

SOUTH AFRICA / JUDGMENT

Solidarity and Another v Jagersfontein Combined School and Others (JS1692/2022) [2024] ZALCJHB 477 (25 November 2024)

[2024] ZALCJHB 477

COURT

Labour Court Johannesburg

BEFORE

Prinsloo

CASE / FILE NUMBER

JS1692/2022

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Source record

THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

no: JS 1692/2022

In

the matter between:

SOLIDARITY

First

Applicant

L

VAN PLETSEN

Second

Applicant

and

JAGERSFONTEIN

COMBINED SCHOOL

First

Respondent

P

J NAUDE

Second

Respondent

THE

SCHOOL GOVERNING
BODY:

JAGERSFONTEIN
COMBINED SCHOOL
Third
Respondent
DEPARTMENT
OF EDUCATION: FREE STATE
Fourth
Respondent
THE
MEC: DEPARTMENT OF EDUCATION:
FREE
STATE
Fifth
Respondent

Heard: 14 November 2024

Delivered: 25 November 2024
This
judgment was handed down electronically by consent of the parties'
representatives by circulation to them via email.
The date for
hand-down is deemed to be 25 November 2024.

JUDGMENT

PRINSLOO, J

Introduction

- [1] The First Applicant (Solidarity) filed an application in terms of section 158(1)(c) of the Labour Relations Act^[1] (LRA), seeking an order for a settlement agreement to be made an order of Court and for the payment of the outstanding amount of R 31 568 to be made to the Second Applicant (Ms van Pletsen).
- [2] The Respondents opposed the application.

Background

facts

- [3] The Applicant was employed at the First Respondent (the school) as a temporary educator from 1 June until 30 September 2021 in a vacant substantive position, which was permanently filled by Mrs Gouws, who was on maternity leave for the said period.
- [4] On 14 September 2021 Mrs Gouws applied for an extension of her maternity leave as unpaid leave for the period 11 October until 15 December 2021, which was for a period of 48 calendar days. Ms van Pletsen continued to tender her services as a substitute educator for

Mrs Gouws at the school for the aforesaid period. This however was without an extension of any contract or agreement and without proper authority from the Fourth Respondent (Department). As a result, Ms van Pletsen was not remunerated for the period she worked from 11 October to 15 December 2021.

- [5] On 17 November 2021 the Second Respondent completed the requisite P020/2020 forms for the appointment of Ms van Pletsen in a vacant substantive post for the period 11 October until 15 December 2021.
- [6] As Ms van Pletsen was not remunerated for the services she tendered, Solidarity acting on her behalf, filed a statement of claim under case number JS191/22 on 29 March 2022. It was for the payment of Ms van Pletsen's outstanding remuneration for the period October to December 2021. The claim was in the sum of R 80 400. The Respondents did not oppose the matter and in April 2022 the Applicants filed an application for default judgment.
- [7] Ms van Pletsen stated that she earned R 26 800 per month and that her claim for R 80 400 was for the payment of her full salary for the months October until December 2021.
- [8] In July 2022 the State Attorney acting on behalf of the Respondents addressed a letter to Solidarity, proposing negotiations to settle the matter. The Respondents did not dispute that Ms van Pletsen rendered services from 11 October until 15 December 2021 and that she was entitled to be remunerated accordingly.
- [9] In August 2022 the parties signed a settlement agreement and it was agreed that the Respondents would pay Ms van Pletsen R 80 400 in respect of outstanding remuneration for the months October, November and December 2021, on or before 30 September 2022.
- [10] The Respondents accordingly made payment to Ms van Pletsen but in the amount of R 48 831, instead of R 80 400, as per the settlement agreement. No further payment was made and on 26 January 2023 the Applicants filed an application in terms of section 158(1)(c) of the LRA for an order that the settlement agreement be made an order of Court and for the payment of the outstanding amount of R 31 568.
- [11] The Applicants' case is that the Respondents failed and/or refused to comply with the terms of the settlement agreement by failing to pay Ms van Pletsen the full amount of R 80 400.
- [12] In opposing the application, the Respondents stated that Ms van Pletsen was paid R 48 831, prorated to the days she rendered her services from 11 October until 15 December 2021. Mrs Gouws was granted unpaid leave for 48 days and Ms van Pletsen was paid for the 48 days she was appointed as a substitute educator. The Respondents deny that Ms van Pletsen is entitled to a salary of R 80 400 and submitted that the said amount was erroneously stated in the settlement agreement. Ms van Pletsen was paid for the services she rendered and she is not entitled to R 31 568 more and the Respondents cannot pay an amount which is incorrect.

- [13] The Respondents also filed a counterclaim, wherein it is averred that the amount agreed to by the parties in the settlement agreement was incorrect and that it was agreed to by the Respondents in error. The Respondents explained that they were labouring under the incorrect belief that Ms van Pletsen was correct in asserting that she was entitled to three months' full pay for October to December 2021, when in fact she was only entitled to be paid for the period 11 October until 15 December 2021.
- [14] In the counterclaim the Respondents seek an order that the amount of the settlement agreement be amended from R 80 400 to R 48 831, that it be declared that the amount of R 48 831 was made in full and final settlement of the Applicants' claim and that Ms van Pletsen was paid in full all the monies due to her, alternatively that the settlement agreement be declared void on the grounds of a mistake.
- [15] The Applicants opposed the counterclaim. It is not for this Court to decide the merits of the counterclaim and the parties should approach the registrar to enrol the counterclaim for adjudication, should they wish to pursue it.

Analysis

- [16] Section 158(1)(c) of the LRA provides that this Court may make any arbitration award or any settlement agreement an order of the Court. The Court has a discretion in this regard.
- [17] In *Fleet Africa (Pty) Ltd v Nijs*[2] the Labour Appeal Court (LAC) relied on the earlier LAC decision in *Greeff v Consol Glass (Pty) Ltd*[3](Greeff) and reiterated that section 158(1)(c) must be read with and subject to section 158(1A). Properly interpreted, the Labour Court may make any arbitration award an order

of court and may only make settlement agreements which comply with the criteria stated in section 158(1A) orders of court. A settlement

agreement that may be made an order of court in terms of section 158(1)(c) must (i) be in writing, (ii) be in settlement of a dispute, (iii) the dispute must be one that the party has a right to refer to arbitration or to the Labour Court for adjudication in terms of the LRA, and (iv) the dispute must not be of the kind that a party is only entitled to refer to arbitration in terms of sections 22(4), 74(4) or 75(7).

- [18] In *SA Post Office Ltd v Communication Workers Union on behalf of Permanent Part-Time Employees*[4] (SAPO) the LAC held that:

'The purpose of making a settlement agreement or an arbitration award an order of court is to enforce compliance with the agreement or the award. The agreement or the award must therefore be unambiguous and unequivocal and not open to any dispute. This does not mean that an award or agreement that provides for payment of salary or wages for a certain period is not clear and precise. The parties could know or easily ascertain by having regard to documentation like payslips or an independent accounting exercise what the amount is (although ideally the

amount should be clearly set out to avoid unnecessary delays and expensive exercise to ascertain the exact amount due). What all this means is that before the Labour Court will grant an order sought in terms of s 158(1)(c) of the LRA it must be satisfied that, at the very least:

- (i) the agreement is one which meets the criteria set in s 158(1)(c) read with s 158(1A) of the LRA, and if it is an award, that it satisfies the criteria set in s 142A of the LRA;
- (ii) that the agreement or award is sufficiently clear to have enabled the defaulting party to know exactly what it is required to do in order to comply with the agreement or award; and
- (ii) there has not been compliance by the defaulting party with the terms of the agreement or the award.'

[19] I will consider the criteria as set out in Greeff in turn. A settlement agreement that may be made an order of court must firstly be in writing. The Applicants presented a written document, signed by the parties as the agreement to be made an order of Court.

[20] Second, it must be in settlement of a dispute, thus it must have as its genesis a dispute, and thirdly must it be one that the party has a right to refer to arbitration, or to the Labour Court for adjudication, in terms of the provisions of the LRA. I am satisfied that the settlement agreement was concluded in settlement of a dispute that was referred to the Labour Court for adjudication.

[21] However, it does not follow that the settlement agreement should be made an order of Court, as this Court has to exercise its discretion in that regard. In SAPO[5] the LAC held that:

'Once the Labour Court is satisfied with all of the above then it must, nevertheless, exercise its discretion whether to grant or refuse the order. In exercising the discretion, the court must take relevant facts and circumstances into account, such as are necessary to satisfy the demands of the law and fairness. Necessarily, each case must be decided on its own facts and circumstances. There is, otherwise, no closed list of factors to be taken into account.'

[22] In Greeff[6] the LAC held that:

'It is noteworthy that s158(1)(c) does not provide that the Labour Court is obliged to make a settlement agreement an order of court. So that even if a settlement agreement complies with the criteria's stated in s158(1A), the court may, nevertheless, in the exercise of its overarching discretion decide not to make it an order of court. Section 158(1)(c) provides that the Labour Court 'may' make it an order of court. This means that the Labour Court has a discretion in that regard, which it would have to exercise in a judicial manner, taking into account all the relevant facts and circumstances.'

[23] In *Eke v Parsons*,[7] the Constitutional Court considered whether a settlement agreement should be made an order of Court and held that:

[25] This in no way means that anything agreed to by the parties should be accepted by a court and made an order of court. The order can only be one that is competent and proper. A court must thus not be mechanical in its adoption of the terms of a settlement agreement. For an order to be competent and proper, it must, in the first place “relate directly or indirectly to an issue or lis between the parties”. Parties contracting outside of the context of litigation may not approach a court and ask that their agreement be made an order of court...

[26] Secondly, “the agreement must not be objectionable, that is, its terms must be capable, both from a legal and a practical point of view, of being included in a court order”. That means, its terms must accord with both the Constitution and the law. Also, they must not be at odds with public policy. Thirdly, the agreement must “hold some practical and legitimate advantage”. [Footnotes omitted]

[24] This Court has a discretion to make a settlement agreement an order of Court and in exercising that discretion, the relevant facts and circumstances must be taken into consideration, such as are necessary to satisfy the demands of the law and of fairness.

[25] Taking the relevant facts into account and considering the demands of law and fairness, this Court is not inclined to make the settlement agreement an order of Court.

[26] A settlement agreement could be made an order of Court, if the agreement is unambiguous and unequivocal and not open to any dispute. In casu there is a material dispute as to the amount due and the terms of the settlement agreement in respect of the Respondent’s obligation to pay Ms van Pletsen. Ms van Pletsen’s case is that she is entitled to be paid R 80 400, as being her remuneration for the full three months of October to December 2021. The Respondents’ case on the other hand is that Ms van Pletzen is only entitled to be paid for the period 11 October to 15 December 2021 and that the amount she is entitled to, was already paid to her. Ms van Pletsen’s entitlement to the full amount and the Respondents’ obligation to pay her R 80 400 are issues in dispute, to such an extent that the Respondents has filed a counterclaim to rectify the amount recorded in the settlement agreement on the ground that it was agreed to in error.

[27] The settlement agreement is open to dispute and an application to deal with the rectification of the agreement, alternatively for it to be declared void on the grounds of a mistake is pending before this Court. The sum to be paid to Ms van Pletsen is a material issue in respect of which there is a material dispute.

[28] The Applicants therefore did not cross the hurdle to show that the settlement agreement is not open to any dispute, which they are required to cross in order for the settlement agreement be made an order of Court.

[29] It follows that this application has to fail.

[30] In instances where a settlement agreement is open to dispute, the parties are not left without remedies, but making such an agreement an order of Court, is not a competent remedy.

Costs

[31] Costs should be considered against the requirements of the law and fairness.

[32] This Court has a wide discretion in awarding costs and in my view this is a matter where the interests of justice will be best served by making no order as to costs.

[33] In the premises I make the following order:

Order:

1.The application in terms of section 158(1)(c) of the Labour Relations Act is dismissed;

2.There is no order as to costs.

Connie Prinsloo

Judge of the Labour Court of South Africa

Appearances:

On behalf of the Applicant: Ms N Ras from Solidarity On behalf of the Respondents: Advocate K Motholo Instructed by: State Attorney, Bloemfontein

[1] Act 66 of 1995, as amended.

[2]

(2017) 38 ILJ 1059 (LAC).

[3] (2013) 34 ILJ 2835 (LAC).

[4]

(2014) 35 ILJ 455 (LAC) at para 22.

[5] Id fn 4 at para 22.

[6] Id fn 3 at para 19 – 21.

[7] 2016 (3) SA 37 (CC) at paras 25 – 26.

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