

SOUTH AFRICA / JUDGMENT

Mongatane v Momentum Group Ltd (JR2343/18) [2019] ZALCJHB 334 (10 September 2019)

[2019] ZALCJHB 334

COURT

Labour Court Johannesburg

BEFORE

G. N. Moshoana

CASE / FILE NUMBER

JR2343/18

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THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG.

Not Reportable

case no: JR 2343/18

In the matter between:

TSHEGOFATSO DAISY MONGATANE

Applicant

and

MOMENTUM GROUP LTD

Respondent

Heard: 10 September 2019

Delivered: 10 September 2019

Edited: 27 November 2019

ex tempore judgment

MOSHOANA, J

[1] Before me is an application to review and set aside an arbitration award issued by the second respondent to the effect that the applicant failed to discharge the onus to prove that she was dismissed within the meaning of section 186(1)(e) of the Labour Relations Act^[1] (LRA). The application stands unopposed.

[2] Briefly, the facts relevant to this matter are as follows: The applicant was employed as a credit controller from the year 2014. At some point her supervisor went on maternity leave, and on the return

of the supervisor there were problems in relation to the working relationship between the two, that is the applicant and her supervisor. Resultantly the applicant was hospitalised, allegedly because of the verbal abuse received from her supervisor.

[3] On 23 March 2018 the applicant lodged a formal grievance against her supervisor. On 9 April 2018 she resigned, citing reasons of intolerability and unprofessionalism on the part of the employer. On the same day, the employer, through one Corrie Van Heerden, expressed disappointment in her decision to resign, after what Corrie had termed a “constructive meeting” that morning. Further, Ditebogo Modiba also expressed her disappointment in the applicant resigning. On 14 April 2018 the applicant referred the dispute alleging unfair dismissal. On the 9 October 2018 the award, which is under attack, was issued.

[4] The test applicable to reviews of this nature remains that of correctness as opposed to reasonableness. The question then becomes: on the objective facts that were presented before the commissioner, was the commissioner correct in concluding that the applicant had failed to prove the dismissal? It is clear on the facts that

the applicant lodged a grievance, and clearly the intention to lodge a grievance was to seek resolution of what effectively troubled her. The grievance procedure of the first respondent provides for three steps: the applicant only took the first step, and shortly thereafter resigned.

[5] Now, with those objective facts, the commissioner was right, that the decision taken by the applicant to resign was taken hastily. Like a dismissal that is occasioned at the behest of the employer,

resignation should also be a measure of last resort. It is clear on the facts of this matter that the applicant did not even give the grievance process an opportunity to have her troubles resolved.

[6] The clear intention on the part of the employer is shown by the two senior employees indicating that they were disappointed in the decision that was taken by the applicant. Therefore, any submission to the effect that there were reports that certain things may or may not happen is in effect an irrelevant consideration. What is relevant

is the question whether the applicant was facing intolerability, which intolerability could not have been removed by the process that she had engaged in, which is the grievance process.

[7] In my view, the applicant acted too hastily, and therefore she cannot in terms of section 186(1) (e) of the LRA be considered to have been constructively dismissed, she simply resigned. Therefore, the

commissioner was correct that the jurisdictional fact of dismissal lacked in order for the exercise of jurisdiction to happen.

[8] In the result I make the following order:

Order

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

G. N. Moshoana

Judge of the Labour Court of South Africa

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

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