

SOUTH AFRICA / JUDGMENT

Mtshali v Stanlib Proprietary Limited (JS618/23) [2024] ZALCJHB 373 (25 September 2024) [2024] ZALCJHB 373

COURT

Labour Court Johannesburg

BEFORE

Reed

CASE / FILE NUMBER

JS 618/2023

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS 618/2023

In the matter between

SIDUDUZIWE

NGESIHLE MTSHALI

Applicant

and

STANLIB

PROPRIETARY LIMITED

Respondent

Heard:

14 May 2024

Delivered:

25 September 2024 (This judgment was handed down electronically by emailing a copy to the parties. The 25 September 2024 10:00am is deemed to be the date of delivery of this judgment).

JUDGMENT

REED, AJ

Introduction

[1] In this matter the Respondent has raised two special pleas on the following grounds:

1.1 that section 10 of the Employment Equity Act[1] (EEA) precludes the Applicant from pursuing a damages and compensation claim for unfair discrimination; and

1.2 the EEA claim was not referred for conciliation at the Commission for Conciliation, Mediation and Arbitration (CCMA).

[2] The special pleas are opposed.

Background

[3] The Applicant was employed by the Respondent until her dismissal for operational requirements on 2 August 2023.

[4] On 18 August 2023, the Applicant referred her unfair dismissal dispute to the CCMA. On the same date the CCMA issued a certificate of non-resolution which provided that the dismissal dispute related to operational requirements and ought to be referred to the Labour Court for adjudication.

[5] On 4 December 2023, the Applicant delivered her statement of case to this Court and claimed the following:

5.1 she was unfairly discriminated against in terms of the EEA and seeks compensation and damages;

5.2 she was automatically unfairly dismissed as provided for in section 187(1)(f) of the Labour Relations Act[2] (LRA); and / or

5.3 she was unfairly dismissed for reasons related to operational requirements.

[6] On 19 December 2023, the Respondent delivered its response to the Applicant's statement of case and raised two special pleas, namely:

6.1 this court does not have the requisite jurisdiction to determine the Applicant's unfair discrimination dispute because the Applicant did not refer an unfair discrimination dispute to the CCMA for conciliation; and

6.2 section 10(1) of the EEA prevents this court from exercising jurisdiction in relation to the Applicant's unfair discrimination dispute under the EEA which pertains to an alleged unfair dismissal.

Evaluation

[6] The applicant's claim that her alleged unfair dismissal constitutes unfair discrimination is excluded from this Court's jurisdiction by virtue of section 10(1) of the EEA which provides as follows:

"In this section the word "dispute" excludes a dispute about an unfair dismissal, which must be referred to the appropriate body for conciliation and arbitration or adjudication in terms of Chapter VII of the Labour Relations Act.

[7] The Applicant did not refer an unfair discrimination dispute to the CCMA and there was accordingly no attempt by the CCMA to conciliate the dispute.

[8] The Respondent's counsel referred to the Constitutional Court decision in *National Union of Metal Workers of South Africa v Intervale Proprietary Limited and Others*[3] where the referral of the relevant dispute to conciliation is indispensable and a pre-condition to the Labour Court exercising

jurisdiction over it. This court is bound by the decision of the Constitutional Court.

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

Order

1. The special pleas are upheld;
2. There is no order as to costs.

J. Reed

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant Instructed by : Adv Phazha and Adv Lefaladi : Ronelda Van Staden Attorneys
For the respondent Instructed by : Adv Riaz Itzkin : Salijee Govender Van Der Merwe Attorneys

[1] No. 55 of 1998.

[2] No. 66 of 1995.

[3]

[2015] 3 BLLR 205 (CC).

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