

Sneller Verbatim/mc

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J2789/99

2001-10-02

In the matter between:

JOHANNES MOLEKO SEJANE

Applicant

and

THE COMMISSION FOR CONCILIATION

MEDIATION AND ARBITRATION

1ST Respondent

2ND Respondent

D) 3RD Respondent

J U D G M E N T

REVELAS J:

- 1.The applicant was dismissed for alleged insubordination in January 1999. He referred a dispute to the Commission for Conciliation Mediation and Arbitration (the ACCMA).
- 2.The applicant had been working for the third respondent in Botswana for the last two years of his employment. After he had been transferred to subsidiary company, according to the third respondent, to avoid retrenchment.
- 3.The question as to the jurisdiction of the CCMA arose. The commissioner who heard the matter, after conducting a thorough study of the applicable law, came to the conclusion that the CCMA had the necessary jurisdiction to hear the matter. The third respondent felt that the

CCMA did not have the necessary jurisdiction, decided not to take the ruling regarding jurisdiction on review, but to wait for further developments.

4. Instead of having the dispute arbitrated, the parties submitted themselves to a further conciliation phase. The parties signed a settlement agreement in terms of which the third respondent was to pay the applicant approximately four months' remuneration. There were also undertakings made by the third respondent in the agreement regarding pension benefits which the applicant's representative informed me from the bar, were not complied with.
5. Almost a year after the agreement had been entered into, the applicant has brought a review application, or what purports to be a review application coupled with a condonation application. The applicant seeks to set aside the agreement as null and void since he claims that the second respondent, (the commissioner), who presided over the conciliation proceedings, forced him to sign the agreement.
6. The second respondent has deposed an affidavit which is before me, that she did no such thing but that the applicant elected or consented to sign the agreement freely and voluntarily.
7. According to the second respondent and the third respondent, the applicant also did not raise any objection to the third respondent, a large company, being represented by its human resources manager and an attorney. The applicant did not have a representative and it appears that he is not a literate person.
8. The applicant's representative attacked the agreement on two grounds.
9. Firstly it was argued that there was no consensus since the party who entered into the agreement on behalf of the third respondent, was not the employer of the applicant.
10. Secondly the applicant was prejudiced in that he was not legally

represented.

11. On the facts of this case I am not sure it was explained properly to the applicant what the consequences could be if he consented to the third respondent being legally represented and he would proceed in person. Clearly the playing fields were unequal.

12. I have expressed my concerns about the agreement being set aside and the applicant's prospects of success. I advised the parties to attempt to reach a settlement agreement which they were unable to do.

13. In my view, the second respondent was derelict in her duties for not properly considering the interests of the applicant in respect of representation. Consequently the agreement is set aside.

14. The applicant has asked for a costs order on an attorney and client scale against the third respondent. There is no basis for such an order. In fact, I decline to make a cost order against the third respondent. The applicant's papers were in disarray. Pages were upside down. The notice of motion did not set out with any clarity what relief was sought.

15. In the circumstances I decline to make a cost order.

16. I make the following order:

1. The agreement dated 13 January 1999 is set aside and the matter may proceed to arbitration.

E. Revelas