

SOUTH AFRICA / JUDGMENT

Sethabela v Simba Proprietary Limited (J125/2024) [2024] ZALCJHB 222 (22 May 2024) [2024] ZALCJHB 222

COURT

Labour Court Johannesburg

BEFORE

Makhura

CASE / FILE NUMBER

J125/2024

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IN THE LABOUR COURT OF SOUTH
AFRICA

HELD AT BRAAMFONTEIN

CASE

NO: J125/2024

DATE:

01-03-2024

1.

REPORTABLE: YES / NO.

2.

OF INTEREST TO OTHER JUDGES: YES / NO.

3.REVISED.

Date

Edited : 22 May 2024

In

the matter between

KATLEHO

ANNA SETHABELA Applicant

and

SIMBA

PROPRIETARY LIMITED Respondent

JUDGMENT

MAKHURA, J

Thank you. This is matter number J125/2024. I am ready to issue my brief reasons for the order that I am about to make.

The applicant approached this court on an urgent basis seeking about ten orders from this court. These orders can be categorised into three; the first four reliefs that the applicant seeks relate to the issue of her abscondment and the demand by the respondent for her to return to work.

The fifth to seventh orders relate to what appears to be the unfair treatment that she received from the employer in so far as the decision by the employer or the respondent to implement the performance management process against her was concerned.

Order numbers eight and nine relate to a claim for payment. The applicant during oral arguments submitted that this is a claim for disability - 75% of her disability.

The tenth claim is one that is more intertwined with 5,6 and 7 is about alleged harassment or in general an unfair conduct, an alleged unfair conduct by the respondent.

Viewed and conceived properly, the primary case is really about the alleged unfair treatment that the applicant says she received or she is been subjected to in the hands of the respondent. This court must raise upfront that it is not insensitive to the allegation that the applicant is disabled. It is common cause, in terms of this issue relating to disability, that there was a temporary disability

approval as far as I can get from the papers for a period of about 3 months which ended in December 2023.

This court derives its jurisdiction from section 57 of the Labour Relations Act and it has its powers clearly outlined in section 158 of the Labour Relations Act. This court, it is common cause and trite, can also or has jurisdiction to entertain claims relating to contracts based on section 77 of the Basic Conditions of Employment Act 55 of 1998. This court can also adjudicate, and has the jurisdiction to deal with constitutional matters.

The Labour Relations Act has set out processes and procedures in terms of which certain claims between the employees and the employers must be processed.

Now if an employee or an employer elects to breach or to short-circuit those processes, that employee obviously has to show cause, show good cause why certain measures or processes and procedures should not be followed. A lot was said by the applicant about the eminent dismissal, however I must indicate that this court is not going to engage itself in speculation. This court is not going to engage itself in conjecture. It is certainly not what the law requires of courts of law to do. As to whether she will be dismissed, when she will be dismissed is a matter that this court does not know, it is a matter that this court is going to stay away from speculating as it should.

I have during the arguments gone through the relief that the applicant seeks and ask the applicant to make submissions why these orders most of which in my view are orders that could be processed differently or are issues that could be or should be processed differently. She addressed me and submitted amongst others that this court should develop the common law and hear and entertain her application in so far as most of what she seeks here relates to internal issues and also to issues that in my view should be referred to the CCMA or the relevant bargaining council. I have considered before I get into the details or deal with the relief that the applicant seeks, the issue of urgency which Mr Gorge on behalf of the respondent raised that this matter is not urgent.

There are in my view some very flimsy reasons why this court should really entertain this matter on an urgent basis, however ultimately it is the discretion of this court to decide whether to listen to the matter. In my view it is in the interests of justice considering the issues raised, considering the allegations of alleged discrimination, considering the allegation that the applicant alleges, without making any finding, that she is disabled, I consider that I should exercise my discretion and entertain the matter and also in the interests of finality of this dispute between the two parties.

As I have already indicated, paragraphs 1 to 4 which I am not going to read into the record relate to the issues particularly to the allegation against her that she has absconded or she is absconding. Further that she is requested to report for duty particularly in the absence of the medical certificates. In the alternative to reporting for duty, she was required to submit medical certificates. The applicant is clearly not happy with that request because according to her she is disabled and she has lodged an appeal which is still underway. I have asked the applicant to show how this court's jurisdiction is engaged because this court is of the view that this is purely an internal matter that is not even ripe for this court to entertain.

This is a matter that to the extent that she is dissatisfied with the request to return to work to the extent that she considers the request to be unfair, she can exercise her right to either refer an unfair labour practice or any other dispute to an appropriate forum even though in my view I do not know what type of disputes it could be because this matter is still being dealt with internally. The applicant in my view should be responding and engaging the respondent in this matter in terms of why she is not reporting for duty.

She is required to in terms of the policy submit proof why she is not able to report for duty. Instead the applicant elects to come to this court and not just come to court, come to court on an urgent basis. She is not able to show how this court's jurisdiction is engaged to issue an order in those terms and therefore the order sought in paragraphs 1 to 4 of the notice of motion must fail.

The second category is paragraphs 5 to 6. These relate to the issue of the performance management process that the respondent instituted on 17 April 2023 which came to a halt sometime in June when the applicant fell sick. That process has not been proceeded with. The applicant seeks an order inter alia that the process is fundamentally flawed. Again, instead of the applicant submitting herself to such a process and provide reasons

why she is not a poor performer, she elects to rush to this court and without even demonstrating how this court's jurisdiction is engaged.

Issues of poor performance, issues of capacity, are issues, to the extent that she was dissatisfied with the conduct, that she could have referred to the CCMA. She could have referred it to any other appropriate forum but she elected to come to this court. That issue in itself has not even been exhausted internally and yet she wants this court to make an order that the process is fundamentally flawed and that she feels discriminated by the institution of such a process.

So that part of the relief also overlaps with paragraph 10 of the order that she seeks which relates to harassment. So the order sought in paragraphs 5, 6, 7 of the notice of motion must once again fail.

The next category of the claim brought by the applicant is paragraphs 8 and 9. In terms of those paragraphs the applicant seeks an order for payment of a disability benefit. That claim has been unsubstantiated. I have during arguments asked the applicant to refer me to the founding papers where she has made such a claim. She referred this court to paragraph 25 of her founding affidavit which in my view does not support any claim. Whilst it talks about disability it does not support the claim which as elaborated during arguments was for 75% of her salary, the applicant could not tell for which month.

The applicant could not tell this court what type of what appears to be a claim for unlawful deduction is based on how much money was deducted, how much should be reimbursed. In any event it will appear that this is a matter once again that is regulated in terms of the policies be that of the respondent's or the Fund that is administering these benefits. Furthermore, it sounds more an issue of a claim for benefits more than a contractual claim.

So as it is not properly pleaded one is really unable to conclusively determine whether this is a claim for contract. The applicant bears the onus to prove that this court has the jurisdiction to entertain such a claim and that such a claim is not a claim that should have been referred to another forum. She has dismally fail to do so. Therefore that claim should again equally fail.

In paragraph 10, the applicant seeks an order that the respondent has harassed, bullied, intimidated her. I have already addressed this issue with the applicant that to the extent that she is claiming harassment, section 6(3) of the Employment Equity Act provides that harassment of an employee is a form of unfair discrimination and is prohibited on any of the listed grounds. That appears in section 6(1) from the same Act.

In terms of section 10 of the Employment Equity Act an employee claiming any alleged unfair discrimination should refer the dispute to the CCMA. It is common cause that section excludes disputes about unfair dismissal. The applicant has elected to approach this court and not follow that process. This claim, as indicated earlier, ties up with paragraph 6 of the notice of motion where she claims racial discrimination on the basis of her being a black woman.

So that is the claim that should be referred to the CCMA, and she has obviously clearly listed the ground for the alleged harassment and discrimination. Having considered this matter I find that this court has no jurisdiction to entertain any of these claims that the applicant seeks and that the application must therefore fail based on lack of jurisdiction.

Regarding costs I am mindful of the fact that the applicant has not been receiving her salary. Despite the view that I take that this application was unnecessary, was frivolous, I still decide to exercise my discretion in terms of section 162 of the Labour Relations Act to not mulct the applicant with costs. However, this court will like to send a stern warning against the applicant that, and many other litigants out there that this type of conduct of bringing completely misdirected applications to this court when there are clear processes that should be followed and short circuiting the internal processes of the employers will not be tolerated any further.

In the premises I make the following order:

ORDER

1. The application is dismissed for lack of jurisdiction.
2. There is no order as to costs.

MAKHURA, M

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

DATE:

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