



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

4 September 2026

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: C528/2022

In the matter between:

LIHLELI ALFRED MENE & EIGHT OTHERS

Applicants

and

KERRY INGREDIENTS (PTY) LTD

Respondent

Heard: 1 September 2026

Delivered: 4 September 2026

JUDGMENT

DE KOCK, AJ

Introduction

[1] This is an application in terms of s 158(1)(c) of the Labour Relations Act¹ (the LRA) for an order that a settlement agreement dated 27 January 2022 (the First Agreement) be made an order of Court. The applicants are former general workers at the respondent's Cape Town site in Milnerton. They

¹ Act 66 of 1995, as amended.

appeared in person, Mr Gontsana and Mr Sithole addressing the Court on their behalf. The respondent, Kerry Ingredients (Pty) Ltd, was represented by Mr Whitaker.

- [2] The respondent's answer is that the First Agreement was overtaken by a second agreement concluded on 25 May 2022 (the Second Agreement), under which the applicants' employment was terminated and severance packages were paid, and that in any event it sold the business unit in March 2023 and could not comply with an order in the terms sought.

Background

- [3] The matter has a long history. It was postponed on 28 June 2023 so that the applicants could seek assistance from Legal Aid or SASLAW, and again on 2 November 2023, on their undertaking not to seek a further postponement, with leave to file an affidavit within 20 court days. Nothing was filed within that period. What the applicants filed, in September 2025, is a short sworn letter explaining that they could not afford attorneys and asking to be allowed to speak for themselves. The respondent answered it in December 2025 and points out, correctly, that it is out of time and that no condonation has been sought. The Court has read it for what it is, which is an explanation rather than evidence on the merits, and has given the applicants the hearing it asks for.
- [4] The following is common cause or appears from documents whose authenticity is not in issue.
- [5] During 2021 a dispute under s 198B of the LRA between the applicants, represented by the National Insourced Workers Union (NIWU), and the respondent was referred to the Commission for Conciliation, Mediation and Arbitration (the CCMA) under case number WECT13956-21. On 27 January 2022 the First Agreement was concluded under the auspices of the CCMA between NIWU, on behalf of its members, and the respondent. Its operative terms are handwritten on the CCMA's printed form:

'1. All the employees on the attached list will remain in the employment of the Respondent for the period it takes for the restructuring process to complete.

2. The same employees are put in the intermittent permanent pool for the purpose that they will be given first preference to permanent employment should a suitable vacant (sic) arise.

3. Batch two is in line for placement in terms of the operational needs'.

[6] Twelve employees signed the list annexed to the agreement. On 5 October 2022 the First Agreement was made an arbitration award in terms of s 142A(1) of the LRA.

[7] Between 10 and 14 March 2022 the respondent issued a notice in terms of s 189 read with s 189A of the LRA to the employees of the Cape Town Site. A facilitation followed, and on 25 May 2022 the Second Agreement was concluded between the respondent, FEDCRAW, SACCAWU and a non-union representative. It is headed 'Process Agreement – Resulted from the Section 189A Facilitation process'. Clause 4 records a mutual termination of employment and a waiver of claims arising from the employment or its termination; clause 5 fixes 31 May 2022 as the termination date; clause 6 provides for severance pay of two weeks per completed year of service and four weeks' notice pay; clause 11 provides that the respondent will consider the employees for recall within twelve months; and clause 12 tabulates 54 affected employees by name. Beneath the table the agreement records that it 'binds all the parties, their members and constituencies'.

[8] All twelve of the names on the list annexed to the First Agreement appear in the clause 12 table. The applicants' employment terminated on 31 May 2022. At the hearing Mr Gontsana confirmed, in answer to the Court, that he participated in the s 189A facilitation, that he saw the Second Agreement, that the applicants received the severance monies it provided, which were paid into their accounts together with their final salaries, and that none of them worked for the respondent after May 2022. The respondent's answering affidavit states, at paragraph 15, that the applicants were represented in the facilitation by FEDCRAW and SACCAWU. No replying affidavit was filed.

- [9] On 12 March 2023 the respondent sold the Cape Town site to South Bakels (Pty) Ltd as a going concern in terms of s 197 of the LRA.

The issue

- [10] A court asked to make an agreement an order of court must be satisfied that the agreement relates to a *lis* between the parties, that its terms are unobjectionable and capable, both legally and practically, of being included in an order, and that the order will hold some practical and legitimate advantage (*Eke v Parsons*) (*Eke*)². The power under s 158(1)(c) is discretionary.
- [11] The question is whether the First Agreement still governed the applicants' position when this application was brought, or whether it had been overtaken by the Second. If it had, there is nothing left in the First Agreement to be made an order of Court.

The two agreements

- [12] The two agreements deal with the same subject-matter: the future of the employees on the First Agreement's list in the respondent's restructuring. The First Agreement kept them in employment for the duration of the restructuring and placed them in a pool for preference in future permanent vacancies. The Second Agreement, concluded four months later at the end of the s 189A facilitation, terminated the employment of the 54 affected employees, including every one of the twelve, on 31 May 2022, paid them severance, and replaced the pool with an undertaking to consider them for recall within twelve months. The Second Agreement is, on its face, the conclusion of the very restructuring that the First Agreement contemplated. Where a later agreement between the parties or their representatives deals with the same subject-matter and is inconsistent with the earlier, the later governs. The respondent characterises this as a novation or compromise; the Court finds it unnecessary to decide whether the requirements for novation, strictly so called, are met, because on any view the First Agreement no longer governed the applicants' position.
- [13] On the evidence before the Court the applicants formed part of the Second Agreement. They are named in it. Their employment ended on the date it fixed.

² [2015] ZACC 30; 2016 (3) SA 37 (CC); 2015 (11) BCLR 1319 (CC) at paras 25 to 26 and 31.

They were paid the severance it provided, and no applicant tendered repayment or repudiated the termination before bringing this application. A person who is named in an agreement, whose employment is terminated in terms of it, and who takes the severance it provides, has been dealt with under that agreement, whatever his views about how it came to be signed. The respondent's affidavit says, at paragraph 15, that the applicants were represented in the facilitation by FEDCRAW and SACCAWU; that is not answered on affidavit, and the Court does not need to go behind it, because the conclusion rests on what the applicants themselves confirmed at the hearing.

- [14] The applicants' answer, given from the bar and not on affidavit, is that they were told the retrenchment would not affect them because their case was still pending at the CCMA; that they had resigned from the unions that signed the Second Agreement and were represented by nobody at the facilitation; that they were not party to the meetings at which it was negotiated; and that they were escorted from the premises by security. The Court allowed them latitude to say all of this, as unrepresented litigants, and has considered it. It does not assist them, for two reasons.
- [15] The first is that it is not the question before the Court. Whether the applicants were properly represented at the facilitation, and whether their retrenchment was fair, are complaints about the Second Agreement and about their dismissal; the applicants have not sought to set the Second Agreement aside and have not referred a dismissal dispute, and this application, which seeks only to make the First Agreement an order, is not the vehicle for either. The second is that the point, even if good, would not revive the First Agreement. A retrenchment carried out under an agreement the employee says he did not authorise may be unfair; it does not become a retrenchment under an earlier agreement. The applicants were retrenched, and were paid, under one agreement, and it was the Second. The Court makes no finding on whether they were represented, and none on the fairness of their dismissal.
- [16] There is a further and independent reason why the order cannot be made. The operative terms of the First Agreement presuppose a subsisting employment

relationship: the employees are to remain in employment for the duration of the restructuring and to be placed in a pool for preference in permanent vacancies. That relationship ended on 31 May 2022, and the site itself was sold in March 2023. An order in those terms would be incapable of practical compliance, which is a difficulty under the second of the requirements in *Eke*³ whatever view is taken of the Second Agreement. On this conclusion the question whether South Bakels (Pty) Ltd would have to be joined, which the respondent raised in the event of substantive relief being granted, does not arise.

Costs

[17] Section 162 of the LRA requires the Court to have regard to the requirements of the law and of fairness. The applicants are unrepresented former general workers, and Mr Whitaker, properly, did not ask for costs. There will be no order as to costs.

[18] In the result, the following order is made:

Order

1. The application is dismissed.
2. There is no order as to costs.



C de Kock

Acting Judge of the Labour Court of South Africa

³ *Ibid* at para 26.

Appearances:

For the Applicants: In person

For the Respondent: J Whitaker

Instructed by: Werksmans Attorneys

LABOUR COURT