal with the applicant's referral, an unfair labour practice that related to a 'shift agreement' and 'standby policy', and the applicant's claim for payment of allowances in terms of the policies.

3.2 6 October 2022 – the applicant referred an unfair labour practice concerning the same issues as the aforementioned referral, and seeking the same relief (referred to, above). The matter was allocated case number CHEM 67-22/23.

3.3 2 June 2023 – pursuant to a hearing on 31 May 2023, the arbitrator handed down a ruling in **CHEM 67-22/23** that the third respondent lacked jurisdiction to deal with the matter.

3.4 15 February 2024 – the applicant launched the present review application.

3.5 9 June 2025 – the applicant and first respondent concluded a VOLUNTARY RETRENCHMENT AGREEMENT ("VRA").

[4] The applicant has chosen not to pursue a review of the arbitration award handed down under case number CHEM 67-22/23, which award still stands.

[5] The practical problem that the applicant would have faced with the latter-mentioned 'live' award will not manifest itself, given the manner in which this court will determine the matter presently before it.

[6] As already stated, the applicant and the first respondent entered into a VRA on 9 June 2025. The VSA was introduced into, and dealt with in these proceedings by way of supplementary affidavits delivered by both the first respondent and the applicant.

[7] The applicant has not challenged the conclusion of the VRA on any recognised ground such as duress or misrepresentation.

[8] Certain clauses of the agreement, dealt with below, have a direct bearing on the proceedings before this court:

- 8.1 Clause 1 – the applicant agreed that he “has entered into (the) Agreement freely and voluntarily, without any force or threat, and with full understanding of the terms set out in (the) Agreement”.
- 8.2 Clause 16 – FULL AND FINAL SETTLEMENT.
- 8.3 Clause 16.1 – the applicant accepted and agreed “that the amounts paid to him in terms of (the) Agreement are inclusive of any and all amounts that (he) is or may be entitled from the (first respondent)”.
- 8.4 Clause 16.2 – the payments made and the benefits afforded to the applicant in terms of the agreement “shall be in full and final settlement of all or any claims of any nature whatsoever that the (applicant) ... may have against the (first respondent) ... and the (applicant) waives any claims / rights he may have in this regard”.
- 8.5 Clause 16.3 – In particular, but without limiting the above provisions:
- 8.6 Clause 16.3.1 – “(the applicant) shall have no claim against the (first respondent) ... arising from any breach of the Employment Contract and / or any employment legislation, including but not limited to the Labour Relations Act, 1995 as amended, the Basic Conditions of Employment Act, 1997 as amended and the Employment Equity Act, 1998 as amended; and”
- 8.7 Clause 16.3.2 – “(the applicant) shall have no claim against the (first respondent) ... arising from any alleged unfair or unlawful dismissal, any alleged automatically unfair dismissal, and alleged unfair labour practice and / or alleged unfair discrimination claims; and”
- 8.8 Clause 16.3.3 – “(the applicant) shall have no claim against the (first respondent) ... for any amount not set out in this Agreement”.
- 8.9 Clause 16.4 – “In addition, and without limiting the above provisions, the (applicant) warrants that he has not instituted any claim against the (first respondent), in any forum, tribunal or court for any reason whatsoever, and he warrants and undertakes that he shall not do so for any reason related to an alleged breach of his Employment Contract and / or any employment legislation and / or in respect of any amount not set out in this Agreement”.

- [9] The first respondent contends inter alia that the conclusion of the VRA resulted in the applicant being prevented from pursuing the review application presently before the court.
- [10] The applicant challenged the first respondent's contention, on the following five grounds:
- 10.1 That the VRA made no specific reference to the review application presently before the court: In this court's view, the express wording of the VRA covers all claims of whatever nature relating to the applicant's employment with the first respondent. Particular reference to this review application was not required.
 - 10.2 There is ambiguity in the wording of the VRA: In this court's view, the terms of the agreement are clear and unambiguous; the applicant's alleged misunderstanding cannot override the clear terms of the VRA.
 - 10.3 Reliance on alleged statements made in the negotiation process that pending cases would not be affected (I assume the negotiation of the VRA – the applicant's supplementary affidavit is not clear in this regard): Not only has the first respondent denied such statements, they have not been confirmed in any way and the allegation in this regard amount to inadmissible hearsay. In any event, and if there were such statements, they would not have the effect of overriding the express terms of the VRA.
 - 10.4 Reliance on a CCMA jurisdictional ruling concerning another employee (that the referred dispute should proceed despite the conclusion of the VRA): The ruling is not binding on this court, and does not influence the court's interpretation of the VRA that the applicant bound himself to. To the extent that it may be relevant, the ruling is being taken on review.
 - 10.5 Reliance on an agreement concluded between certain unions and non-unionised employees: This agreement has no impact or significance in these proceedings. The applicant is bound by the VRA that he concluded.
- [11] On the plain wording of the VRA, the applicant's review application falls squarely within the category of matters that the applicant agreed to waive his right to pursue. There is no clause that preserves the applicant's right to pursue this particular review that is the subject of these proceedings.

- [12] The applicant elected, when concluding the VRA, to abandon his right to pursue his review application. The conclusion of the VRA extinguishes the applicant's underlying dispute and constitutes a complete defense to subsequent litigation (such as this review) concerning the same subject matter.
- [13] Having regard to the above, it is therefore not necessary for this court to deal with the condonation application.
- [14] I am not persuaded that the practice of this court that costs do not necessarily follow the result should be departed from.
- [15] In the premises, the following order is made:

Order

1. The review application is dismissed.
2. There is no order in respect of costs.

T. Seery

Acting Judge of the Labour Court of South Africa

Appearances:

For the plaintiffs : Adv S K Xulu instructed by Ntokozo Sibusiso Xulu Attorneys

For the respondent : Fluxmans Inc

LABOUR COURT