

SOUTH AFRICA / JUDGMENT

Mathebula v Marula Platinum (Pty) Ltd (J2626/18) [2020] ZALCJHB 193 (25 August 2020) [2020] ZALCJHB 193

COURT

Labour Court Johannesburg

BEFORE

P Nkutha-Nkontwana

CASE / FILE NUMBER

J2626/18

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Source record**THE****LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG****Not Reportable****Case no: J2626/18**

In the matter between:

PATRICK
MAGEZI MATHEBULA
Applicant
and
MARULA
PLATINUM (PTY) LTD
Respondent

Enrolled:

04 August 2020 (decided on the papers)

Delivered:

25 August 2020
This judgment was
handed down electronically by circulation to the parties' legal
representatives by email, publication on
the Labour Court website and
released to SAFLII. The date and time for handing-down is deemed to
be 10h00 on 31 August 2020.

Summary:

Section 158(1)(c) of the LRA – no merit in enforcing a
settlement agreement that is conditional
to a future event which
resides solely on the discretion of the employer.

JUDGMENT

NKUTHA – NKONTWANA, J

Introduction

[1] The applicant approached this Court seeking an order to make a settlement agreement an order of Court in terms of section 158(1)(c) of the Labour Relations Act[1] (LRA).

[2] The respondent opposes the application and takes issue with the enforceability of the settlement agreement.

Pertinent

facts

[3] The applicant was employed by the respondent as a Rock Drill Operator on 05 June 2008. On 2 December 2013, he was injured whilst on duty when a foreign particle entered his left eye which affected his sight.

[4] The applicant was sent to an eye specialist by the respondent in order to determine the severity of the injury. The eye specialist prescribed spectacles, indicating that the applicant is still able to

work, however the applicant claimed that his left eye had virtually lost all its vision.

[5] Due to the applicant's claim that he had lost total vision in his left eye, the respondent assisted him to lodge a claim for occupational injuries with Rand Mutual Assurance. That claim was unsuccessful and it was opined that his injury did not result in permanent impairment. Still, the applicant claimed that his spectacles were getting misty when he was performing his duties.

[6] The respondent took every measure in order to accommodate the applicant's medical condition including allocating him an alternative job. He commenced his new role on 1 August 2016, however he continued to report problems with his eyesight.

[7] The applicant exhausted his sick leave entitlement on 19 January 2017, but the respondent continued to pay a portion of his salary during his extended sick leave from 19 January 2017 to 20 June 2017.

[8] The respondent commenced incapacity proceedings against the applicant after he was unable to resume his duties. The applicant was medically boarded on 24 June 2017. The respondent assisted the applicant with his claim for incapacity and he subsequently received his pay-out.

[9] The applicant referred the dispute to Commission for Conciliation, Mediation and Arbitration (CCMA) and the respondent sought to resolve the dispute referred by the applicant in order to reach finality by entering into a settlement agreement with the applicant on 27 November 2017. The material terms of the settlement agreement are as follows:

‘5. WITHDRAWAL OF DISPUTE

The applicant voluntarily withdraws the referral and abandons the dispute against the respondent in settlement of his / her case at the CCMA with the full knowledge that he/she will not be able to proceed with this dispute at later stage.

6. OTHER

The parties agreed as follows:

6.1 the employee’s employment was terminated on medical grounds.

6.2 the employer undertakes to place the employee’s son, Casim Mukosi Mathebula, on the waiting list. Mukosi has completed a FET qualification for a Diesel Mechanic. The employer further undertakes to contact the son when there is a suitable vacancy. The employee shall submit his son’s CV.’

[10] On 1 February 2018, the applicant approached the respondent’s

Human Resources Manager, seeking to be reinstated on the basis that his son did not want to work for the respondent. The respondent was not in a position to reinstate the applicant as he had accepted the incapacity termination.

[11] On 20 February 2018, the applicant approached the CCMA seeking to

make that the settlement agreement an arbitration award in terms of section 142A(1) of the LRA. The Commissioner issued the ruling, dated 10 September under case number LP5449-17. The Commissioner found that the respondent duly complied with the settlement agreement by placing the applicant’s son on the waiting list and that, in the absence of proof that there was a relevant vacancy, there was no breach of contract. The Commissioner accordingly dismissed the application.

[12] The applicant then approached the court seeking to enforce the same settlement agreement that he failed to have made an arbitration award.

Legal principles and application

[13] In the matter of South African Post office Ltd v Communication Workers Union obo Permanent Part-time Employees (SAPO),[2] referred to by the respondent, the Labour Appeal Court (LAC), per Judge President Waglay, cautioned against merely making a settlement

agreement an order of court precisely because in most instances, as typified in the present case, settlement agreements are conditional

to the fulfilment of future events; alternatively, the terms are ambiguous or vague and thus requiring extraneous evidence to ascertain the intention of the parties before they could be enforced. It was pertinently stated that:

‘Section 158(1)(c) of the LRA provides that the Labour Court has the jurisdiction to make any settlement agreement, concluded in respect of a matter arising within the scope of the LRA, an order of court. This does not mean that the order is there for the taking. The Labour Court has a discretion to make it an order of court even if it otherwise meets the criteria provided in section 158(1A), read with section 158(1)(c) of the LRA. Hence, where a settlement agreement provides for an employer to pay an employee R5000,00 by a particular date and the employer pays this amount on or before the due date the employee would be foolhardy to approach the Labour Court to make the settlement agreement an order of court, as no purpose would be served by doing so and the Court would refuse to make it an order of court. By the same token, where the settlement agreement provides that the employer ‘will re-employ a dismissed employee if he feels like doing so’, and the employer does not re-employ the employee, the employee would be ill advised to approach the Labour Court and seek to make that agreement an order of court, because no purpose can be served by making such an agreement an order of court. It is an agreement that leaves the discretion to employ entirely within the discretion of the employer and he may employ ‘if he feels like doing so’. He cannot be forced by a court’s order to be in the mood to employ and there is no enforceable obligation to employ. The purpose of making a settlement agreement or an arbitration award, an order of court is to enforce compliance with the agreement, or the award. The agreement or the award must therefore be unambiguous and unequivocal and not open to any dispute. This does not mean that an award or agreement that provides payment of salary or wages of a certain period is not clear and precise. The parties would know or easily ascertain by having regard to documentation like pay slips or an independent accounting exercise

what the amount is [although ideally the amount should be clearly set out to avoid unnecessary delays and expensive exercise to ascertain the exact amount due]. What all this means is that before the Labour Court will grant an order sought in terms of Section 158(1)(c) of the LRA it must be satisfied that, at the very least :

- i. the agreement, is one which meets the criteria set in s 158 (1)(c) read with section 158(1A) of the LRA, and if it is an award, that it satisfies the criteria set in section 142A of the LRA;
- ii. that the agreement or award is sufficiently clear to have enabled the defaulting party to know exactly what it is required to do in order to comply with the agreement or award; and,
- iii. There has not been compliance by the defaulting party with the terms of the agreement or the award.’

- [14] In the present case, the applicant is clearly grasping at straws. Simply stated, he is desperately trying to enforce a settlement agreement that is dependent on an event yet to take place. Having failed at the CCMA, his move to launch this application is obviously ill-considered.
- [15] Notably, the settlement agreement did not temper with the respondent's discretion to employ or not to employ the applicant's son even if he has complied with all the conditions. Like all candidates, even if he is being considered for employment, he can still be rejected for whatever reason. As stated in SAPO, the respondent cannot be forced by a court order to employ the applicant's son as there is no enforceable obligation to employ him.

Conclusion

- [16] It follows that the applicant failed to make out a case for the enforcement of the settlement agreement. As such, the matter stands to be dismissed.

Costs

- [17] The respondent seeks costs against the applicant. It contends that the applicant had been warned about the imprudence of this application, but he still persisted. I note that the applicant is an unrepresented individual litigant and, as such, he is not conversant with legal processes. In my view, it would not be fair and equitable to burden him with costs.
- [18] In the circumstances, I make the following order:

Order

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

P Nkutha-Nkontwana

Judge of the Labour Court of South Africa

- [1] Act 66 of 1995 as amended.
- [2] [2013] 12 BLLR 1203 (LAC) at para 21.

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Prepared on 12 October 2026 · Esheria