

SOUTH AFRICA / JUDGMENT

Kabamba v MEC for Health North West (2936/2019) [2025] ZANWHC 78 (2 May 2025)

[2025] ZANWHC 78

COURT

North West High Court, Mafikeng

BEFORE

JT Djaje

CASE / FILE NUMBER

2936/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION,

MAHIKENG

Case

Number: 2936/2019

Reportable: YES / NO
Circulate
to Judges: YES / NO
Circulate
to Magistrates: YES / NO
Circulate
to Regional Magistrates: YES / NO
In

the matter between: LENGE
NATHALY KABAMBA
Plaintiff
And
MEC
FOR HEALTH NORTH WEST
Defendant

Heard: 7 MARCH 2025

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses.

The date for the hand-down is deemed to be on 02 MAY2025.

ORDER

The following order is

- made:
1.
Judgment is granted in favour of the plaintiff;
 2.
The defendant is ordered to make payment to the plaintiff in the amount of R467 420,89 with interest thereon a tempore morae calculated at the mora interest rate of 10.25% with effect from 11 June 2019 until date of final payment;
 3.
The defendant is ordered to pay costs of suit.

JUDGMENT

DJAJE DJP

- [1] This is a claim for specific performance. The plaintiff claims for payment of arrears remuneration in terms of an employment contract with the defendant. The remuneration is for the period from 10 September 2018 to 14 March 2019. The amount claimed by the plaintiff for the said period is four hundred and sixty-seven thousand four hundred and twenty rand eighty-nine cents (R467 420,89).

Evidence for the plaintiff

- [2] The plaintiff is a medical doctor who qualified in 2004 from the Democratic Republic of Congo. She is not a South African citizen, and her refugee identification document is valid until 5 January
2026. She currently does locum at a private practice. She was previously employed by the North West Department of Health in 2007 until 2021. She worked as a Medical Doctor at the Mahikeng Provincial Hospital until 2012. In that same year she moved to the Sub-District of Ngaka Modiri Molema until 2021. She explained that as a foreigner, she was allowed to work in South Africa after consultation with the Health Professional Council of South Africa ("HPCSA") and Foreign Work Force Management ("FWM") would verify her status.
- [3] In order for the plaintiff to practice in South Africa, she had to pass a professional examination by the HPCSA and register with HPCSA whereby she would then renew her registration annually. She testified that at all times, she was in possession of either an unexpired work visa or a refugee permit issued by the Department of Home Affairs.

The FWM assists foreign doctors by issuing them with an endorsement certificate which endorses a doctor's eligibility to be granted a refugee permit. The endorsement certificate is valid for a period of six months. In essence the endorsement certificate facilitates assistance by the Department of Home Affairs. There is also a letter of endorsement, which is different from the certificate. This letter is issued once off by the FWM to confirm the doctor's employment suitability. For purposes of renewal of a fixed term employment contract, upon expiry the employer being the Department of Health would require proof of up-to-date registration with the HPCSA, valid work visa or refugee permit and the original letter of endorsement.

- [4] The plaintiff was issued an endorsement certificate on 12 April 2016 to facilitate her application for permanent residence permit with the Department of Home Affairs. She had a valid refugee permit

issued by the Department of Home Affairs valid from 16 May 2016 to 16 May 2020. Her last fixed term contract with the Department of Health expired on 31 March 2018 and the defendant retained her without formally renewing the contract. After realising this the Department on 13 July 2018 requested an updated certificate of registration from HPCSA. At that time the HPCSA only issued a confirmation letter dated 30 July 2018 due to administrative system errors. The letter confirmed that the plaintiff was duly registered and her annual membership fees were up to date. This was not acceptable by the Department and on 1 August 2018, the plaintiff received a letter terminating her services until she submitted her registration documents with the HPCSA.

- [5] On 27 August 2018, the HPCSA finally issued the certificate of registration and an affidavit explaining its administrative difficulties which prevented it from issuing a registration certificate for the plaintiff earlier. The plaintiff immediately submitted the certificate to the Department of Health and on 10 September 2018, she received an offer of employment for a further fixed term contract of three years. She accepted the offer of employment in writing on 10 September 2018 and was ready to start working. Mrs Matwa from the Human Resource unit of the Department of Health, informed the plaintiff that she could not start work until she submits the letter of endorsement from FWM. Despite telling Mrs Matwa that the letter was in her file, the plaintiff was not allowed to work until she brought another letter from FWM which she received on 15 February 2019. She was only permitted to work on 14 March 2019. She did not receive any salary from 10 September 2018 to 13 March 2019. In terms of the new contract, her gross salary monthly was seventy-six thousand six hundred and twenty-six rand fifty cents (R76 626.50).

Evidence for defendant

- [6] The defendant called Mrs Kealeboga Manyaaapelo (previously Matwa) to testify. She is employed by the Department of Health as Senior Admin Officer in Human Resource since 1 April 2004. She explained that her duties are to recruit, manage leave and make operational plans. She confirmed that the plaintiff was once employed by the Department of Health at the Sub-District of Ngaka Modiri Molema. According to Mrs Manyaaapelo, the plaintiff in 2009 was employed at the Mafikeng Provincial Hospital and was in possession of the HPCSA

registration certificate, refugee status and endorsement certificate from FWM. When her contract expired, she needed to get new documents from FWM. In 2012 the plaintiff went to the sub-district. She met the plaintiff in 2016 and her documents were not in order as the plaintiff had submitted a passport with critical skill permit when she was a refugee. She advised the plaintiff to submit the renewed refugee status and a certificate from the HPCSA, thereafter take the offer to FWM.

- [7] In July 2018 the plaintiff received an offer for a temporary contract, but she could not be employed without the endorsement certificate and endorsement letter. It was her evidence that at the time of the offer, the plaintiff had a refugee status but no endorsement letter hence she could not start working. She testified that the plaintiff did not communicate the date of resumption of duty as she did not have the required documents for employment. During cross examination, she explained that the letter of endorsement provides that the employee can sign a contract with the employer within 30 days of assumption of duty. She could not point to any law that provides that it is unlawful to renew a contract without a letter of endorsement.

Submissions

- [8] It was argued on behalf of the plaintiff that at the time her contract was renewed in 2018, she had a valid refugee permit and that the letter of endorsement is only issued once by FWM. Further that in September 2018 the plaintiff had a valid letter of endorsement in her file. The defendant's evidence was challenged as being inconsistent.
- [9] It was contended by the defendant that there was no valid contract presented to court by the plaintiff and as such no cause of action has been disclosed. It is the defendant's case that the offer and acceptance presented to court is not valid but if found valid, the suspensive conditions had not been met. As such the defendant cannot be liable to remunerate the plaintiff for the period when she had not submitted the required documentation.

Law and application

- [10] The defendant argued that the plaintiff at the time of the renewal of the contract did not have the required documentation. This refers to the letter of endorsement that is issued by FWM. The plaintiff's evidence was that such a letter is only issued once and at the time of the offer in September 2018, it was in the file. In the discovery by the plaintiff, an annexure to endorsement certificate which was identified as the letter of endorsement was disclosed. In the said document the following appears right at the top: "Note: This annexure will be issued once only and shall be considered valid for all future applications". This document is dated 12 April 2012 and issued by Director Workforce Management. This document is separate from an endorsement certificate which states that the certificate is valid for six months from the date of issuance.

- [11] In dealing with these documents it is important to interpret what is contained therein. In the case of *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at par [18] the court dealt with interpretation of documents as follows:

“ [18] 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 approach 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.”

- [12] It stands to be accepted that when the plaintiff was issued with the endorsement certificate in April 2016 an endorsement letter was attached as well. The certificate was to be renewed after six months, and the letter issued once off. That much is clear from the documents and there can be no other interpretation thereto. On 13 July 2018 there was an approval for renewal of the temporary employment contract of the plaintiff for a period of three years. The HPCSA sent a letter dated 30 July 2018 to the Chief Director in the Department of Health explaining as follows:

“Department: REGISTRATION

Contact Mrs Doreen Musemwa

Person

Reference: Dr Kabamba/MP 0648175

Date: 30 July 2018

Mrs ME Mokhutswane-Kaudi

North-West Department of Health

Chief-Director: Ngaka Modiri Molema District

Mmabatho

Dear Mrs Kaudi

REGISTRATION STATUS OF DR LENGE KABAMBA

This letter serves to confirm that Dr Nathaly Lenge Kabamba is registered with the Health professions Council of South Africa with MP 0648175. Her payments are up to date with the last annual renewal payment made on 26 March 2018.

We are however unable to print her practicing card due to an administrative error we are trying to rectify. We will keep you updated when the error has been corrected.

We sincerely apologize for the inconvenience caused by the administrative hiccup that Dr Kabamba and the institution are now suffering.

Yours faithfully

Ms Doreen Musemwa

General Manager: CPD, Registration & Records”

[13] Despite the letter referred to above the plaintiff received the termination of services on 1 August 2018. After receiving the documents from the HPCSA the offer dated 10 September 2018 was made and was subject to the plaintiff submitting “The valid critical skill visa from the department of Home Affairs or Refugee status and endorsement letter from Foreign Workforce.” On the same day the plaintiff signed the acceptance of offer of employment. It is the plaintiff’s case that on signing the

acceptance of offer, a contract came into place. In its plea, the defendant pleaded that the plaintiff could not commence her employment as she had not submitted an endorsement certificate when the contract referred to an endorsement letter. It has already been alluded to above that the two are different documents and that the letter of endorsement was already issued in April 2012. The endorsement certificate is required for purposes of residency and is of no use to the employer. On the face of it, the purpose thereof refers to ‘Permanent Residence’. It would therefore serve no purpose for the employer to request an endorsement certificate for purposes of a contract renewal within the same department.

[14] The defendant argued that there was no compliance with the condition of the contract and as such no contract came into effect. The evidence by the plaintiff is that at the time of the offer, the endorsement letter required in terms of the contract was available as it was issued in April 2012. That evidence was not disputed as the defendant in its plea had referred to an endorsement certificate. This pleaded defence is of no substance and cannot be sustained.

[15] The plaintiff on 10 September 2018 accepted the offer and was ready and willing to render her services which triggered the commencement of the contract which had to be honoured. In *Mohabed’s Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interests (Pty) Ltd* (183/17) [2017] ZASCA 176 (1 December 2017) the Supreme Court of Appeal in reaffirming the principles of a contract stated that:

“The privity and sanctity of a contract entails that a contractual obligation must be honoured when the parties have entered into the contractual agreement freely and voluntarily. The notion of the privity and sanctity of contracts goes hand in hand with the freedom to contract taking into consideration the requirements of a valid contract, freedom to contract denotes that parties are free to enter into contracts and decide on the terms of the contract.”

[16] The defendant had no reason not to honour the contractual obligation with the plaintiff. Such refusal was unlawful and resulted in the plaintiff suffering loss of salary from the period 10 September 2018 to March 2019.

[17] As far as the quantum is concerned the plaintiff claims the salary that was indicated in the contract. That has not been disputed that the plaintiff was to receive an all-inclusive package of R919 518.00 per annum, basic pensionable salary of R643 662.60, rural allowance of R165 513.24 p/a and service bonus of R53 626.50. The total amount of loss of salary income by the plaintiff amounts to R467 420.89.

Costs

[18] It is trite that costs follow the result and there is nonreason to deviate in this matter.

Order

[19] Consequently, the following order is made:

J T DJAJE

DEPUTY JUDGE PRESIDENT

NORTH WEST HIGH COURT

APPEARANCES

DATE OF HEARING

: 22 JANUARY 2025

JUDGMENT

RESERVED

: 7 MARCH 2025

DATE OF JUDGMENT

: 2 MAY 2025

COUNSEL FOR THE PLAINTIFF : ADV HITGE

COUNSEL FOR THE DEFENDANT : ADV MOLEFE

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