
SOUTH AFRICA / JUDGMENT

Sedibeng District Municipality and Another v Shongwe (J712/15) [2015] ZALCJHB 425 (11 December 2015) [2015] ZALCJHB 425

COURT

Labour Court Johannesburg

BEFORE

Lallie

CASE / FILE NUMBER

J712/15

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REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

CASE NO: J 712/15

In the matter between:

SEDIBENG DISTRICT MUNICIPALITY

First Applicant

YUNUS CHAMDA

Second Applicant

and

NONTOMBI INNOCENTIA SHONGWE

Respondent

Dated: 11 December 2015

LALLIE J

[1] This is an application for leave to appeal against the whole of the judgment I handed down on 19 May 2015 in which I granted the

following order:

‘1 The deductions made by the respondent from the applicant’s remuneration from August 2014 to February 2015 were unlawful.

2 The respondent is ordered to pay the applicant all the money deducted from her remuneration from August 2014 to February 2015 in the amount of R52 240. 79. The respondent may make lawful deductions from the applicant’s remuneration.

3 The respondent is ordered to pay the applicant’s costs on an attorney and client scale.’

[2] The application is opposed by the respondent. Initially, the applicant sought to rely on two grounds; firstly, that I erred in focusing on the fact that the applicants made deductions from the respondent’s salary which were greater than 25% and ignored the fact that the deductions were made by agreement between the parties. The other ground is that I ought to have considered the agreement which was entered into between the parties whether it was by implication or otherwise. In the submissions which the applicants referred to as the supplement, application for leave to appeal, the applicants not only presented their submissions but also added further grounds for leave to appeal.

[3] The respondent’s opposition is mainly that the pleaded case before me concerned deductions from her remuneration which were made by the first respondent in contravention of section 34 of the Basic Conditions of Employment Act 75 of 1997 as amended (“the BCEA”). The deductions were made without the respondent’s consent and some exceeded 25% of her monthly remuneration. Even the first applicant’s cash handling policy which the applicants sought to rely on in justifying the deductions does not enable it to violate the BCEA in the manner in which the first respondent did. Lastly, the respondent submitted that the application stands to be dismissed with costs as the applicants have no prospects of success on appeal.

[4] The applicants’ submissions that I erred in allowing the respondent to dwell on the issue of the legality of the deductions

which were made in terms of the first applicant’s cash handling policy which is binding on the respondent has no legal basis. It fails to take into account that the pleaded case before me was for the reimbursement of deductions which were made unlawfully in violation of section 34 of the BCEA. The submissions the applicants sought to rely on do not support the applicants’ case that I erred in finding that the deductions were in breach of the BCEA. The oral agreement between the first applicant and the respondent does not assist the applicants as the BCEA requires the agreement to be in writing. The argument that the deductions less than 25% of the respondent’s monthly remuneration should have been found lawful cannot be valid in the absence of the applicant’s written consent that those deductions be made.

[5] The applicants’ argument that by adding the order that the first applicant may make any lawful deductions from the respondent’s

remuneration to the order for the reimbursement of the deductions which were made unlawfully, rendered the order contradictory is incorrect. The order clearly declares the deductions made between August 2014 and February 2015 unlawful and requires the first

applicant to reimburse the respondent. The order advises the parties that the first respondent retains the right to make deductions from the respondent's remuneration. The deductions must, however, be made lawfully.

[6] The test for leave to appeal is whether the applicants have prospect of success on appeal.[1] The applicants have failed to prove their allegations that I made errors in my judgment. In the absence of valid submissions that I erred in finding that the deductions the first applicant made from the respondent's remuneration of August 2014 to February 2015, the applicants have no prospects of success on appeal. I could find no reason for costs not to follow the result.

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

7.1 The application for leave to appeal is dismissed with costs.

Lallie, J

Judge of the Labour Court of South Africa

Matter is considered in chambers

For the Applicant: Suleman's Inc Attorneys

For the Respondent: JC Burger Attorneys

[1] Lodewicus Adries Micheal Kruger v The State 612/13 [2013] ZA (SCA)

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