

SOUTH AFRICA / JUDGMENT

Ntsiko v Commission for Conciliation, Mediation and Arbitration and Others (PR 161/20) [2022] ZALCPE 32 (11 November 2022)

[2022] ZALCPE 32

COURT

Labour Court Port Elizabeth

BEFORE

Z Lallie

CASE / FILE NUMBER

PR 161/20

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IN THE LABOUR COURT OF
SOUTH AFRICA, GQEBERHA

Not Reportable

CASE

NO: PR 161/20

In the matter between:

MIHLALI NTSIKO
Applicant
And
COMMISSION FOR
CONCILIATION,
First Respondent
MEDIATION AND
ARBITRATION
COMMISSIONER RIAAN DE
LANGE
Second Respondent
DISCOVERY HEALTH (PTY)
LTD
Third Respondent
Heard: 12 October 2022

Delivered:

This judgment was handed down electronically by circulation to the Applicant's and the Third Respondent's legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing - down is deemed to be 15h30 on 11 November 2022.

JUDGMENT

LALLIE, J

[1] The applicant was employed by the third respondent on 6 April 2017 as a contract care consultant. She was dismissed on 20 March 2019 for incapacity which resulted from her ill health and challenged the fairness of her dismissal at the first respondent, the Commission for Conciliation, Mediation and Arbitration (the CCMA). The dispute was not resolved at the conciliation stage of its resolution process and the applicant referred it to arbitration. When the dispute was

scheduled for arbitration the applicant and the third respondent were successful in resolving it through conciliation. They then entered into a settlement agreement whose salient clause reads as follows:

“The parties are in agreement that the applicant will be re-considered for any suitable vacant post which may arise within the respondent’s

post structure. The applicant would have to apply for such position in terms of the respondent’s recruitment policies and would have to show that she is medically fit for such post”.

- [2] The applicant launched this application in an attempt to free herself from the settlement agreement. Although she initially attempted to obtain relief through different avenues, she ultimately elected, through her attorney, to seek an order declaring the settlement agreement null and void ab initio. The application is opposed by the third respondent.
- [3] The applicant filed an application for condonation of the late filing of her review application. The condonation application is also opposed by the third respondent. I have considered the submissions on condonation carefully. The third respondent’s vehement opposition cannot succeed because the grounds the applicant relied on are valid. The delay resulted, mainly, from the disruption that was caused by the covid-19 pandemic and the procedures which had to be followed by the Justice Centre in assisting the applicant pro bono. The prejudice the applicant stands to suffer should condonation be refused is greater than the effects of the delay on the third respondent. I am therefore satisfied that the interest of justice requires that the delay be condoned.
- [4] The applicant’s main reason for seeking an order declaring the settlement agreement null and void ab initio is that it is vague and unenforceable. The applicant’s argument on vagueness is based on the use of the word “re-consider” in the settlement agreement.

[5] I agree with the third respondent that the terms of the settlement agreement are clear and unambiguous. Any vagueness the use of the word 're-consider' might have caused disappears when the agreement is read in its entirety. The applicant did not raise any defence recognised in law which would entitle her to the relief she seeks. This court has to uphold the sanctity of agreements. In the absence of a valid reason to have the settlement agreement declared

null and void, it remains enforceable. This application can in the circumstances, not succeed.

[6] I was given no valid reason in fairness to grant a costs order against the applicant.

[10] In the premises, the following order is made:

Order:

1. The application for the late filing of the review application is granted.
2. The application is dismissed.
3. There is no order as to costs.

Z. Lallie

Judge of the Labour Court of South Africa

APPEARANCES

For the Applicant: Ms. E Van Staden of the Legal Aid South Africa - Gqeberha

For the Respondent: Mr. Bleazard of Bleazard Attorneys

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Prepared on 11 October 2026 · Esheria