

SOUTH AFRICA / JUDGMENT

# O'Brien v Heaven Sent Gold South Africa (PTY) Ltd (previously known as Village Main Reef Group (PTY) Ltd) (JS 501/2021) [2022] ZALCJHB 308 (17 October 2022)

**[2022] ZALCJHB 308****COURT**

Labour Court Johannesburg

**BEFORE**

Ramolefe

**CASE / FILE NUMBER**

JS 501/2021

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**Source record****IN****THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG****Not****reportable****JS****501/2021****In****the matter between:**

WILLIAM

STANLEY OWEN O'BRIEN

Applicant

And

HEAVEN

SENT GOLD SOUTH AFRICA (PTY) LTD

Respondent

(PREVIOUSLY

KNOWN AS VILLAGE MAIN REEF GROUP (PTY) LTD

**Heard:**

26 August 2022

**Delivered:**

17 October 2022

(Judgement

was handed down electronically by circulation to the Applicant's

and First Respondent's representatives by

email. The date and

time for handing down the judgment is deemed to be 14h00 on the 17

October 2022)

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**JUDGMENT**

RAMOLEFE AJ

**Introduction**

- [1] The applicant has brought this claim in which he seeks damages against the respondent. These are made up of general damages and patrimonial loss in amounts of respectively R500 000.00 and R10 530 000.00. The basis of the claim is a settlement agreement terminating the employment relationship between the applicant and the respondent. There is as such currently no employment relationship between the parties.
- [2] To this claim the respondent has raised a special plea of jurisdiction, and it is with this point in limine that this judgment deals.

**Background****facts**

- [3] Following the applicant's employment on 2 January 2017 to the position of Chief Executive Officer of the respondent, numerous developments and events unnecessary to be traversed in this judgment appear to have worked,
- over a period time, towards the ultimate breakdown in the employment relationship between the parties. The end of the road thus reached, the parties agreed to part ways, and accordingly concluded a settlement agreement on 30 January 2020.
- [4] Central to the settlement agreement is clause 13.4 which is in the following terms –
- "13.4 The Employee and the Company undertake, with effect from the signature date and indefinitely thereafter, not to make any derogatory or defamatory statements about each other".
- [5] In pleading his case for alleged breaches of clause 13.4 of the settlement agreement, the applicant referred to an exchange of e-mails and to the roles played in the breaches by three individuals linked in various capacities to the respondent: Messrs Jeff Dong, Michael Zhang and Jansen van Vuure . Not unsurprisingly, none of these individuals are parties to this litigation, and this because
- the applicant launches his claim and pins his hopes on the settlement concluded with the respondent.

## Analysis

[6] In the applicant's heads of argument, reliance is placed on sections 157(2)(a) and 158(1) of the Labour Relations Act[1], and primarily, on section 77(3) of the Basic Conditions of Employment Act[2] ("the BCEA"). The latter section provides that-

*"(3) The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of contract" (emphasis added).*

[7] The applicant's heads of argument rely on *University of the North v Franks*[3] for the proposition that "the termination of an employment contract and the terms and conditions upon which this is to occur are clearly matters concerning such a contract", and that the Labour Court accordingly has jurisdiction. These heads also refer to *Kruse v Gijima AST (Pty) Ltd* [4] where Pretorius AJ said –

*"[21] It is clear from Franks that the ambit of section 77(3) of the B EA is wide enough to cover a collateral agreement, for example, one which has the effect of terminating a contract of employment. The ambit of section 77(3) is not limited to disputes directly concerning contracts of employment..." (emphasis added)*

[8] In its heads of argument, the respondent contends that the issue for

## determination

is whether this Court has jurisdiction to adjudicate the applicants claim as pleaded. Having regard to the reliance placed by the applicant on section 77(3) of the BCEA , central to which section is "a contract of employment", the respondent argues that what is pleaded is in fact a delictual claim based on the settlement agreement and that, as such, this is not a matter concerning a contract of employment.

[9] Mr Mosam SC, for the respondent, referred me to *Heightsafety Training Academy (Pty) Ltd v Mose and Others*. [5] In that matter, Lagrange J dealt with the application of section 77(3) of the BCEA and reasoned as follows –

[18] The labour court only has jurisdiction to hear applications to enforce restraint of trade agreements against employees, or former employees, by virtue of section 77(3) of the Basic Conditions of Employment Act 75 of 1997, which states:

'The Labour Court has concurrent jurisdiction with Civil Courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract.' (emphasis added)

In my view, it would require a very elastic and strained reading of that provision to interpret it as extending to cloaking the court with jurisdiction to entertain delictual claims arising from a contract of employment. Although it is true that a delictual claim can arise from a breach of contractual obligations, unlike the determination of a dispute about the enforcement of a restraint agreement, the determination of the delictual claim is not primarily concerned with the enforceability of contractual obligations.

- [19] A delictual claim arising from a contractual relationship might ‘concern’ a contract of employment in an incidental sense, but the determination of delictual liability requires a court to determine whether the following; essential elements have been met: harm sustained by the plaintiff; conduct on the part of the defendant which is wrongful; a causal connection between the conduct and the plaintiff’s harm; and fault or blameworthiness on the part of the defendant. When these requirements of a delictual claim are considered it is hard to conceive of that claim as one that predominantly involves the determination of a ‘matter concerning a contract of employment’, even if a breach of an employment contract happens to be one factual component in the claim in question.
- [20] Moreover, the ambit of s 77(3) must be read in the context of the purpose of the BCEA, in which it is situated. That purpose cannot, by any stretch of imaginative interpretation, be read as intending to provide for the determination of delictual claims arising from breach of an employment contract.
- [10] The submission on behalf of the respondent is that the applicant's claim, being a delict, arises not from a contract of employment but a breach of the settlement agreement. In amplification of the argument, Mr Mosam SC submits that even if the applicant were to argue that the agreement “stems from a contract of employment, and that the delictual claim as arising from a contractual relationship might be said to “concern “a contract of employment in an incidental sense, the actual determination of delictual liability requires a court to consider the five elements of delict. For this reason, this would not be a determination of a “matter concerning a contract of employment”. I agree.
- [11] In my view, a proper analysis of the facts demonstrates that not even upon a wide interpretation of section 77(3) of the BCEA can it be said that the nature of the applicant’s claim is anything but a delict or, put differently that what is manifestly a delictual claim could be regarded as a dispute “ directly concerning” a contract of employment because of the settlement agreement. For this reason, I conclude that this Court lacks jurisdiction and that the special plea accordingly fails to be upheld.

## Order

In the premises, I make the following order:

1. The special plea is upheld.
2. There is no order as to costs.

Khotso D Ramolefe

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate A N Kruger.

Instructed by:

Gerhard Botha Attorneys.

For the Respondent: Advocate A Mosam SC (with him F Karachi).

Instructed by:

Werksmans Attorneys

[1] 66 of 1995

[2] 75 of 1997

[3]

[2002] 8 BLLR 701 (LAC)

[4]

(2010) 31 ILJ 1898 (LC)

[5] (J2039 of 2019) [2019] ZALCJHB 375 (22 November 2019)

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Prepared on 10 October 2026 · Esheria