



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

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Signature

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Date

**THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN**

Case No. 2025-167345

In the matter between:

**MASETSABI SETSABI**

**Applicant**

and

**SYSPRO (PTY) LTD**

**Respondent**

**Heard: 14 May 2026**

**Delivered: 29 May 2026**

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**JUDGMENT**

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**MAKHURA, J**

Introduction

[1] On 24 September 2025, the applicant lodged an application seeking an order declaring that the Voluntary Retrenchment Package (VRP) agreement invalid on the ground that it was *“induced by misrepresentation, coercion and/or duress”* and that it be declared invalid and of no force and effect. The applicant also

sought relief under the Labour Relations Act<sup>1</sup> (LRA) that her termination of employment was substantively and procedurally unfair, alternatively that it constituted a breach of contract.

- [2] In relation to the alleged unfair dismissal claim, the applicant seeks just and equitable compensation in terms of sections 193 and 194 of the LRA. Regarding the alleged breach of contract, she claims damages for the loss of income and benefits she would have earned but for her termination until her “*normal retirement age of 65 years*”.
- [3] The respondent opposes the application, arguing primarily that the applicant cannot approbate and reprobate. It contends that she should have exercised her election to cancel the VRP agreement within a reasonable time, did not prove that any misrepresentation was material, and is bound by the terms of the VRP agreement. Further, the respondent relies on the integration clause that any undertakings, representations, and terms and conditions not incorporated in the VRP agreement were not binding to argue that the misrepresentation was not material. Lastly, the respondent contends that the applicant failed to tender payment of the benefits of the VRP agreement.

#### Material facts

- [4] The applicant was employed by the respondent as an Office Assistant with effect from October 2013. On 2 June 2023, she received a notice in terms of section 189(3) of the LRA indicating that her position, along with two others, might be affected by a restructuring process. The notice recorded that:

‘As a further attempt to minimise the effect that a possible forced retrenchment process may have on the business, it was decided to make available a voluntary retrenchment-process (“VRP”), in terms whereof employees are entitled to apply for a VRP. This process is set out in the annexed letter and we urge you to carefully consider applying for the VRP in view of the enhanced benefits provided in comparison to an involuntary retrenchment. It is further proposed that the

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<sup>1</sup> Act 66 of 1995, as amended.

consultation process be held over until the VRP is finalised, i.e. the consultation process can commence on the date stated in paragraph 12 below should you fail to apply for a VRP.'

- [5] The notice set a provisional date of 7 June 2023 for consultation if the applicant and/or those affected do not apply for VRP. The notice attached a letter which set out the VRP proposal. The proposal required applications to be submitted by midday on 6 June 2023. It included benefits such as salary payment until the end of June 2023, notice pay for July, termination on 28 July 2023, severance pay calculated at 1.5 weeks per completed year of service, and an additional *ex gratia* payment equal to two months' salary.
- [6] On 6 June 2023, Angela Chandler, the respondent's Finance and Sales Administrator, addressed an email to the respondent's Head of Human Resource Operations, Annie Jurbandam, copying, amongst others, the applicant, confirming the applicant's acceptance of the VRP. The email also noted the applicant's request for a complete and final breakdown of the package and indicated that Bidvest had agreed to offer her a position, for which she requested the details. Jurbandam responded that feedback would be provided the following day.
- [7] The applicant accepted the VRP offer, and both parties signed a written VRP agreement on 15 June 2023. The VRP agreement stated that the applicant entered into it voluntarily, that the parties reached consensus in respect of the mutual separation and termination of employment, that "*she has been free to secure independent legal and other professional advice (including financial and taxation advice)*", and that:

'This Agreement constitutes the whole of the agreement between the parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter hereof and not incorporated in this Agreement shall be binding on either party.' (Emphasis added)

- [8] On 28 June 2023, Chandler sent the applicant a voice note urging her to be at the office by 9h30 for an interview with Bidvest at 10h00. The applicant states that she was interviewed on 29 June 2023, together with another affected employee, who was subsequently employed by Bidvest on their last day of employment, which was 30 June 2023. Although the applicant does not disclose the details of her interview in the founding affidavit, she alleged in her referral of the unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) that Bidvest informed her that they only employ individuals from Khayelitsha. As a result, it appears that she was not offered employment because she did not reside in Khayelitsha.
- [9] On 11 July 2023, the applicant emailed Jurbandam requesting assistance from the respondent with completing the documentation to withdraw her provident fund benefits.
- [10] The applicant then alleges that on 11 August 2023, she received a telephone call from Jurbandam informing her of another job opportunity that had been arranged for her in Century City.
- [11] On 22 January 2024, the applicant referred an unfair dismissal dispute to the CCMA in Bloemfontein. She also applied for condonation for the late referral of the dispute. When summarising the facts of the dispute, the applicant alleged that the respondent was not "honest" in the retrenchment process, that her job had effectively been outsourced or transferred and that although she was promised alternative employment, she was informed that she could not be employed because she was not from Khayelitsha.
- [12] In her application for condonation, the applicant explained that the delay in referring her dispute arose because she was unable to obtain assistance from the CCMA in Cape Town. She added that she had to wait for the respondent to update the Department of Labour and noted a discrepancy between the UIF code issued to her and the description of her termination as a voluntary severance package.

[13] The CCMA dismissed her condonation application on 6 February 2024, and her subsequent attempt to review that ruling in the Labour Court was also unsuccessful on 18 August 2025. She thereafter instituted the present proceedings.

#### The applicant's case

[14] In her founding affidavit, the applicant complained that the time afforded to her from 2 to 6 June 2023 to respond to the VRP proposal was short and that the *"intervening weekend made it practically impossible to seek proper legal or financial advice"*. She argued that this created undue pressure on her – in her words, the time was *"arbitrary"* and created *"urgency and fear"*.

[15] She also relied on a voice note from Angela Chandler, the respondent's administrator, indicating that failure to respond to the VRP proposal by 12h00 on 6 June 2023 would result in her losing the enhanced package and facing retrenchment, while also suggesting that alternative employment had been secured with Bidvest, to argue that the VRP was therefore *"offered under threat"* with their roles being earmarked for Bidvest.

[16] The applicant characterised the VRP as a coercive mechanism tantamount to forced retrenchment, referring to the section 189 notice stating that the respondent urged employees to *"carefully consider applying for the VRP in view of the enhanced benefits provided in comparison to an involuntary retrenchment"*. She criticised the section 189 notice and the *rationale* for restructuring, alleging that the consultation process was not genuine but a sham, that the redundancy of positions was unfounded, and that her role had in fact been outsourced.

[17] The applicant then alleged that she was pressured by Jurbandam into signing the VRP agreement on 15 June 2023. She said Jurbandam instructed her to sign the agreement immediately, did not allow her to take the agreement home for consideration, and assured her that Bidvest would provide alternative employment.

[18] Regarding the reason for bringing the current proceedings, the applicant explained that during the hearing of her review application in August 2025, the presiding judge asked whether she had sought to set aside the VRP agreement. She indicated that she had not, and:

'That moment made it clear to me how the Respondent's conduct, combined with the misleading wording of the VRP agreement, created the false impression that I had no right to challenge the agreement itself...

This application is now brought in response to that judicial prompt...'

#### The respondent's opposition

[19] In opposition, the respondent's primary defence is that the applicant accepted the terms of the VRP agreement and cannot now adopt a contradictory position. It maintains that, even if she were entitled to cancel the agreement, she failed to do so within a reasonable time. The respondent highlights that more than two years elapsed before she attempted to challenge the agreement, which it contends is unreasonable.

[20] The respondent further submits that the applicant has not demonstrated that any alleged misrepresentation was material and places its reliance on the integration clause, which excludes reliance on any representations not incorporated in the written agreement. Finally, the respondent relies on the applicant's failure to tender restitution.

[21] The respondent contends that the unfair dismissal dispute was referred after the applicant learned she could not claim benefits from the unemployment insurance fund because she had signed a VRP agreement. In other words, the applicant had taken no issue with the VRP agreement. Further, the respondent states that nowhere in her referral form nor the application for condonation does the applicant state or suggest that she signed the VRP because of misrepresentation, coercion or duress.

[22] The respondent then takes issue with various orders sought by the applicant, particularly those under the LRA in terms of which she seeks, upon declaring the VRP agreement void, to declare that her termination of employment was substantively and procedurally unfair and payment of compensation.

### Analysis

[23] The doctrine of approbation and reprobation seeks to prevent a party from adopting two positions inconsistent with one another. In other words, a person who has consented to a particular act, either expressly or through conduct, cannot later reject that same position and adopt a different one. This principle is well-established and has been affirmed as prohibiting a party from blowing hot and cold.<sup>2</sup>

[24] In *Bowditch v Peel and Magill*<sup>3</sup> (*Bowditch*), the Appellate Division held that:

‘...A person who has been induced to contract by the material and fraudulent misrepresentations of the other party may either stand by the contract or claim a rescission... It follows that he must make his election between those two inconsistent remedies within a reasonable time after knowledge of the deception. And the choice of one necessarily involves the abandonment of the other. He cannot both approbate and reprobate. Here the plaintiffs alleging that the contract was fraudulently induced not only claimed damages as distinct from rescission, but they claimed damages for breach of contract. By their pleadings they elected to stand by the contract, and thereby they abandoned any right to rescind it ...’

[25] Similarly, in *Bekazaku Properties (Pty) Ltd v Pam Golding Properties (Pty) Ltd*<sup>4</sup>, it was emphasised that where there is a material breach, the innocent party must elect either to cancel the contract or to enforce it. Once that choice is made, it becomes binding, and the party cannot later change course without the consent of the other party.

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<sup>2</sup> *Hlatshwayo v Mare and Deas* 1912 AD 242 at pages 259.

<sup>3</sup> 1921 AD 561 at 572 – 573.

<sup>4</sup> 1996 (2) SA 537 (C) at 542E – F.

[26] The primary enquiry, therefore, is whether the applicant has established grounds to invalidate the VRP agreement. As is evident from the above, even in the absence of an express decision, a party may make an election through their conduct, and whether such an election has occurred depends on the facts of each case.

[27] After referring to the alleged pressure exerted by Jurbandum, the applicant summarised her case as follows:

‘Faced with this pressure, and in reliance on the assurance of alternative employment, I signed the agreement and thereafter left the company.’

[28] The central aspect of the applicant’s case is the alleged assurance that she would secure alternative employment. The respondent does not dispute that such an assurance was given in the terms described by the applicant. However, the respondent argues that the applicant accepted and benefited from the VRP agreement and is therefore not entitled to later repudiate it. According to the respondent, the applicant’s conduct demonstrates a clear and binding election, rendering her unable to revisit that choice

[29] The material facts between 2 and 28 June 2023 are largely common cause. The applicant was presented with the VRP proposal on 2 June 2023. On 6 June 2023, she accepted the offer and requested the final breakdown of the VRP. The VRP agreement was signed on 15 June 2023. After signing the agreement, she was invited for an interview with Bidvest on 29 June 2023. She attended the interview but was unsuccessful because she did not reside in Khayelitsha.

[30] After her unsuccessful attempt to secure employment with Bidvest, the applicant took no steps to raise or challenge the situation with the respondent. Instead, she proceeded to apply for unemployment insurance benefits, and only after learning that she was not entitled to those benefits did she refer an unfair dismissal dispute to the CCMA. This referral occurred more than seven months after her

employment had ended, yet she still did not raise any complaint regarding the validity of the VRP agreement.

[31] It was only during the hearing of her review application, when the Court questioned whether she had sought to set aside the VRP agreement, and after the judgment issued on 18 August 2025, that the applicant brought these proceedings, and in her own words, in response to the Court's enquiry, which, for the first time, she raised allegations of misrepresentation, coercion, and duress. This stance was inconsistent with her earlier conduct, particularly given that she had been aware as early as 29 June 2023 that she would not be employed by Bidvest.

[32] Considering all the facts, the applicant had clearly elected to accept and benefit from the VRP agreement. Having made that election, she could not later adopt a contradictory position by seeking to invalidate the agreement. The principle of irrevocability of choice applies; her decision to accept the contract had therefore become final and binding.

[33] In any event, even if she were allowed to change her election or choice and cancel the VRP agreement, she did not act within a reasonable time. In *Segal v Mazzur*<sup>5</sup> (*Segal*), the Court held that an innocent party to a contract confronted with an election to stand by the contract or cancel it, must do so within a reasonable time. The Court said that:

'Now, when an event occurs which entitles one party to a contract to refuse to carry out his part of the contract, that party has the choice of two courses. He can either elect to take advantage of the event or he can elect not to do so. He is entitled to a reasonable time in which to make up his mind, but when once he has made his election he is bound by that election and cannot afterwards change his mind. Whether he has made an election one way or the other is a question of fact to be decided by the evidence. If, with knowledge of the breach, he does an unequivocal act which necessarily implies that he has made his election one

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<sup>5</sup> 1920 CPD 635 at p 644; see also *Bowditch* fn 3 above; *Christie's The Law of Contract in South Africa*, 8<sup>th</sup> edition, 2022, (*Christie*) p350.

way, he will be held to have made his election that way ... [T]he question whether a party has elected not to take advantage of a breach is a question of fact to be decided on the evidence ...' (Emphasis added)

- [34] Therefore, in this case, the applicant knew as early as 29 June 2023 that she would not be employed by Bidvest, yet she waited approximately 26 months before attempting to challenge the agreement. Such a delay is plainly excessive and unreasonable. The applicant did not have to wait for the Court to enquire if she had challenged the VRP agreement to remember that she was misled.
- [35] This long and unreasonable delay also undermines the claim that any misrepresentation was material in inducing the applicant to conclude the VRP agreement. A party seeking to rescind a contract on the basis of misrepresentation must demonstrate that, but for the representation, they would not have entered into the agreement. The respondent argued that the alleged assurance of alternative employment was not material, particularly because it was not recorded in either the VRP proposal or the written agreement. Had it truly been material, the applicant would have insisted on its inclusion before signing the written VRP agreement. Instead, the agreement expressly contains an integration clause stating that only its written terms are binding.
- [36] The respondent further argued that the applicant, despite seeking cancellation of the VRP agreement, failed to tender restitution of the benefits she had already received under the VRP agreement. It is trite that an innocent party who seeks to set aside the contract and restore the status *quo ante* or claim restitution must return or tender to return any benefits received so as to restore the parties to the original positions.<sup>6</sup> The purpose of this was explained in *Feinstein v Niggli and Another*<sup>7</sup> as follows:

'The object of the rule is that the parties ought to be restored to the respective positions they were in at the time they contracted. It is founded on equitable considerations. Hence, generally a court will not set aside a contract and grant

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<sup>6</sup> *Christie* at p 353.

<sup>7</sup> 1981 (2) SA 684 (A) at p 700.

consequential relief for fraudulent misrepresentation unless the representee is able and willing to restore completely everything that he has received under the contract. The reason is that otherwise, although the representor has been fraudulent, the representee would nevertheless be unjustly enriched by recovering what he had parted with *and* keeping or not restoring what he had in turn received, and the representor would correspondingly be unjustly impoverished to the latter extent...'

- [37] Despite this being raised in the answering affidavit, the applicant did not make any tender of restitution. Although she indicated an understanding of this principle during the hearing, she still failed to offer to repay the benefits received. The application will also fail on this basis alone.
- [38] The complaint that she was coerced into accepting the VRP is also unconvincing. The statement that she would lose the enhanced benefits if she declined the offer does not amount to coercion, nor was it misleading. In any event, she confirmed her acceptance of the offer on 6 June 2023 and had a further nine days before signing the agreement, during which she could have reconsidered her position.
- [39] Finally, many of the applicant's remaining allegations concern the fairness of the retrenchment process, including claims that it was a sham or disguised outsourcing. These issues are relevant, if at all, to an unfair dismissal claim, not to the contractual challenge presently before the Court. Her breach of contract claim is unsupported and cannot succeed. These issues need not detain me any further.
- [40] Having considered the facts and legal principles, the application cannot succeed and must be dismissed. This effectively brings the matter to an end. Even if the Court had jurisdiction to entertain the unfair dismissal and damages claims, the findings on the validity of the VRP agreement preclude any further enquiry.

### Costs

[41] Mr Bosch argued that the applicant should be ordered to pay costs as a mark of disapproval for pursuing what it considered a meritless claim, particularly since this is a contractual matter where the general principle on costs should apply and the general principle in this Court that costs do not follow the result<sup>8</sup> does not apply. In other words, the respondent, as a successful party, should be entitled to its costs.

[42] While the matter is indeed contractual in nature, the Court retains a discretion on the issue of costs. However, the Court observed that the applicant only raised allegations of misrepresentation after being prompted during the August 2025 proceedings. Prior to that, there was no suggestion that the VRP agreement had been improperly induced. This indicates that the application was opportunistic and, in my view, lacked *bona fides*.

[43] For that reason, I consider it appropriate that the respondent should not bear the full financial burden of opposing the application, and also that the applicant should not be mulcted with the full costs despite her *mala fides*. A partial costs order is therefore justified, and the applicant should be ordered to pay half of the respondent's costs, including counsel's fees, as a mark of disapproval for her afterthought and meritless application.

[44] In the premises, the following order is made:

Order

1. The application is dismissed.
2. The applicant is ordered to pay 50% of the respondent's costs of opposing the application.

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<sup>8</sup> Section 162 of the LRA; *Zungu v Premier of the Province of KwaZulu-Natal* (2018) 39 ILJ 523 (CC); [2018] 4 BLLR 323 (CC) at paras 24 – 26; *National Union of Mineworkers obo Masha and others v Samancor Ltd (Eastern Chromes Mine) and others* [2021] 9 BLLR 883 (CC); (2021) 42 ILJ 1881 (CC) at paras 28 – 33; *Union for Police Security and Corrections Organisation v SA Custodial Management (Pty) Ltd and others* (2021) 42 ILJ 2371 (CC) at paras 38 – 40; *Motor Industry Staff Association and another v Great South Autobody CC t/a Great South Panelbeaters; Solidarity on behalf of Strydom and others v State Information Technology Agency SOC Ltd* [2024] ZACC 29; (2025) 46 ILJ 481 (CC) at paras 77 – 78.

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M. Makhura  
Judge of the Labour Court of South Africa

Appearances:

For the Applicant: In person

For the Respondent: Mr C. Bosch

Instructed by: Da Silva Attorneys

LABOUR COURT