



(1) Reportable: YES
(2) Of interest to other Judges: Yes



Signature

04/03/2026
Date

**THE LABOUR COURT OF SOUTH AFRICA
AT GQEBERHA**

Of interest to other judges

Case no: PS16/2021

In the matter between:

**ASSOCIATION OF MINEWORKERS AND
CONSTRUCTION UNION**

First Plaintiff

**SIMPHIWE. T. HELESI & 31 OTHERS
AS PER ANNEXURE "A"**

**Second to Thirty-Second
Plaintiffs**

and

MOTORVIA (1993) PTY LTD-UITENHAGE

Defendant

Heard: 17 November 2025

Delivered: 04 March 2026

Summary: (Special plea - Settlement agreement – settlement agreement
precluding prosecution of dismissal dispute – special plea upheld)

JUDGMENT

LAGRANGE, JNature of the application

- [1] This matter deals with a special plea raised by the defendant ('Motorvia' or 'the company') to a referral of an unfair dismissal claim for alleged participation in strike action.

Background

- [2] The events giving rise to this dispute and another dispute over an alleged unfair labour practice occurred during March and April 2020 when various 'lockdown' regulations prevailed under the different phases of the Covid 19 pandemic.
- [3] The company contends that employees had embarked on an unprotected strike action on the eve of the implementation of the first severe lockdown regulations at the end of March 2020. At a later stage when work was to resume, the 32 plaintiffs claimed that they were prevented from returning to work when work resumed at the end of May 2020. Initially they treated their exclusion from work as a dismissal and they referred an unfair dismissal dispute to the CCMA. When that dispute was conciliated at the CCMA, the company advised them they had not been dismissed. Accordingly, they withdrew that dispute and referred a fresh dispute over an unfair suspension to the CCMA under case number ECPE 3145-20 on 18 June 2020 ('the suspension dispute'). Their suspension was formally confirmed by the employer. The suspension dispute was unsuccessfully conciliated on 13 July 2020.
- [4] It was only on or about 5 October 2020, after protracted disciplinary proceedings, that the plaintiffs were dismissed for the alleged strike action in March. This prompted them to refer an unfair dismissal dispute to the CCMA the following day, under case number ECPE 5425-20, which was referred to arbitration on 23 October 2020.
- [5] When the unfair suspension dispute was due to be arbitrated on 20 October 2020, the parties reverted to conciliation.

- [6] On 26 November 2020, the company disputed the jurisdiction of the CCMA to arbitrate the dismissal dispute and on 10 December a jurisdictional ruling was issued upholding the company's objection, which meant that the dispute would have to be referred to this court.
- [7] On 2 March 2021, when the unfair suspension proceedings at the CCMA reconvened, the parties signed a settlement agreement. In terms of the settlement agreement the unfair suspension dispute was resolved. However, the company claims that, at the same time, the agreement also settled the unfair dismissal claim, which by then had not yet been referred to the court. It is this claim that gives rise to the special plea it has raised.
- [8] Whether the agreement also settled the unfair dismissal claim must be determined on a proper interpretation of the settlement document.

The settlement agreement

- [9] Save for identifying the forum as the CCMA, the settlement agreement ('the agreement') was drafted in the format of a typical court order commencing with the case number, citation of parties and the heading "Settlement Agreement" in the tramlines.
- [10] The case number appearing on the settlement agreement (ECPE 3145-20) concerned the unfair labour practice dispute over suspension without pay. The preamble to the agreement read:

*"**WHEREAS** the Union, on behalf of the listed Employees has referred a dispute under case number: **ECPE 3145-20**.*

***WHEREAS** the parties have amicably agreed to settle the dispute between them.*

***WHEREFORE** the parties agree as follows:"*

(Emphasis added by underlining, bold typeface in the original)

- [11] Clauses 1 and 2 of the agreement require the employer to pay amounts set out in Schedule A to the agreement, subject to the deduction of income tax. Clause 4 provided for the payments to be made in two tranches, a month apart, as reflected in Schedule A. Clause 5 provided for the payments to be made by means of electronic funds transfers.

[12] Clause 6 provided for payment due to a deceased applicant to be made to his widow on provision of her bank details.

[13] Owing to a numbering error, there were two clause 7's. The first one (hereafter referred to as 'clause 7a') stated that:

"The Applicant hereby unconditionally withdraws the dispute, which has been lodged with the CCMA under case number ECPE 3145-20."

This was a reference to the suspension dispute.

(Emphasis added)

[14] The second clause 7 (hereafter referred to as 'clause 7b'), reads:

"This settlement agreement and/or any payment in terms thereof does not constitute an admission of liability by the Respondent or Applicant and is in full and final settlement of any claims that the Applicant may have against the Respondent arising out of their services with the Respondent or the termination thereof.

(Emphasis added)

[15] Clause 8 states:

"The Applicant acknowledges that it fully understands the consequences of this full and final settlement, that the same has been explained to it and that it enters into this full and final settlement freely and voluntarily. The applicant furthermore agrees it was not forced and/or coerced into signing this agreement."

(Emphasis added)

[16] Clause 9 states:

"This settlement agreement constitutes the entire agreement between the parties and any amendments, variations and/or additions to the terms here of will only be valid if reduced to writing and signed by both parties."

[17] Clause 10 stipulates requirements that the parties keep the agreement confidential and sets out remedies in the event the confidentiality undertaking is breached.

Interpretation of agreements

[18] In the seminal judgment in *Natal Joint Municipal Pension Fund v Endumeni Municipality*¹, a new approach to interpreting the meaning of documents was established:

[18] The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.

*[19] All this is consistent with the 'emerging trend in statutory construction'. It clearly adopts as the proper approach to the interpretation of documents the second of the two possible approaches mentioned by Schreiner JA in *Jaga v Dönges* NO and *Another*; *Bhana v Dönges* NO and *Another*, namely that from the outset one considers the context and the language together, with neither predominating over the other. This is the approach that courts in South Africa should now follow, without the need to cite authorities from an earlier era that are not necessarily consistent and frequently reflect an approach to interpretation that is no longer appropriate. The path that Schreiner JA pointed to is now received wisdom elsewhere."*

¹ 2012 (4) SA 593 (SCA)

(emphasis added)

- [19] The reference to Schreiner JA's characterisation of the two approaches is a reference to the following extract from the judgment in *Jaga v Dönges and Another*²:

*"Certainly no less important than the oft repeated statement that the words and expressions used in a statute must be interpreted according to their ordinary meaning is the statement that they must be interpreted in the light of their context. But it may be useful to stress two points in relation to the application of this principle. The first is that 'the context', as here used, is not limited to the language of the rest of the statute regarded as throwing light of a dictionary kind on the part to be interpreted. Often of more importance is the matter of the statute, its apparent scope and purpose, and, within limits, its background. The second point is that the approach to the work of interpreting may be along either of two lines. Either one may split the inquiry into two parts and concentrate, in the first instance, on finding out whether the language to be interpreted has or appears to have one clear ordinary meaning, confining a consideration of the context only to cases where the language appears to admit of more than one meaning; or one may from the beginning consider the context and the language to be interpreted together."*³

(emphasis added)

In *Endumeni* the last-mentioned approach was adopted.

The Special Plea

- [20] The crux of the special plea is that the unfair dismissal dispute was also settled in the agreement by virtue of clause 7b, which on one reading of the clause settled not only the unfair labour practice dispute but any dispute the plaintiffs may have had against the company including any claim arising from the termination of their employment. Reading clause 7b as a standalone provision, the settlement would include the unfair dismissal claim arising from the termination of the plaintiffs' employment. The central question is whether this is a correct interpretation of the agreement.

² 1950 (4) SA 653 (A)

³ At 662G – 663A

Background

- [21] The parties had agreed to lead oral evidence to establish the context in which the agreement was reached. Each party's evidence was given by a single witness, who had represented it in the CCMA proceedings and the conclusion of the agreement.

Evidence of Mr T Andrews

- [22] Andrews is an official of the employer organisation NEASA. He acted as the authorised representative for the respondent throughout all CCMA processes relevant to the dispute. He stated that his involvement included dealing with the unfair suspension dispute, the unfair dismissal referral, and representing the employer on the day the settlement agreement was concluded. He further testified that he had known Mr Nguntze for approximately five years and had engaged with him in several labour matters during that period. Nguntze disputed this though it was not put to Andrews under cross-examination.
- [23] He explained the chronological development of the disputes. The first unfair dismissal dispute was referred and later withdrawn. A second dispute concerning an alleged unfair suspension was then referred and progressed to arbitration. A later referral for unfair dismissal was also made, which proceeded to arbitration where he raised a jurisdictional objection. The CCMA issued a ruling on 10 December 2020, finding that it lacked jurisdiction over the dismissal dispute because the dismissal arose from participation in an unprotected strike. According to Andrews, the applicants took no steps to refer that dismissal dispute to the Labour Court during the three months that followed.
- [24] Turning to the events of 2 March 2021, he testified that the arbitration commenced in the ordinary manner. The commissioner suggested that the parties explore settlement, and both sides agreed. He stated that negotiations took place through separate consultations with the commissioner. He explained that he informed the commissioner that he had a mandate to settle every dispute arising from employment, which included any dismissal related claims. It was put to him that only the settlement of the suspension dispute was discussed according to Nguntze.

- [25] Once the parties reached agreement in principle, he drafted the settlement agreement using the commissioner's laptop. The document was printed by the commissioner. When he returned to the arbitration room he presented it to both parties. Andrews claimed he read each clause aloud while standing beside the union representative, Mr Nguntze ('Nguntze'), which the latter denied. After reading each clause, he claims placed his initials in the margin to confirm what had been read. He asserted that Mr Nguntze showed no confusion, raised no objection, and signed the agreement first. Mr Andrews then signed on behalf of the employer, and the document was witnessed by two individuals, including the commissioner. Nguntze disputed the commissioner was present when they signed the agreement.
- [26] He further explained the employer's interpretation of the settlement agreement. He emphasised that the clause referring to full and final settlement was deliberately inserted because the intention was to settle every possible claim arising from employment, including termination. He also emphasised that no allegation of mistake, coercion, misrepresentation, or fraud had been pleaded in response to the employer's special plea.
- [27] During cross examination he was challenged on several issues. It was put to him that the commissioner was absent when the agreement was signed, but he denied this and insisted that the commissioner witnessed the signing. He was also challenged with the suggestion that he did not read the document to Mr Nguntze. He rejected this and affirmed that he read the entire document aloud. It was put to him that the agreement was intended to settle only the unfair suspension dispute because the heading only referred to that dispute's case number. He responded that the heading did not limit the scope of the terms contained in the body of the agreement and that the full and final settlement clause clearly extended beyond the suspension issue. These points were reiterated in re-examination where he insisted that the union representative had the opportunity to read the document and appeared to understand its contents.

Evidence of Mr R Nguntze

- [28] Mr R Nguntze ('Nguntze') is a regional organiser of the union AMCU. He has been an official since 2017 and became involved with the Motovia workplace after being transferred to the Eastern Cape. He testified that he first met Mr Andrews in 2020, contradicting Andrews' claim to have known him for five years.
- [29] He described the background to the disputes. The employees had returned from the national lockdown and were refused access to the workplace. Initially the union referred an unfair dismissal dispute to the CCMA, but this was withdrawn after the employer stated that the employees had not been dismissed but were merely not allowed onto the premises. The union then reformulated the dispute as an unfair suspension and referred that to the CCMA. Nguntze stated that the unfair suspension claim was arose from the failure of Motovia to pay employees their full remuneration during the period in question. The union believed the employees were still employed and therefore entitled to payment. According to him, the monetary amounts listed in annexure A of the settlement agreement represented the shortfall that should have been paid.
- [30] After the CCMA ruled in December 2020 that it had no jurisdiction to arbitrate the unfair dismissal dispute, he said he referred the matter to the union's head office for legal advice. The union instructed attorneys to pursue the claim, and he described the dismissal dispute as still alive and in progress at the time of the settlement agreement was concluded on 2 March 2021.
- [31] His description of the settlement events differed markedly from that of Mr Andrews. He claimed that the negotiations did not take place through separate consultations but occurred jointly in the same room. According to him, once agreement was reached on the monetary amounts of the unfair suspension claim, Mr Andrews borrowed the commissioner's laptop and typed the agreement. He said the commissioner left the room. However, this is at odds with clause 5.9 of the pre-trial minute the parties concluded, which stated that the agreement was concluded in the presence of the arbitrator.
- [32] Nguntze asserted that when the document was returned, none of the clauses were read out aloud. He conceded that he did not read the agreement himself.

He relied on the fact that the case number on the document related only to the unfair suspension dispute. He believed that the agreement covered only that dispute and that the figures corresponded only to those claims. He saw no need to read it because he was satisfied with the terms which had been discussed and assumed the agreement simply recorded those terms. He also claimed that all the members were so elated about settling the suspension dispute on the terms discussed that he just wanted to sign the agreement. He maintained that there was no discussion whatsoever regarding the unfair dismissal claim on that day.

- [33] When confronted with clause 7b of the agreement, which refers to full and final settlement of any claims arising out of employment or its termination, he insisted that termination had never been discussed and had no connection to the settlement negotiations. He repeatedly stated that he did not know why the word termination appeared in the agreement. He suggested that if this clause referred to dismissal, it must have been inserted without it ever being mentioned to him, although he avoided directly accusing the employer of wrongdoing. He maintained that the union was present for the unfair suspension matter only, and that the wording of clause 7b did not reflect the discussions and intention of the union.
- [34] As mentioned, he admitted that he did not read the agreement before signing it. When asked whether he was negligent, he did not dispute that it may appear so, but he insisted that he relied on discussions and on the presence of the case number relating only to the suspension dispute. He acknowledged that by signing the document he represented that he agreed to its terms. However, he emphasised that the agreement did not include the case number for the dismissal matter and therefore could not be interpreted as covering it. He also disputed the suggestion in cross-examination that he had not raised challenges to Andrews' version, stating that he had informed his attorney of the correct facts.
- [35] He concluded by confirming that the employer did in fact pay the amounts listed in annexure A, and that no further complaints were received from members in relation to that payment. He remained firm that the settlement was intended to

resolve only the unfair suspension dispute and not the unfair dismissal dispute. It was put to him that the amounts reflected the negotiated conclusion of both disputes, but no attempt was made to break down the figures to show that they did not simply reflect the payment for the suspension period.

Evaluation

- [36] Andrew's and Nguntze's versions of the circumstances in which the settlement agreement came to be concluded are at odds in several respects. They disagreed on the content of the discussions and how the Annexure detailing payments was derived. Both versions are not inherently implausible but Andrew's claim that he stood next to Ngunze reading and initialling every provision as they went through it does have an air of contrivance about it. Ngunze's claim that he did not read the agreement for the reasons he gave, is also remarkable, but perhaps a little less difficult to believe.
- [37] Be that as it may, the oral evidence did not assist as much as it could have to elucidate the context in which the discussions took place. However, there are some objective factors from which the context can be derived.
- [38] Firstly, the CCMA hearing was only convened to arbitrate the unfair suspension dispute.
- [39] Secondly, the case number in the headnote of the agreement only referred to the suspension dispute, even though Andrews drew it up.
- [40] Thirdly, there was no express reference to the dismissal dispute in any of the provisions of the agreement.
- [41] Fourthly, the union had handed the dismissal dispute over to the union's attorneys and Nguntze had not come to the CCMA with a view to settling the dismissal dispute, even if Andrews claims he had a mandate to settle both.
- [42] Fifthly, the potential relief the employees might obtain, if successful with their unfair dismissal claim, compared to the relief in the unfair suspension dispute would plainly outweigh the significance of the latter. It does seem less probable that the unfair dismissal claim was intended to be referred to only by implication,

rather than by express reference, if it was the parties' intention to settle it in the same agreement.

- [43] Against these factors is the express wording of clause 7b which on its own would ordinarily encompass any dispute, including the dismissal dispute. The dismissal dispute had occurred and had been unsuccessfully conciliated. It is true the company might not have known if that dispute would proceed, but Andrews claimed he came with a mandate to settle that dispute as well. It was an identifiable dispute with a designated CCMA case number, yet in drafting the settlement which Andrews intended to settle both disputes with, he supposedly consciously chose not to identify it, but rather to capture it under a generic 'full and final' settlement provision.
- [44] It seems somewhat improbable the parties would not have specifically referred to that dispute, if they intended to settle it, rather than using the general phrasing in paragraph 7b, which is typically intended by one party to ensure they are not exposed to potential but unknown claims which might still be launched. The dismissal dispute was known, identifiable and unresolved.
- [45] The defendant argues that the case is akin to that of *Wheelwright v CP De Leeuw Johannesburg (Pty) Ltd*⁴, summarised by the defendant in the following terms.
- [46] *Wheelwright* concerned an employment relationship governed by a contract which provided for a restraint of trade following the termination of the employee⁵. The employee was retrenched and subsequently referred an unfair dismissal dispute to the CCMA⁶. Conciliation failed, and at the subsequent arbitration proceedings, the parties settled the dispute between them by way of a written settlement agreement in terms of which the employee would be paid certain monetary amounts. The agreement was constituted by two documents, a standard form CCMA settlement agreement, and an annexure to the standard form agreement⁷.

⁴ (2023) 44 ILJ 767 (LAC); [2023] 5 BLLR 393 (LAC)

⁵ Para [1]

⁶ Para [7] - [8]

⁷ Para [9]

[47] The standard form agreement recorded that the settlement was in full and final settlement of the CCMA dispute and of all statutory payments due to the employee, viz:

'The settlement agreement was contained in two separate documents. The first was in the form of a standard settlement agreement prepared by the CCMA. In this document, the parties

"record the settlement of their dispute in the following terms. By signing this agreement the parties acknowledge that the agreement was read to them and interpreted (where necessary) and that they understand the content hereof. This agreement is in full and final settlement of the dispute referred to the CCMA as well as in full settlement of all statutory payment due to the applicant as reflected at paragraph 5 of this agreement..."

(emphasis added)

[48] The second agreement set out in the Annexure stipulated: *'This agreement is in full and final settlement of all and any claims which the parties may have against each other whether such claim arise from contract, delict, operation of law, equity, fairness or otherwise'*⁸.

[49] After the conclusion of the settlement agreement the employer attempted to enforce the restraint of trade agreement stemming from the original employment contract, to which the employee responded that the settlement agreement had settled any disputes arising from the original employment contract⁹.

[50] On appeal, and in interpreting the agreement the Labour Appeal Court held as follows:

'[29] In the present case, the wording employed in annexure A went beyond a mere repetition of the words used in the standard form. In particular, as set out in clause 5, the wording referred to "all and any claims which the parties may have against each other whether such claims arise from contract, delict, operation of law, equity, fairness or otherwise". Manifestly, this clause extends beyond the specific referral to the CCMA which is expressly covered in the standard clause. How else can one explain the reference in annexure A to claims based on delict, operation of law, equity, fairness or otherwise? None of

⁸ Para [10]

⁹ Para [15]

these causes of action were relevant to the specific issues which have been referred to the CCMA and which were covered expressly in the standard form.'

(emphasis added)

- [51] Unlike this matter, there was not an existing unresolved dispute which had already come to light. It was only later that the restraint enforcement arose. The most practical way to bar an action in restraint of trade which did not exist was to prohibit it under a general blanket exclusion. What does not make sense in this instance is why the parties would not have stipulated the existing unresolved dismissal dispute which was identifiable in terms of the CCMA case number assigned to it and why it would not have been reflected in the headnote of the agreement.
- [52] In *Toerien v University of Witwatersrand Johannesburg*¹⁰, another authority relied on by the defendant, the court was dealing with a case involving a settlement of an unfair dismissal claim, which also provided that the payment made under the settlement to the employee was '*... in full and final settlement of any claim of whatsoever nature against the University arising out of the abovementioned matter and the employment of Marcus Toerien whether now or in the future*'. At the time of concluding the agreement, the applicant had three disputes pending before the CCMA and had brought two applications to the Labour Court pertaining to his disciplinary enquiry.
- [53] The Labour Court held that a discrimination claim which the applicant subsequently launched against the university fell within the ambit of the settlement agreement¹¹. When the settlement agreement was concluded no identifiable discrimination dispute existed.
- [54] It is true that in *Toerien* the court noted that even though the preamble of the settlement agreement referred to the dismissal dispute, the parties '*had agreed to settle more than that dispute. They intended to settle all disputes of whatever nature arising from the employment relationship.*'¹² In both cases, the courts

¹⁰ (2021) 42 ILJ 2010 (LC)

¹¹ Paragraphs 22-24

¹² Paragraph 28.

were dealing with the application of the settlement clause to a dispute which had not arisen at the time the settlement was concluded.

- [55] By contrast, in this matter, the settlement was concluded at a time when the existence of the dismissal dispute was known and Andrews in fact claimed he came with a mandate to settle that dispute as well as the suspension dispute. This does give rise to the question why he would not have taken the trouble to clearly specify that dispute was also withdrawn in terms similar to those used to describe the withdrawal of the suspension in clause 7a, but he was not interrogated about this.
- [56] He had testified the payments agreed upon in the annexure attached to the agreement were the negotiated settlement sums without providing any explanation of how they were arrived at. Nguntze gave a very plausible account that the sums represented 75% of the amount of suspension pay claim. Unfortunately, his explanation for the figures was not put to Andrews, so I cannot attach weight to it.
- [57] Despite all these considerations, it remains extremely difficult to explain why clause 7b appeared in the settlement agreement at all.
- [58] In *Wellworths Bazaars Ltd v Chandler's Ltd*¹³, the Appellate Division held that:

'But a Court should be slow to come to the conclusion that the words are tautologous or superfluous. It was said by the Privy Council in Ditcher v Denison (11 Moore P.C. 325, at p. 357): -

'It is a good general rule in jurisprudence that one who reads a legal document whether public or private, should not be prompt to ascribe - should not, without necessity or some sound reason, impute - to its language tautology or superfluity, and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use.'

*Cf. also per KOTZE, J.A., in Attorney-General, Transvaal v Additional Magistrate (1924 AD 421, at p. 436); Minister of Justice and Another v Breytenbach (1942 AD 175, at p. 183); Craies, Statute Law (4th ed. pp. 99, 100). Here I can find no reason cogent enough to lead me to do so.'*¹⁴

¹³ 1947 (2) SA 37 (A)

¹⁴ At page 43.

[59] The principle has been endorsed many times by other courts and by the Constitutional Court most recently in *Minister of Finance v Afribusiness NPC* 2022 (4) SA 362 (CC) viz: '*On first principles, our jurisprudence on interpretation requires that each word must — as far as possible — be given meaning.*'¹⁵ In a footnote to this dictum the court noted:

'In Wellworths Bazaars Ltd v Chandler's Ltd and Another 1947 (2) SA 37 (A) at 43 the Appellate Division held that 'a Court should be slow to come to the conclusion that words [in a statute] are tautologous or superfluous'. In similar vein, in a minority judgment in National Credit Regulator v Opperman and Others 2013 (2) SA 1 (CC) (2013 (2) BCLR 170; [2012] ZACC 29), Cameron J said in para 99 that '(a) longstanding precept of interpretation is that every word must be given a meaning. Words in an enactment should not be treated as tautologous or superfluous.' Although the majority and minority judgments differed on the meaning of the provisions at issue, there was no disagreement on this established principle.'

[60] It is true that the Constitutional Court was dealing with statutory provisions, but the principle has been applied in a contractual context as well.¹⁶

[61] The highlights the principal difficulty AMCU has. Its argument necessarily entails relegating the impugned clause 7b to complete irrelevance. Unavoidably, this flies in the face of the principle of eschewing superfluity in documents. The argument is also at odds with the way this court and the Labour Appeal Court have interpreted 'full and final' settlement provisions.

[62] In my view, what this brings to light is AMCU's real underlying contention about clause 7b, namely that it should not have been part of the settlement agreement and a correct rendering of the agreement would exclude it altogether. However, the remedy for that lies in rectification, and cannot be 'cured' by discerning the correct meaning of the agreement as it presently stands.

[63] In the circumstances, as the settlement agreement stands, the special plea must succeed. The court must accept that the agreement did settle not only the

¹⁵ At paragraph 109

¹⁶ As in *Wellworths* and see also *B & E International (Pty) Ltd and Another v Enviroserv Waste Management(Pty) Ltd And Others* 2000 (4) SA 152 (SE) at 159B-C.

suspension dispute but the unfair dismissal dispute, which was a claim the applicants had against Motovia arising 'out of their services with the Respondent or the termination thereof'.

[64] The defendant did ask for costs on the basis that the special plea was obviously well founded in its view. On the other hand there is an ongoing relationship between the AMCU and Motovia and

Order

1. The special plea is upheld.
2. In terms of clause 7b of the settlement agreement concluded on 2 March 2021, attached as Annexure "A" to the Defendant's Statement of Response, the Plaintiffs' unfair dismissal claim was settled, and this court has no jurisdiction to adjudicate that claim.
3. No order is made as to costs.


R Lagrange
Judge of the Labour Court of South Africa

Appearances

For the Applicant: M Futcher from Futcher & Poppesquo Attorneys

For the Respondents: S Grobler instructed by MF De Beer Attorneys