

SOUTH AFRICA / JUDGMENT

Chidi and Others v University of South Africa (JS631/2011) [2014] ZALCJHB 439; (2015) 36 ILJ 709 (LC) (6 November 2014) [2014] ZALCJHB 439

COURT

Labour Court Johannesburg

BEFORE

Molahlehi

CASE / FILE NUMBER

JS631/2011

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

REPUBLIC

OF SOUTH AFRICA

THE

LABOUR COURT, JOHANNESBURG

Reportable

CASE

NO: JS 631/2011

In

the matter between -

DORAH

CHIDI AND FOUR OTHERS

Applicants

And

UNIVERSTY

OF SOUTH AFRICA

Respondent

Heard:

15 and 16 May 2014

Closing

Heads of Argument filed: 02 June 2014

Judgment:

06 November 2014

Summary:

Application to have settlement agreement declared invalid because the representative did not have a mandate to sign the offer of settlement. General principles governing authority of a representative to compromise the principals claim.

JUDGMENT

MOLAHLEHI J.

Introduction

[1] The applicants filed a statement of case claiming that the termination of their fixed term employment contracts was automatically unfair. They claim in this regard that the termination of the employment contracts was automatically unfair because the respondent compelled them to accept less favourable conditions in the renewal of their contracts.

[2] In its response to the statement of case the respondent raised several points in limine. The points in limine were considered by Snyman AJ on 21 September 2014 and he made the following order:

“(1) The respondent’s points in limine are dismissed.

(2) The issue of the settlement agreement is determined as follows:

(2.1) The settlement agreement filed with the Court on 22 November 2012 is *prema facie* valid and binding.

(2.2) The applicant shall be required at the commencement of the trial in this to show proper course by the presentation of evidence as to why the settlement agreement should not be upheld.”

[3] This matter came before this Court on 15 May 2014, and the issue for determination in line with the above order was whether the agreement referred therein was valid and binding. As part of the narrowing down of the issues and seeking to expedite the proceedings it was agreed that the parties would call three witnesses. It was further agreed that no adverse inference would be drawn from the failure to call any witness regarding the issues in dispute.

[4] It was also placed on record at the commencement of the trial that two of the applicants had accepted the offer and they are, S Dhunpath and Ramdenee, who did not appear on the day of the hearing. They however have not withdrawn their claim and were not represented by the other applicants’ attorneys of record. The two were also not notified of the date of the hearing and that is probably the reason why they did not attend court.

The issue for determination

[5] The key issue for determination in this matter concerns the validity of the agreement which Mr Serumula signed on behalf of the applicants. The issue arises from the contention by the applicants that the mandate of Mr Serumula was limited to representing them in negotiating settlement of their alleged unfair dismissal but did not include signing the settlement agreement.

- [6] The respondent on the other hand relies on the implied authority of Mr Serumula in seeking to have the settlement agreement upheld.

Background

facts

- [7] The applicants were prior to the termination of their employment contracts employed by the respondent on fixed term contracts.

Shortly before the end of their contracts at the end of August and September 2011 the applicants filed a statement of case essentially

saying that the respondent has raised their expectation that their contracts would be renewed and that the indication from the

respondent that it was intending not to renewing their contracts amounted to an unfair dismissal in terms of section 186 of the Labour Relations Act of 1995 (the LRA).

- [8] It is common cause that during the negotiations process that led to the agreement in question the applicants were represented by Mr Serumula, who at the time was employed by the respondent as manager: regional services at the Florida Campus.

- [9] The case of the applicants is however that the agreement is invalid and unenforceable because Mr Serumula signed the agreement without first obtaining a mandate from them as to whether he should sign the settlement offer on their behalf.

- [10] In his testimony, Mr Serumula testified that he did not have the mandate to sign the agreement. He however signed it after receiving a telephone call whilst at a conference in the East Rand from the attorneys of the respondent, Mr Maenetja. According to him, Mr Maenetja contacted him telephonically, on that particular Friday and enquired as to whether he had signed the agreement which he had faxed to him. Mr Maenetja further advised him to make sure that he signed the agreement on that day otherwise any delay could result in the delay in effecting payment to the applicants because the agreement needed to be uploaded on that day for the purposes of effecting payment the following day. It would seem the following day refers to the following Monday because the discussion between the two took place on a Friday.

- [11] According to Mr Serumula, he informed Mr Maenetja that he did not have the mandate to sign the agreement as he still needed to consult with the applicants regarding the contents of the offer. He however signed the agreement. He then met with the applicants the Monday following the signing of the agreement and presented to them the signed agreement. The applicants were unhappy with the terms of the settlement agreement. It was as a result of this that Mr Serumula served the affidavit in support of the cancellation of the settlement agreement on the erstwhile attorneys of the respondent.

- [12] The second witness for the applicant's was Ms Sekgogoba, one of the applicants. She essentially confirmed the testimony of Mr Serumula in particular that they did appoint him to represent them in negotiating a settlement of their dispute with the respondent. She also testified that the mandate of Mr Serumula was limited to negotiating the settlement agreement but not to sign it before consulting with them.

The legal principles

- [13] The general principles governing authority of a representative to settle a client's claim is set out in MEC for Economic Affairs, Environment and Tourism: Eastern Cape v Kruizenga and Another.^[1] The Supreme Court of Appeal (SCA) after reviewing a number of authorities dealing with the issue of an attorney's

authority to compromise a client's claim or defence state the general principle in the following terms:

"[7] It is settled law that a client's instruction to an attorney to sue or to defend a claim does not generally include the authority to settle or compromise a claim or defence without the client's approval. The rule has been applied to a judgment consented to by an attorney without his client's authority and also when the attorney did so in the mistaken belief that his client had authorised him to do so. This principle accords with the rule in the law of agency that where an agent exceeds the express or implied authority in transacting, the principal is not bound by the transaction."

- [14] The SCA further summarised the approach that the Courts have adopted in dealing with the authority of an attorney to transact on behalf of a client as follows:

"[11] To summarise it would appear that our courts have dealt with questions relating to the actual authority of an attorney to transact on a client's behalf in the following manner: Attorneys generally do not have implied authority to settle or compromise a claim without the consent of the client. However, the instruction to an attorney to sue or defend a claim may include the implied authority to do so provided the attorney acts in good faith. And the courts have said that they will set aside a settlement or compromise that does not have the client's authority where, objectively viewed, it appears that the agreement is unjust and not in the client's best interests. The office of the State Attorney, by virtue of its statutory authority as a representative of the government, has a broader discretion to bind the government to an agreement than that ordinarily possessed by private practitioners, though it is not clear just how broad the ambit of this authority is."

- [15] The same approach has been adopted in the English law, in Freeman and Lockyer (a firm) v Buckhurst Park Properties (Mangal) Ltd and Another,^[2] a case that has been followed in our law,^[3] in the following terms:

“The representation which creates “apparent” authority may take a variety of forms of which the commonest is representation by conduct, that is, by permitting the agent to act in some way in the conduct of the principal’s business with other persons. By so doing the principal represents to anyone who becomes aware that the agent is so acting that the agent has authority to enter on behalf of the principal into contracts with other persons of the kind which an agent so acting in the conduct of his principal’s business has usually “actual” authority to enter into”

[16] It is apparent from the above authorities that it is well established in our law that a principal may be held liable on the basis of his or her representative’s apparent authority. In order to hold the principal liable for the deeds of the representative it has to be shown that the representation arises from the express words or conduct of the principal and not that of the representative.[4] The authority of the representative to represent and act on behalf of the principal may be expressly stated or may be implied

from the conduct of the principal.[5] Once established that the representative had the authority to act as he or she did, the principal is estopped from denying such authority.

[17] In *South African Eagle Insurance Co. Ltd v NBS Bank Limited*, [6] the Supreme Court of Appeal held that:

“It is sufficient for successful invocation of the doctrine [of estoppel] that the conduct of the principal was such as to entitle the party concerned to believe that the person purporting to act on the principal’s behalf was authorised to transact a contract of the kind in question.”

[18] It is common cause as stated earlier that Mr Serumula had the authority to represent the applicants in the negotiation process. The issue now is whether he had the authority to sign the agreement without first seeking a mandate in that regard. The case of the respondent is that the applicants are estopped from denying the authority of Mr Serumula to sign the agreement on their behalf because the authority can be inferred from their conduct.

[19] The applicants seek to avoid the terms of the agreement on the basis that Mr Serumula informed the respondent’s erstwhile attorney that he did not have the authority to sign the agreement. The respondent’s erstwhile attorney was not called to testify in that regard. The principle that a negative inference may be drawn if a party fails to call a witness who could clarify an issue does not apply in the present instance the parties having agreed, prior at the commencement of the proceedings, to dispense with it. In any case, in my view, the issue can be resolved without the need for clarification by the erstwhile attorney of the respondent. The issue can be resolved on simple probabilities based largely on the persuasive quality of the version of Mr Serumula and specifically as to the reason why he signed the draft settlement agreement.

- [20] It seems but for the allegation that Mr Serumula told the erstwhile attorney of the respondent that he did not have authority to sign the offer, the implied authority for him to sign would not have been disputed. The question that has arisen in this case is whether the applicants may be estopped from denying the authority of Mr Serumula to sign the draft settlement and thereby compromising the applicants' claim of unfair dismissal.
- [21] The respondent contends that in the circumstances where Mr Serumula represented the applicant both at the conciliation proceedings and the pre-trial meeting and the drafting of the pre-trial minutes, there was no basis for it to question his authority to sign the offer and was also entitled to assume that he had that authority.
- [22] The version of Mr Serumula that he told the respondent's erstwhile attorney that he did not have the mandate to sign is not convincing. If he indeed did not have the mandate to sign the issue of being persuaded or being misled into signing, as he seems to suggest, is out of question. The draft agreement was not before him at the time the call was made for him to sign. He had to drive all the way from the East Rand to the West Rand to pick up the draft and then sign it. There is no evidence that he attempted to contact any of the applicants over the weekend regarding the draft agreement.
- [23] The reason for signing the agreement does not assist the case of the applicants. According to Mr Serumula, he was told to sign the agreement because the delay in signing could result in the applicants not receiving their salaries and therefore he had to sign before Monday following the Friday he had the discussion with the attorney. If his version was to be accepted the simple question is why did he not wait until Monday to consult with the applicants and thereafter obtain their mandate. The other question is why did he not wait until Monday so that he could enquire from Human Resources first as to whether indeed the processing of the salaries would close on that day and also if that was the case if there was no possibility of exempting the applicants from the application of the rule, if at all existed, to afford him the opportunity to obtain the mandate. This has to be seen in the context where Mr Serumula is a manager and not unsophisticated employee.
- [24] The version that he had to sign the agreement to avoid the delay in loading the salaries is further highly improbable when regard is had to the provisions of the agreement. The discussion between him and the attorney took place during December 2011 and the agreement was to come into operation on 3 January 2012. In this respect clause 1.1 of the agreement provides that:
- "1.1 The parties agreed that in settlement of all their disputes emanating from the employment relationship, and to settle the current Labour Court action under the above case number the Respondent shall employ the Applicants for a period of 2 [two years], starting from 3 January 2012 to 31 December 2013."*
- [25] In light of the above discussion I am of the view that the version of the applicants that Mr Serumula did not have authority to sign the draft agreement on their behalf stands to fail. The version of the respondent that it believed that the authority of Mr Serumula to represent

the applicants during the negotiations process included that of signing the draft agreement which the parties had negotiated is accepted. The representation of the applicants that Mr Serumula had the authority to represent them was made during the conciliation process and the subsequent negotiations process which they were part of. The representation was made by the applicants and not Mr Serumula, in circumstances where placing reliance on it by the respondent as an outsider was reasonable.[7]

[26] As concerning costs, I am of the view that it would not be proper to allow costs to follow the result.

Order

[27] In the premises the following order is made:

27.1 The Applicants are stopped from denying the authority of Mr Serumula as their representative, to sign the settlement agreement.

27.2 The settlement agreement sign for and on behalf of the Applicants by Mr Serumula, is valid and binding on all the parties to the agreement.

27.3 There is no order as to costs.

MOLAHLEHI J

Judge of the Labour Court Johannesburg

Appearances:

For the Applicant : Advocate C. Thompson

Instructed by : Mohlala Attorneys

For the Respondent : Advocate M Seape

Instructed by: Poswa Attorneys.

[1] 2010

(4) SA 122 (SCA).

[2] 1964

(2) QB 480 (CA).

[3] See *Glofinco v Absa Bank Ltd. t/a United Bank* (135/2001) [2002] ZASCA 91 (30 August 2002).

[4] *NBS Bank Ltd v Cape Produce (Pty) Ltd* 2002 (1) SA 396 (SCA) 412C-E.

[5] *Inter-Continental Finance and Leasing Corporation (Pty) Ltd v Stands 56 and 57 Industry (Pty) Ltd and another* 1979 (3) SA 740 (W) at 748D.

[6] 2002

(1) SA 560 (SCA) at 575C-D:

[7] The requirements for holding a principal liable on the basis implied authority are discussed in NBS Bank Ltd v Cape Produce Company (Pty) Ltd and Others 2002 (1) SA 396 (SCA) at paragraph [26].

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCJHB/2014/439.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/chidi-and-others-v-university-unknown-topic-alcjhb-2014>

Prepared on 13 October 2026 · Esheria