

SOUTH AFRICA / JUDGMENT

Keswa and Another v Subscan (Pty) Ltd (JS272/20) [2021] ZALCJHB 230 (12 August 2021) [2021] ZALCJHB 230

COURT

Labour Court Johannesburg

BEFORE

Mosebo

CASE / FILE NUMBER

JS272/20

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Source record**IN THE LABOUR COURT OF
SOUTH AFRICA, JOHANNESBURG****Note****Reportable****Case No: JS272/20****In**

the matter between:

NKOSINGIPHILE
KESWA First
Applicant
NTOBEKO
TSHAZI Second
Applicant
and
SUBSCAN
(PTY)
LTD Respondent

Heard:

Delivered: 12
August 2021 (In view of the measures implemented
as a result of the Covid-19 outbreak, this judgment was handed down
electronically by circulation
to the parties' representatives by
email. The date for hand-down is deemed to be 12 August 2021.)

JUDGMENT

MOSEBO AJ,

[1] This application concerns an application for condonation for the late referral of the dispute to this Court outside the 90 day period

referred to in section 191 (5A)(11) of the Labour Relations Act[1] (LRA). The application was set down for hearing on the unopposed roll on 27 November 2020 when the applicants discovered that the

respondent had filed an opposing affidavit. The application was postponed sine die to enable the applicants an opportunity to file a replying affidavit.

[2] The matter came before me on 29 June 2021 and there was no replying affidavit filed by the applicants. On enquiry, the respondent's

representative, Ms Muller, referred the Court to a settlement agreement attached to the opposing papers as annexure "HL2".

She explained that after the parties met for conciliation at the Commission for Conciliation, Mediation and Arbitration (CCMA) on 14 December 2019 and were unable to resolve the dispute, they continued with settlement discussions and subsequently reached an agreement followed by a settlement agreement signed by the parties on 30 January 2020.

[3] As stated, the applicants have not filed a replying affidavit and on enquiry, it became apparent that the respondent does not dispute the fact that they have signed the said settlement agreement. Instead, their contention is that the settlement agreement aforesaid has not been complied with in that they have not received the amount of money referred to in the settlement agreement.

[4] The first applicant stated that the settlement agreement provides that he will receive the sum of R11 626.40, but he only received the sum of R3 000,00. The second applicant stated that the settlement agreement provides that he will received the sum of R8 626,40 but he received the sum of R500,00.

[5] In an endeavor to bring this dispute to finality, the Court directed both parties to provide it with proof of payment and both parties

obliged. Upon perusal of the documents it is apparent that the respondent has made several deductions from the settlement amount,

none of which were referred to in the settlement agreement. It is as a result of these deductions that the applicants did not receive the amounts referred to in the settlement agreement.

[6] In her supplementary submissions, Ms Muller for the respondent submitted that there is no dispute between the parties that the dispute has been settled. Insofar as the applicants contend that there has been non-compliance with the settlement agreement, their remedy is to enforce the settlement agreement.

[7] This submission has some merit in that the dispute concerning the unfair dismissal of the applicants has been settled by the parties in terms of the settlement agreement signed on 30 January 2020. The remaining dispute between the parties concerns the alleged non-compliance with the settlement agreement by the respondent i.e. whether or not the respondent is entitled to effect deductions not agreed to in the settlement agreement, from the settlement amount. In my judgment, the applicants' remedy in this regard, lies in section 24(8) of the Act which provides that:

"if there is a dispute about the interpretation or application of a settlement agreement contemplated in either section 142A or 158(1)(c), a party may refer the dispute to a council or the commission and subsections (3) to (5), with the necessary changes, apply to that dispute."

[8] Accordingly, the application for condonation falls to be dismissed on the basis that the matter has been settled between the parties.

[9] Therefore, the following order is made:

Order

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

Mosebo AJ

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant: Faku Attorneys

For the respondent: Yusuf Nagdee Attorneys

[1] No. 66 of 1995, as amended.

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Prepared on 10 October 2026 · Esheria