

SOUTH AFRICA / JUDGMENT

Muller v Mpumalanga Tourism and Park Agency (JS412-20) [2021] ZALCJHB 76 (2 June 2021)

[2021] ZALCJHB 76

COURT

Labour Court Johannesburg

BEFORE

F Coetzee

CASE / FILE NUMBER

JS412-20

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case

no: JS412-20

In

the matter between:

JAN
JOHANNES MULLER
Applicant
and
MPUMALANGA
TOURISM & PARKS AGENCY
Respondent
Heard: 2 June 2021

Delivered:

This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 2 June 2021.

Summary:

Point in limine – jurisdiction –
determined on the applicant's pleading

JUDGMENT**COETZEE, AJ**

[1] The applicant referred a dispute to the Labour Court for adjudication.

The applicant's case

[2] The applicant sets out his case.

[3] The respondent employed the applicant in various positions and from June 2007 as the Senior Manager: Wildlife Protection Services.

[4] The applicant became indisposed. The respondent's Group Life Scheme ("the policy"), underwritten by Sanlam, which policy forms part of the conditions of employment, the applicant was covered for insured benefits in the event of disability.

[5] The applicant was officially medically bordered on 22 May 2017 in accordance with the benefit of the policy.

[6] The policy provided for the payment of a benefit of 75% of the applicant's monthly salary calculated from May 2017.

[7] The applicant's salary was R 107112.36 calculated by the applicant in terms of section 35(3) of the Basic Conditions of Employment Act 75 of 1997 ("the BCEA") read with the Schedule: Calculation of Employee's remuneration in terms of section 35 (3) of the BCEA as published in GN 691 in GG 2 of 23 May 2003.

[8] The applicant, on his calculation, was entitled to a benefit/payment from the respondent in the amount of R80 334.27 subject to an annual increase of 5%.

[9] According to the respondent, the applicant was entitled to a benefit of R40 381.57 per month.

[10] The applicant submits that the respondent declared the applicant's annual salary as R693 852.55 which was not in accordance with the applicant's salary as calculated by him, nor allegedly in accordance with any policy of the respondent.

[11] Upon request that the respondent should provide the applicant with its policies and procedures to calculate the annual salary for purposes of the benefit, the applicant was provided with a copy of the conditions of employment only.

[12] The applicant submits that the calculation by the respondent of the annual salary and benefit does not reflect in the conditions of employment nor in any policy.

[13] The respondent was obliged to officially pay the benefit from May 2018 from when the respondent paid the applicant R40 381.57 which amount is in dispute. There after followed alleged underpayments by the respondent.

- [14] The applicant pleads that in terms of section 77(3) of the BCEA the Court has jurisdiction to determine whether the respondent breached the contract of employment, inclusive of all policies thereof with regards to the calculation and/or payment of the benefit to the applicant. The applicant seeks payment of the alleged short payment.

The respondent's points in limine -the first point

- [15] The first point is that the Court does not have jurisdiction to entertain the claim as the claim does not flow from a contract of employment as contemplated in section 77(3) of the BCEA.
- [16] The applicant's claim rests on the calculation of the quantum of the disability benefit being paid by the Underwriters, Sanlam, under the Income Continuation Policy put in place by the respondent for each of its employees.
- [17] The Income Continuation Policy and in this case the disability benefit flows from and is calculated in terms of the Sanlam Life Income Continuation Schedule attached to the statement of defence.
- [18] The parties agreed in the pretrial minute that the remuneration was replaced by the benefit and therefore it is not a contractual claim.
- [19] The applicant's dispute therefore relates to the interpretation and application of the respondent's Income Continuation Policy and as such falls outside the scope of section 77(3) of the BCEA.

The second point in limine

- [20] Sanlam, as the Underwriters of the respondent's Income Continuation Policy, has a material interest in the outcome of the applicant's application. The non-joinder of Sanlam as a party to these proceedings renders the claim materially defective.

Discussion – the Court does not have jurisdiction

- [21] The first point in limine is that the Court does not have jurisdiction to entertain the claim as the claim does not flow from a contract of employment as contemplated in section 77(3) of the BCEA, but that the applicant's claim rests on the calculation of the quantum of the disability benefit being paid by the Underwriters, Sanlam under the Income Continuation Policy put in place by the respondent for each of its employees.
- [22] The respondent submits that the Income Continuation Policy, and in this case the disability benefit, flows from and is calculated in terms of the Sanlam Life Income Continuation Schedule attached to the statement of defence.

Analysis

[23] The applicant correctly relies upon *Transman (Pty) Ltd v Dick* [1] where the Court held that the duty is on the employee not only to plead a contractual claim but also the facts from which the contended term or tacit term could be inferred.

"In the present case the duty was on the employee not only to plead a contractual claim but also to prove facts from which the contended tacit term could be inferred. This the employee has failed to do and as a result there is no factual basis for importing into the employment agreement the term that he was entitled to a hearing before the board terminated his employment. In fact he has failed to plead the terms of the employment agreement between himself and the employer. Therefore he has not satisfied the requirements of the test for importing terms into a contract. Accordingly the court below erred in assuming that his employment contract was "subject to an implied term that he would be afforded a fair hearing before he was dismissed". It follows that the appeal must succeed. This finding is reached without adjudicating the merits of the complaint by the employee". (Own emphasis)

[24] The applicant also relies upon *Mhlongo v South African Revenue Service*[2] where the Court held that unless the alleged contractual right is apparent *ex facie* to the contract of employment the alleged existence of such right must be rejected.

[25] Whether the Court has jurisdiction, must be determined upon the applicant's pleading without having regard to the substantive merits of the applicant's case. In this matter the parties have held a pretrial meeting and finalised the minutes. The Court must therefore also have regard to any admitted facts.

[26] In *Gcaba v Minister of Safety and Security and Others*

[3] the Constitutional Court dealt with the question whether a failure to promote and appoint the applicant constituted administrative action subject to review and whether the High Court correctly decided that it had no jurisdiction to hear the matter.

[27] The applicant in that pleading had relied exclusively upon the administrative law to challenge the respondent for not promoting him. The *Gcaba*-matter is of assistance only to the extent that the jurisdiction must be determined on the basis of the pleadings and not the substantive

merits of the case:[4]

'75. Jurisdiction is determined on the basis of the pleadings, as Langa CJ held in *Chirwa* [supra] and not the substantive merits of the case. If Mr *Gcaba's* case were heard by the High Court, he would have failed for not being able to make out a case for the relief he sought, namely review of an administrative decision. In the event of the Court's jurisdiction being challenged at the outset (in limine), the applicant's pleadings are the determining factor. They contain the legal basis of the claim under which the applicant has chosen to invoke the Court's

competence.”(Own emphasis)

- [28] the Labour Appeal Court also considered the Labour Court's jurisdiction having regard to section 77(3) of the BCEA. In *Rand Water v Stoop and Another*[5] the Labour Appeal Court held that the Court had jurisdiction where an employer claims damages from the former employee arising from the provisions of the contract of employment whether explicit or implied, provided the contractual provisions are pleaded.
- [29] In summary, the authorities referred to, require of the applicant to plead a contractual term and the breach thereof. The Court must only look at the pleading and not consider any evidence or look at the substantive merits of the case, except in this matter also at any agreed facts..
- [30] Having regard to the applicant's statement of claim, he pleaded that the policy forms part of his contract of employment. He therefore relies upon a contractual term for the relief he claims. In addition, the applicant pleaded that it is the respondent that is obliged in terms of the contract of employment to pay him the benefit.
- [31] In summary, the applicant pleads that in terms of a contractual term incorporating the policy, he is entitled to benefits to be paid by the respondent. That brings the claim, as pleaded, within the ambit of section 77 of the BCEA.
- [32] The respondent has a different version on the material facts. The respondent submits that the parties agreed in paragraph 2.1.7 of the minute that he received the benefit and that he does not receive remuneration.
- [33] Paragraph 2.1.7 does not record such an admission. It merely records that the applicant became entitled to the benefit during May 2018. In view of the applicant's pleaded case that the respondent pays the amount in terms of the contract, paragraph 2.1.7 does not assist the respondent.
- [34] According to the respondent the insurer calculates and pays the benefit which is channelled through the respondent. Any dispute about the calculation of the benefit lies in the hands of the insurer and not with the respondent. This, however, forms part of the substantive merits of the case that the Court may not now consider or look at to determine its jurisdiction.
- [35] It is for the applicant eventually to prove what he pleaded, that is that the only relationship is the contract between the applicant and respondent and that in terms of the contract, the calculation of the benefit and the payment thereof rest with the respondent only. The applicant will fail in his case if the respondent's version is accepted as correct. That, however, is for the trial Court to determine.

Discussion of the second point in limine

- [36] Having regard to the applicant's statement of claim, the only relationship is between the applicant and the respondent flowing from the contract of employment that incorporated the policy. That being the case, according to the applicant, the insurer has no interest in this matter.
- [37] The risk that the applicant runs, is that if the respondent in the trial may show that the benefit is calculated and paid by the insurer, that the applicant may be faced with a miss-joinder and left without any relief. This is an observation only and the Court does not have to concern itself with that issue at this point in time.

Costs

- [38] This is an interlocutory matter where the applicant is successful. Having regard to the relevant factors there is no reason to make a costs order.
- [39] The following order is hereby made:

Order

1. The points in limine are dismissed with no order as to costs.

F. Coetzee

Acting Judge of the Labour Court of South Africa

Appearances:

The matter has been determined on paper.

- [1] 2009
- (4) SA 22 at para 30
- [2] (J1915/09)
- [2015] ZALCJHB 313 (11 September 2015) at paragraph 52
- [3] 2010
- (1) SA 238 (CC)
- [4] Para 75
- [5] (2013) 3 for ILJ 579 (LAC)

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCJHB/2021/76.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/muller-v-mpumalanga-unknown-topic-alcjhb-2021>

Prepared on 14 October 2026 · Esheria