

SOUTH AFRICA / JUDGMENT

Nkuna v Ba Phalaborwa Local Municipality (J 816/12) [2013]

ZALCJHB 62 (2 May 2013)

[2013] ZALCJHB 62

COURT

Labour Court Johannesburg

BEFORE

Lallie

CASE / FILE NUMBER

J 816/12

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REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case No: J 816/12

In the matter between:

T NKUNAApplicant

and

BA PALABORWA LOCAL MUNICIPALITYRespondent

Heard: 31 August 2012

Delivered: 2 May 2013

Summary: The purpose of section 158(1) (c) of the LRA is to make settlement agreements orders of this Court in order to facilitate their enforcement and not to determine ab initio the merits of the agreement.

LALLIE, J

Introduction

This is an application in terms of section 158 (1) (c) of the LRA 1 to make a settlement agreement an order of court.

Background

The applicant was a chief financial officer of the respondent. In February 2011 she was suspended and charges of misconduct were

proffered against her. At a disciplinary enquiry which ensued she was found guilty and dismissed in September 2011. She referred an unfair dismissal dispute to private arbitration in February 2012. The council of the respondent (council) resolved on 1 March 2012 to settle the dispute between the parties outside the private arbitration process and mandated the municipal manager to settle the dispute and present the settlement to the council for ratification.

Mr Mokoape, (Mokoape), an official of the respondent and the applicant's attorneys negotiated a settlement. The negotiations culminated in the applicant's attorneys signing a document it referred to as a settlement agreement (the document) on her behalf and the applicant tendering her resignation on 19 March

2012. The respondent did not sign the document and advised the applicant on 20 March 2012 that it would not comply therewith. It is that document which the applicant seeks this court to make an order of court on the basis that it is a settlement agreement, clause 11 of which provides that the parties agree to the document being made an arbitration award alternatively an order of court in terms of section 142A (1) of the LRA.

Points in limine

The respondent raised four points in limine. The first is that, there is no agreement which can be made an order of court as envisaged in section 158(1) (c) of the LRA as the purported agreement was not signed by or on behalf of the respondent. The second is that, this application has been brought against the spirit of section 158(1)(c) which was not intended to be used as a vehicle to bypass other more directly available causes of action contemplated in the LRA and common law, and to provide what is tantamount to final relief through motion proceedings. The third is that, it would not be prudent for this court to exercise its discretion in favour of the applicant, particularly in the absence of an agreement. The last point is that, Mokoape who negotiated the purported settlement agreement lacked the mandate to sign it as the municipal manager was entrusted with such responsibility.

The other ground on which this application is opposed, is that the merits of this matter may not be considered for purposes of the present application. The respondent submitted that the applicant resigned out of her free will without any duress. It will be prudent to consider the points in limine with the merits of this matter.

The purpose of section 158(1) (c) is to provide an aid for the practical enforcement of arbitration awards. In this regard see

Librapac CC v Fedcrow and others.² In Kolobe v Proxenos (Sophia's Restaurant)³ it was held that an order made in terms of section 158 (1) (c) of the LRA does not involve an ab initio determination of the merits of the dispute between the parties as that has been done through the arbitration process. The court further confirmed that section 158(1) (c) applications are about non-compliance by the respondent party with the terms of an award. These principles are equally applicable to applications for making settlement agreements orders of this court.

The applicant submitted arguments on the validity of unsigned agreements. It is clear from the facts that are common cause that

the determination of the existence of a valid and binding settlement agreement between the parties needs to proceed making the agreement an order of court. A settlement agreement is an out of court process by which parties decide how to resolve their dispute. All the terms of the agreement are determined by the parties and the role of section 158(1)(c) is very limited, it is to assist the parties enforce their agreement

In the present application the applicant requires far more. It expects this court to deal with the merits of the purported

agreement and make a finding on its validity first. The exercise requires a determination of a number of material issues including

whether Mokoape had the necessary authority to enter into the agreement on behalf of the respondent and whether the applicant

resigned on her free will.

The applicant should have proved the existence of a settlement agreement and default on the part of the respondent to comply with it. I am not satisfied that the applicant has proved the necessary requirements. Instead, she requires an ab initio determination of the dispute between the parties which I have to steer clear from. For these reasons, it will not be prudent to exercise the power vested in this court in section 158(1) (c) of the LRA.

The respondent sought *de bonis propriis* or attorneys and own client costs against the applicant. Having considered the submissions on the issue of costs, I cannot turn a blind eye to the role played by Mokoape in this dispute which might have influenced the applicant to reasonably believe that a settlement agreement was reached between the parties. In the circumstances it will not be appropriate to grant a costs order.

In the premises the following order is made:

The application is dismissed.

pp. Lallie, J

Judge of the Labour Court of South Africa

APPEARANCES:

FOR THE APPLICANT: Mr Moshwana GN of

Mohlaba & Moshwana Inc [JHB]

FOR THE FIRST RESPONDENT: Mr Golberg AL of Golberg Attorneys

1Labour Relations Act 66 of 1995.

2 [1999] 6 BLLR 540 (LAC) at 542 F.

3[200] 11 BLLR 1291 (CC) at 1296 J- 1297A.

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