



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JS106/24

In the matter between:

MULEYA MULALO ALBERT ALLEY

Plaintiff

and

AFRICAN RAINBOW MINERALS LIMITED

Defendant

Heard: 1 June 2026

Delivered: 20 August 2026

JUDGMENT

PHEHANE, J

Introduction

- [1] The plaintiff (Mr. Muleya) launched this referral in terms of section 191(5)(b)(ii) of the Labour Relations Act¹ (LRA) claiming that his dismissal from the employ of the defendant for operational requirements was both procedurally and substantively unfair. He seeks reinstatement, alternatively, compensation.

¹ Act 66 of 1995 (as amended).

[2] The defendant opposes this referral.

Relevant legal framework

[3] Section 189 of the LRA provides for the procedure that an employer must follow when it contemplates dismissing one or more employees due to operational requirements. The employer must consult the affected employee/s on the issues set out in section 189(2) of the LRA.

Relevant facts

[4] Mr. Muleya was employed in the role of a reaction security officer from 1 November 2012 until his dismissal for operational requirements on 31 October 2023.

[5] In April 2021, Mr. Muleya was injured on duty. He sustained an injury to his right thumb. He was subsequently placed on light duty on a temporary basis, which entailed patrolling the defendant's premises.

[6] In June 2023, Mr. Muleya referred an unfair labour practice dispute to the Commission for Conciliation Mediation, and Arbitration (CCMA), in which he alleged that the defendant refused to permanently place him on light duties. The outcome of the dispute was a settlement agreement that was concluded between the parties on 31 July 2023, the salient terms of which read as follows:

‘Both parties agrees [sic] that they will go back to the Company and discuss the issues. The employer also agreed that they [sic] will place the applicant on light duty until they find something suitable for him. If the company fail [sic] to find something suitable for him they will then follow the process of operational requirements.’²

[7] The two witnesses before this Court, Ms. Ronelle van Schalkwyk, the human resources manager for the defendant and Mr. Muleya confirmed that the settlement agreement was concluded between the parties and both of them had signed the agreement.

² A82, at para 7 of the settlement agreement.

- [8] It is common cause that Mr. Muleya remained on light duty while the defendant investigated the availability of a suitable alternative position for him.
- [9] It is also common cause that on 29 September 2023, the defendant informed Mr. Muleya that no suitable alternative position was available and therefore, he would be retrenched on 31 October 2023. Mr. Muleya was offered and received a severance package of R96 163.50; notice pay of R37 888.42, and leave pay of R20 286,16, the total amount being R163 338.08.³
- [10] Mr. Muleya subsequently referred an unfair dismissal dispute to the CCMA alleging that his dismissal for operational requirements was procedurally and substantively unfair. The CCMA issued a certificate recording that the dispute remained unresolved. The dispute was referred to arbitration and the commissioner ruled, for reasons unexplained, that the CCMA lacks jurisdiction and directed Mr. Muleya to refer his dispute to this Court for adjudication. The dispute was referred to this Court timeously.

Issues for determination and evaluation

- [11] The statement of claim is not a model for clarity in respect of Mr. Muleya's claim. Mr. Muleya does no more than allege that his retrenchment is substantively unfair because the defendant should have placed him in an alternative role after he was injured on duty. In respect of procedural unfairness, Mr. Muleya does no more than allege that his dismissal was procedurally unfair.
- [12] During the course of the trial, Mr. Mahome for the plaintiff contended that Mr. Muleya's retrenchment was procedurally unfair because the settlement agreement required the defendant, in the event of it being unable to place Mr. Muleya in an alternative position, to issue a notice in terms of section 189(3) of the LRA and thereafter, to consult with Mr. Muleya before retrenching him. Such a case was, however, not pleaded by Mr. Muleya and is therefore not properly before this Court.⁴ It is trite that parties are bound by their pleadings.

³ A84 to 85.

⁴ *Kgomotso v South African Police Service and Others* [2026] 5 BLLR 438 (LAC) at para 49.

[13] The pre-trial minute equally, is not a model for clarity. What emerges from the pre-trial minute is that it is common cause that Mr. Muleya was dismissed for operational requirements. Notably, the parties failed to comply with the former Practice Manual of this Court,⁵ which was operative at the time, and which made provision for additional issues that the parties were required to set out in their pre-trial minute pertaining to substantive and procedural issues relating to their dispute. Had they done so, the issues before this Court would have been better crystallized. I raised this with both parties and required them to make submissions relating to standing the matter down to allow them to draft a supplementary pre-trial minute in compliance with the provisions of Rule 23(2) which mirror the aforesaid provisions of the repealed Practice Manual. Mr. van As for the defendant, submitted that it would serve no purpose drafting a supplementary pre-trial minute, as, following the conclusion of the settlement agreement, the only issue that the parties agreed on in resolving the retrenchment process was finding a suitable alternative role, failing which, Mr. Muleya would be retrenched. Mr. Mahome did not disagree. On that basis, the trial proceeded without a supplementary pre-trial minute. Following the parties' submissions, the genesis of the dispute before this Court is clause 7 of the settlement agreement.⁶

⁵ Practice Manual of the Labour Court of South Africa, repealed on 17 July 2024. Item 10.4.2.1 read: 'Where the issue in dispute is that of an alleged unfair dismissal for operational requirements, the following questions must be answered:

- (a) The applicant(s) must indicate whether [they admit] that in general there was a need to retrench;
- (b) If the applicant(s) [do not] admit that there was a general need to retrench, the applicant(s) must state the factual basis for the failure to admit this. The respondent must give a response thereto;
- (c) If the applicant(s) contained there were alternatives to [their] retrenchment, [they] must state what these alternatives were and the respondent must give a response thereto;
- (d) If the fairness or otherwise of the selection criteria is in dispute, the applicant(s) must state the basis for contending that such selection criteria was unfair. The respondent must give a response thereto;
- (e) ...
- (f) The applicant(s) must set out in sufficient particularity in what respect [they allege] that the termination of [their] services was procedurally unfair and the Respondent must set out its response thereto;
- (g) Where meetings took place between the parties [they] must each set out when these meetings took place, whether these meetings constituted consultations in the retrenchment process and whether minutes exist for these meetings. If minutes exist, the parties must record the status of such minutes. If the applicant(s)' case is that the meetings as identified did not constitute consultation(s), [they] must indicate the basis of such allegation and the respondent must respond thereto.'

⁶ Fn 2 *supra*.

- [14] It is not disputed that following the conclusion of the settlement agreement, Mr. Muleya was consulted on the investigations by the defendant to find a suitable alternative position for him. These consultations took place on 18 August 2023, 7 September 2023 and 20 September 2023, were reduced to writing and received by Mr. Muleya.⁷ It is common cause that after no suitable role was found, Mr. Muleya was consulted about this, and the defendant offered him a severance package, which he accepted. He was also informed that the defendant was amenable to releasing him immediately and he would be paid one month's note payment for the month of October 2023. This discussion was reduced to writing in a letter dated 29 September 2023.⁸ The letter records *inter alia*, that should Mr. Muleya not agree to the terms, then the defendant would be amenable to holding further consultations during the month of October 2023. It is common cause that this letter was presented to Mr. Muleya to consider and he returned with the signed letter on 2 October 2023 agreeing with the terms, which signed letter, he presented to the defendant. He thereafter received his severance package, leave, and notice pay as mentioned above and immediately left the employ of the defendant on the agreed terms.
- [15] Mr. van As submitted that in view of Mr. Muleya's acceptance of the severance package, his case of unfair dismissal falls flat and ought to be dismissed.
- [16] In this regard, the defendant relies on the recent Labour Appeal Court (LAC) decision of *WBHO Construction v Masenya NO. and Others*⁹ where the Court considered a mutual separation agreement that was concluded freely and voluntarily between the parties following informal discussions on a proposed dismissal for operational requirements. The LAC found that the agreement was valid and held that nothing prevented the parties from concluding separation agreements during retrenchment processes, and therefore, the Court found that no dismissal had occurred.

⁷ See: Pleadings, statement of claim at para 18 on p 7. The letters dated 18 August 2023, 7 September 2023 and 20 September 2023 appear at B1 to 3; B4 and B5 respectively.

⁸ fn 3 *supra*.

⁹ [2026] 5 BLLR 486 (LAC).

- [17] In the present case, both witnesses confirmed that following the conclusion of the settlement agreement, Mr. Muleya remained on light duty while the defendant investigated the availability of a suitable alternative role for him. He was consulted on the investigations and was handed letters on the date of each consultation. When the investigations had been exhausted, he was consulted and was offered a severance package, which he accepted. On Mr. Muleya's own version during his oral evidence, he consulted legal wise over the weekend following the consultation meeting on 29 September 2023 with the letter on hand. He received advice to sign the letter and accept the severance package. During cross-examination, Mr. Muleya stated that he had discussions about a position at the Sundowns Football Club (Sundowns) as he intended to go and work at Sundowns. However, that opportunity fell through as he did not hear from Sundowns. He also confirmed that he understood that his role at the defendant was redundant; further, that he did not ask the defendant for further consultations following the meeting of 29 September 2023 and he had not proposed any alternative roles to the defendant at that meeting.
- [18] Mr. Muleya received the severance package and further notice payments as recorded in the letter of 29 September 2023 with the subject: "REDUNDANCY PAYMENT". In terms of this letter, Mr. Muleya accepted the payment and waived further consultations. There is no evidence before this Court that the amount he received was repaid to the defendant.
- [19] In view of the afore-going, I find that the defendant proved that the dismissal of Mr. Muleya was both procedurally and substantively fair.
- 19.1 The settlement agreement truncated the issues for consultation concerning the possible retrenchment of Mr. Muleya.¹⁰ These truncated issues were the availability of suitable alternative positions, the proposed severance pay, and the timing of the retrenchment.
- 19.2 The defendant advised Mr. Muleya during the consultations held, that there were no suitable alternative positions available.

¹⁰ *Fletcher v Elna Sewing Machine Centres (Pty) Ltd* [2000] 3 BLLR 280 (LC) at paras 38-40.

- 19.3 The defendant offered to hold further consultations about the availability of suitable available positions.
- 19.4 Mr. Muleya did not take up this invitation to consult and instead accepted the severance package proposed by the defendant as well as the month's pay in *lieu* of notice.
- 19.5 There were therefore fair and adequate consultations about the agreed truncated issues.
- 19.6 There were no suitable alternative positions.
- 19.7 There was no need to consult further after Mr. Muleya accepted the severance package and one month's payment in *lieu* of notice.

Costs

[20] In this Court, the general rule is that costs do not follow the result.¹¹ I accordingly make no order as to the payment of costs.

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

Order:

1. The plaintiff's referral is dismissed with no order as to costs.

M. T. M. Phehane

Judge of the Labour Court of South Africa

¹¹ *Union for Police Security and Corrections Organization v South African Custodial Management (Pty) Ltd and others* (2021) 42 ILJ 2371 (CC).

LABOUR COURT

Appearances:

For the plaintiff: Adv F Mahome

Instructed by: Khomola Attorneys

For the defendant: Adv van As

Instructed by: Cliffe Dekker Hofmeyr