

SOUTH AFRICA / JUDGMENT

South African Municipal Workers Union and Others v City of Johannesburg Metropolitan Municipality (JA 48/10) [2013] ZALAC 4; (2013) 34 ILJ 1944 (LAC) (21 February 2013)

[2013] ZALAC 4

COURT

Labour Appeal Court

BEFORE

Waglay, Leeuw, Murphy

CASE / FILE NUMBER

JA 48/10

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REPUBLIC OF SOUTH

AFRICA

THE LABOUR APPEAL

COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case no: JA 48/10

In the matter between:

SOUTH AFRICAN

MUNICIPAL WORKERS' UNION

.....First

Appellant

TE CHAANE & 31

OTHERSSecond

and further Appellants

and

CITY OF JOHANNESBURG

METROPOLITAN

MUNICIPALITY

.....Respondent

Heard: 10 May 2012

Delivered: 21 February

2013

Summary: Rectification

of a settlement agreement- whether it was the intention of the parties to continue with the payment of the “loco allowance”

in addition to the new salary package.- onus on

appellants to adduce evidence supporting their entitlement to rectification- appellant failing to present such evidence- Appeal dismissed.

JUDGMENT

WAGLAY AJP.

Introduction

- [1] The issue in this appeal is whether the appellants are entitled to rectify the agreement concluded between the first appellant and the respondent so as to reflect that the second to further appellants (hereafter “the employees”) would continue to receive as part of their remuneration an allowance referred to as a “locomotion allowance”.

Background

- [2] The employees were promoted from the positions of superintendents to the positions of chief superintendents in the respondent’s Metropolitan Police Department. The new positions carried with them an all-inclusive remuneration package and a motor vehicle was no longer required to carry out the duties attached to the new position. The employees were therefore required to return the motor vehicle supplied to each of them by virtue of their past positions.
- [3] After taking up their new positions with the all-inclusive remuneration package, the employees formed the view that their promotion placed them in a worse financial position. They thus made proposals to the respondent to be paid a “special locomotion allowance”. This allowance would ostensibly fund the purchase of a motor vehicle by each of the employees.
- [4] The respondent investigated the employee’s complaint and sought advice from Human Resources Consultants. The recommendation it received was that the employees be paid a locomotion allowance (“loco allowance”) of R6000.00 per month to compensate for the loss of their “company motor vehicle”. The recommendation was placed before the respondent’s city manager, Mr. Moloi. Mr. Moloi was of the view that the proposal was reasonable and decided that it be implemented. He sent a letter to this effect to Mr. Ngcobo who was the chief of the Metropolitan Police Department and the employees’ immediate superior. Mr. Ngcobo was unhappy with this proposal and met with Mr. Moloi to explain that on a consideration of all the facts and circumstances relating to the employees promotion a car allowance should not be paid to the employees. According to Mr Ngcobo, there were principally two reasons why the respondent should avoid paying the employees a car allowance: (i) because the employees did not require a motor vehicle to discharge their duties as chief superintendents; and, (ii) because the employees were aware at the time of their promotional appointment that they would only receive an all inclusive package and no

car allowance or a car to carry out their duties. Mr Ngcobo did however suggest that the employee rather be given an increase in their salary of about R11 500.00 per annum. Mr. Moloi accepted Mr Ngcobo's reasons and suggestions and rescinded his decision to pay the employees a car allowance, and recommended an increase of R11 750.00 per annum for each of the employees.

- [5] The appellants were of the view that because Mr. Moloi had initially agreed to pay them a car allowance of R6000.00 per month, his withdrawal thereof constituted an unfair labour practice. They thus raised a grievance against the respondent. The parties failed to resolve the dispute which was then referred to the relevant Bargaining Council first for conciliation and thereafter for arbitration.
- [6] The award issued by the arbitrator was to the effect that the respondent should pay to each of the employees the sum of R6 000.00 per month as a car allowance. The respondent, dissatisfied with the award, applied to have it reviewed and set aside in the Labour Court. The Labour Court set aside the award for various reasons and referred the dispute back to the Bargaining Council to be arbitrated afresh. A new arbitration was held and an award similar to one previously made was handed down.
- [7] The respondent again applied to the Labour Court to review and set aside the new award.
- [8] While the dispute was going through its various stages, to appease the dissatisfaction within the respondent's metropolitan police service, the respondent made all kinds of attempts to address the issue. The one constant was that the respondent was not prepared to pay a car allowance to the employees. One of the reasons for adopting this view was respondent's fear of opening the "flood gates", as every employee who did not need a vehicle to discharge his/her duties would then claim or demand a car allowance. The respondent attempted to accommodate the employees' demand/grievance initially (as recorded above) by increasing their annual salary by R11 750.00 (about R1000.00 per month) thereafter by increasing their salary yet again by a further R4 800.00 per month. Also in order to make the salary package more "tax-efficient", the respondent agreed to allow a portion of their salary to be labelled a car allowance. This meant that although the employees did not receive a car allowance their payslip reflected a basic salary and a car allowance (referred in their payslip as a "loco allowance"). The car allowance attracts a lower tax rate than the normal salary hence the employee received a benefit in the form of getting extra cash by paying less tax on their salary.
- [9] The result was that in attempting to accommodate the employees' complaint about being financially worse off after accepting their promotions, the respondent gave them certain increases to address their complaint (this amounted to about R5 800 per month) and allowed them to structure their remuneration package in a way that would give the employees an additional benefit.
- [10] By June 2007, the salaries of the affected employees were structured as follows:

29 employees: salary component R17886.44 loco allowance R6835.00

1 employee: salary component R16488.01 loco allowance R7303.22

1 employee: salary component R21190.16 loco allowance R5673.00

1 employee: salary component R24958.37 loco allowance R6000.00

[11] The total remuneration package of the 32 employees thus varied from R23 791.23 to R30 958.37 per month or R285 494.76 to R371 500.44 per annum.

[12] By June 2006, it had been five years since the dispute was raised and the end through the legal process still seemed nowhere in sight. The respondent's application to review and set aside the second arbitration award had also hit a serious obstacle. The record of the arbitration proceedings could not be found and the parties had to get together to reconstruct the record. By this time the respondent's city manager, Mr. Moloi, was replaced by one Mr. Mavela Dlamini and everyone was now desirous of resolving this long outstanding dispute.

[13] Negotiations were held between the parties but not a single piece of paper evincing a minute of a meeting between them was presented to the Court.

[14] A settlement agreement was eventually concluded. This agreement once and for all, settled the dispute relating to the locomotion/loco/car allowance for the employees. The relevant parts of the agreement record the following:

'MEMORANDUM OF AGREEMENT AND SETTLEMENT'

Entered into between:

City of Johannesburg Metropolitan Municipality

And

South African Municipal Workers Union

(Jointly referred to as the Parties)

Whereas the South Africa Municipal Workers Union, (SAMWU) has on behalf of their members made demands on the City of Johannesburg per a petition of demands of the 23 May 2006; and

Whereas there are material issues that have been referred to the Labour Court relating to the payment of allowances to 32 employees. Mainly Chief Superintendents, in the service of the City at Johannesburg Metropolitan Police Department have been in dispute with the city for a long time.

Now therefore

The parties herein confirm that they have each been legally and appropriately mandated to enter into the said settlement agreement.

The parties therefore wish to settle the disputed matters, being the intended review by the Labour Court and other demands petitioned to the city, as follows:-

1.to 6.

7.

The parties herein resolve and agree to settle the dispute regarding the demand for review of remuneration of Chief Superintendents as follows:

8.

The City pays in full and final settlement of the dispute an amount of R5.8m (five million eight hundred thousand Rand) including previous payments and the Chief Superintendents will be placed at a salary package of R290.000 per annum effective from the 1 March 2006 (which translates to R24 166.66); and further that no additional allowance in respect of the disputed locomotion allowance shall be considered or paid to the said category of employees. (my emphasis)

That on receipt of the aforementioned payment both the City and the Union agrees that this will constitute a full and final settlement between the parties.

The parties agree that the original award will be superceded and nullified by this signed settlement (and that neither of the parties will not use the award or this agreement as a precedent for other cases that may arise).

It is further agreed that, this settlement agreement may be made an order of court in terms of section 158 of the LRA No. 66 of 1995 as amended.

No representation other than what is contained herein will be binding unless reduced to writing and signed by the two parties.

No variation, amendment or deletion will be binding on either party unless reduced to writing and signed by the two parties.

9.

That notwithstanding anything to the contrary, the parties agree that the employees affected shall waive and have no further recourse for any differentiated salaries, benefits or allowances on the basis such as experience, qualifications length of service etc given the single benchmark envisaged and agreed to herein, unless expressly agreed to as part of the natural progression of staff in future years.

10. to 13.

[Signed by both parties]'

- [15] According to the respondent, in terms of the agreement the employees would be paid a lump sum amount in respect of car allowance, and would receive a new monthly all-inclusive salary of R24 166.66 with no car allowance. The employees aver that, other than the lump sum, the agreement in fact provides for a monthly salary of R24 166.66 plus the monthly “loco allowance” in the amount as reflected on their payslips prior to the conclusion of the agreement.
- [16] The respondent refused to pay the employees the monthly loco allowance and the appellants thus instituted an action against the respondent for payment thereof. The appellants claimed that the respondent was in breach of the agreement by failing to pay the employees their monthly loco allowance. The appellants further contended, that in the event it is found that the agreement does not provide for the continued monthly payment of their loco allowance, then the appellants seek rectification of the agreement to reflect the respondent’s obligation to pay the monthly loco allowance as this was the common intention of the parties at the time the agreement was concluded.

The Labour Court

- [17] The Labour Court (Van Niekerk J) dismissed the action on the grounds that the respondent had not breached the agreement and had, in fact acted in accordance with the terms thereof. On the alternative claim for rectification, the Labour Court held that the appellants had failed to establish that the agreement did not reflect the common intention between the parties and refused rectification of the agreement.
- [18] The appellants’ application for leave to appeal was refused, as was its petition to the Judge President of this Court. The appellants’ leave to appeal to the Supreme Court Appeal (SCA) was partially successful in that the SCA granted the appellants leave to appeal to this Court only in respect of the appellants’ alternative claim, that of rectification of clause 8 of the agreement.

The Appeal

- [19] What this Court is required to determine is whether the parties had in fact intended, or put differently, had the common intention to pay and receive, in addition to the new agreed salary, the loco allowance which the employees were being paid at the time. In other words, the appellants’ seek to rectify the agreement to reflect a change in the words “salary package of R290 000.00 per annum” to read “a basic salary package of R290 000.00 per annum”.
- [20] An agreement more often is a product of compromise between two or more parties. In most cases, it is embodied in a written document which records the compromise made and is held up as an enforceable deal. The written agreement is therefore conclusive as to the rights and obligations of the parties. Where the rights and obligations set out in the agreement are clear and unambiguous, the rule is that no external factors can play any role in interpreting the terms of the agreement, nor will any evidence be entertained to impose additional or different rights and obligations different to what is clearly understood by a

plain reading of the agreement.¹ A written agreement that is clear and unambiguous stands as an agreement cast in stone which can neither be moved nor can any inroads made into it. Likewise the fluidity of changing conditions and evidence cannot dilute the rights and obligations embodied in a written agreement.

- [21] There are however circumstances where the written agreement, clear and unambiguous as it is, does not record and reflect the true agreement between the parties. Where this is the case the parties are entitled to rectification of the agreement. Generally, where terms that were agreed upon are omitted or, terms not agreed to are added to the written agreement, then a party to the agreement can seek rectification of the written document so that it records and reflects the true and proper agreement that was concluded between the parties.
- [22] In this matter, the appellants seek rectification of the written agreement to reflect that the employees would, in addition to the new salary package of R290 000.00 per annum, continue to receive the amount paid to them as a “loco allowance”, as this was, according to the appellants, the common intention of the parties. The respondent disagrees. The respondent avers that there was no intention on its part to continue making the “loco allowance” payments and that the new salary package of R290 000.00 per annum constituted the all-inclusive package of the employees. According to the respondent, the document as it stands properly reflects the agreement between them.
- [23] The duty falls upon the appellants to satisfy this Court by presenting evidence that can demonstrate in clear and satisfactory manner the contentions made by them to support their entitlement to rectification. In *Bardopoulos and Macrides v Miltiadous*,² it was said:

‘A party seeking to obtain rectification must show the facts entitling him to obtain that relief ‘in the clearest and most satisfactory manner’...and as it is pointed out in *Taylor v Cape Importers* 1938 CPD 362 at p368, where the common intention is to be shown not by any writing but by verbal evidence, the Courts may have great difficulty

in determining whether there was a mistake in the written contract. These cases do not, I consider, require more than a balance of probability in favour of the party seeking rectification but indicate that such a claim is in fact difficult to prove’

- [24] The above dictum was confirmed by the SCA in *Soil Fumigation Services Lowveld CC v Chemfit Technical Products (Pty) Ltd*³ when it was said that:

‘It is a settled principle that a party who seeks rectification must show facts entitling him to that relief ‘in the clearest and most satisfactory manner’ (per Bristowe J in *Bushby v Guardian Assurance Co* 1915 WLD 65 at 71; see also *Bardopoulos and Macrides v Miltiadous* 1947 (4) SA 860 (W) at 863 and *Levin v Zoutendijk* 1979

- (3) SA 1145 (W) at 1147 H-1148A). In essence, a claimant for rectification must prove that the written agreement does not correctly express what the parties had intended to set out therein. (See e.g *Meyer v Merchants’ Trust Ltd* 1942 AD 244 at 253).’

[25] As I have said earlier in this judgment, there is not a single minute setting out the discussions, debates, agreements and disagreements that took place at the various meetings that were held between the parties. The only documents that were presented to the court a quo were:

- (i) the proposals made by the appellants to the respondent to settle the dispute (this document is of little relevance as it purports to be an “unmandated” proposal made by the union); and
- (ii) the document dated 8 June 2006 headed “Proposal to settle dispute: SAMWU obo members vs. City of Johannesburg” (hereafter referred to as the “Mayoral Committee document”). The Mayoral Committee document records the following:

‘1. STRATEGIC THRUST

Service Delivery Excellence and Good Governance

2. OBJECTIVE

The purpose of this report is to obtain approval from the Mayoral Committee to offer a financial settlement to SAMWU in an attempt to resolve a long outstanding dispute.

3. BACKGROUND

The Chief Superintendents in the Johannesburg Metropolitan Police Departments (Herein after referred to as JMPD) are an integral part of management and carry out the responsibility of ensuring that the operations of JMPD continue uninterrupted.

This category of employees raised a grievance with the City represented by the South African Municipal Workers Union, (Hereinafter referred to as SAMWU) relating to payment of loco allowances, which is dealt with in terms of the City’s grievance procedure. Having not resolved this grievance at local level, it was elevated to the City Manger, Who appointed Messrs, Mavuso and Lebelo to deal with this matter in his behalf.

A recommendation was submitted to the City manager in October 2002 to grant the said employees an increase in salary in an attempt to resolve the grievance. However, they remained dissatisfied and declared a dispute and referred the matter for adjudication with the South African Local Government Bargaining Council (Hereinafter referred to as SALGBC) on 28 October 2002.

In line with the SALGBC, the matter was set up for conciliation on 23 February 2003 and remained unresolved. SAMWU then referred the dispute to arbitration, and the matter was arbitrated upon on 30 May 2003 and a default award issued in favour of SAMWU. The City, looking at the adverse implications of the award, applied to the Honourable Labour Court to review the default award and succeeded.

Arising from the successful review, the matter was then arbitrated upon for by another arbitrator, who awarded that the employees be paid R6 000 loco allowance although the nature of their work does not warrant travelling. The City was not satisfied with this award and applied to the Honourable Labour Court to review the arbitration award in anticipation of it settling an adverse precedent. The parties are still waiting for a date on which the review will be heard from the Honourable Labour Court.

In view of the length that his matter has taken and is still likely to take i.e. since 2002, SAMWU submitted a written proposal to the City for consideration in October 2005 which the City acknowledged but was convinced at the time that interests of the City will be best served by not settling the dispute outside the proceedings of the Honourable Labour Court as advised by the City's attorneys.

However, there has been a rethink of this approach as the dispute has affected the morale of the said employees negatively and the longer it takes to resolve this, the more it affects service delivery in JMPD negatively. In line with the new thinking, the Chief of Police, the City manager and Corporate Services met with SAMWU off the record in order to explore their flexibility and whether there is room to settle the dispute without creating a precedent. The off-the-record discussions were positive; hence the City explored various options to propose to SAMWU with a view to settle the dispute.

SCENARIO 1

This scenario is based on the assumption of purely implementing the arbitration award retrospectively, which implies that all the Applicants be paid a locomotion allowance of R6 000.00 retrospective to 28 October 2002, being the date of the dispute referral.

The total cost of implementing the arbitration award retrospectively is R 6 338 339.32

SCENARIO 2

This scenario is based on the assumption derived from the SAMWU proposal where the City would pay the employees a lump sum of R 5,8m once off and then pay them a salary of R290 000.00pa backdated to 1 November 2002.

The total cost of implementing this proposal is R 9 727 690.77

SCENARIO 3

This scenario is based on the assumption that the City pays the Applicants R5.8m as once off only and adjust their salary to R290 000pa from 1 March 2006. In addition, the City proposes that the amount already paid to the employees during 2002 as recommended to the City manager as well as the R4 800 adjustment paid to them in July be deducted from the total payable (my emphasis).

The effect of the proposal in that the City will pay a total of R3 060 991.97 in back pay to the Applicants and place them on a new scale of R 290 00pa going forward at an additional cost of R190 403.39 per month as outlined in Annexure 4. The settlement will be based on the conditions outlined in the draft counter proposal attached hereto as Annexure A; and will be reduced to a written agreement to be signed by the parties prior to effecting any payments.

9. POLICY IMPLICATIONS

The effect of the arbitration award of implementing a loco allowance for employees who are not required to travel is problematic. Hence the City approached the Honourable Labour Court to preserve this important principle (my emphasis)

The proposal in scenario 3 addresses the shortcomings and is viable as it does not create an unsustainable precedent.

10. LEGAL AND CONSTITUTIONAL IMPLICATIONS

None other than those covered in the settlement agreement.

11. FINANCIAL IMPLICATIONS

The financial implications of the proposed settlement are R3 060 991.97 and an additional R 190 403 per month as depicted in this report in scenario 3. A savings in the consolidated City budget has been identified to fund the settlement cost.

12. COMMUNICATION IMPLICATIONS

None

13. ITS IS RECOMMENDED

That the City manager be authorised to negotiate and finalise the said matter in the context of the framework detailed in the body of the report (scenario 3) and with due regard to stabilising the industrial relations environment in the City of Johannesburg.' (the numbering is as appears in the original document).

[26] There is an annexure to the above document which sets out the quantification of the various scenarios. As regards scenario 3 which is the one that relates to this matter, the annexure is divided into nine columns marked A to I.

columns A to C set out the details of the employees;

column D sets out the settlement amount in respect of each of the employees (This being the sum of R181 250.00 to each of the employees amounting to a total of R5.8million);

column E sets out the amount that each of the employees had already received up to the date of settlement. The amount in this column would be deducted from the R181 250.00 reflected in column D (The amount here was the sum of R 85 569.26 made up of the R 11 750.00 per annum and the later addition of R 4800.00 per month paid to the employees in lieu of the car-allowance – see the highlighted portion of scenario 3 as appeared on respondent’s settlement proposal);

column F was the amount which each employee would receive as a lump sum to make up the amount set out in column D (the amount here was the sum of R 95 680.74);

column G shows the “Proposed new basic salary of R290 000.00 per annum” (this column reflects the sum of R 24 166.66 a month);

column H reflects the employees current earnings as it appears on their payslips and did not include the “loco allowance” that they were receiving at the time; and lastly,

column I reflects the increase in salary that each of the employees would be paid in order to earn a salary of R 24 166.66 a month or R 290 000.00 per annum.

finally, at the bottom of the page there is a table which indicates what the settlement would cost the appellant , it records:

Amount F R3 060 991.97

Amount I for 4 months R761 613.56

Grand total 2005/6 R3 822 605.53

[27] The quantification document that was finally attached to the settlement agreement was the same as the above document save for one important change. Column G in the document attached to the settlement agreement was headed “Proposed new total salary of R290 000” and not “Proposed new basic salary of R290 000” as was the case in the quantification document attached to the Mayoral Committee document.

[28] At the trial, Mr Langa gave evidence on behalf of the appellants. His evidence was to the effect that he had a number of meetings, some formal some informal, to resolve this matter. He said that he never raised the issue of the car-allowance at these meetings because when the car-allowance was mentioned the respondent would not engage them in discussions. He said that while the agreement properly recorded the settlement, in essence, the purport of the settlement was that the loco-allowance that the employees were receiving as reflected in their payslips would continue unaffected. There was therefore in his view, no need to deal with that issue in the written agreement. He added, that the appellants and respondent were in agreement with this otherwise it would mean that the appellants had negotiated a reduction in salary as the “loco-allowance” paid to the employees (R6835) was more than the increase (R6280). Furthermore, and reading the settlement agreement with the Mayoral Committee document, it is clear that the respondent envisaged that the new salary structure would lead to an additional costs R190 403.39 per month. Therefore if the “loco-allowance” were to cease it would not lead to additional costs being incurred by the respondent but it

would have led to a saving. This he said demonstrated their view that the “loco-allowance” was not affected by the agreement and that the appellant would continue making that payment.

- [29] Mr Ngcobo, who testified on behalf of the respondent, denied that the negotiations and the ultimate settlement were supposed to leave unaffected the payment of the “loco-allowance”. He said that the negotiations were to resolve the issue of the car-allowance. The R5.8million lump sum and the new salary must be seen in that context. From the outset, the respondent did not want to pay the employees a car allowance, but it was prepared to make payment in its stead to minimise the negative impact the removal of the company car had on the employees’ salaries. He added that the lump sum payment of R5.8million was to take care of the negative impact of the loss of the car, and the new salary of R290 000 per annum ensured that the employees were now at an acceptable level of earning. He said it was never intended that the respondent would continue paying the employees the “loco-allowance” as this would mean that the employees would receive two car allowances: the lump sum and an additional monthly amount. The negotiations would make no sense; because it would then have been cheaper to simply implement the arbitration award. Lastly, his evidence was that the new salary was effective from 1 April 2006 as that is when salary increases generally came into effect and because the agreement was only concluded in July 2006 the employees were to receive back pay for four months (between April to July). The back pay amounted to the sum of R 761 613.56 as reflected in the quantifying document, being the monthly increase of R190 403.39 X4 months.⁴
- [30] Appellants’ argument is that with an arbitration award in their favour there was no reason for them to negotiate a settlement of the dispute which could result in the employees receiving a monthly salary package of a lesser amount than they were receiving prior to the settlement. They had not done so and thus the respondent accepted that the “loco-allowance” paid to the employees would continue. They referred to the Mayoral Committee document and the annexure setting out quantification of the settlement which records that implementing the settlement proposal would add an additional cost of just over R190 403.39 per month in support of the argument.
- [31] The above argument would be compelling but for the fact that it completely ignores the lump sum payment of just over R180 000.00 made to each of the employees. Furthermore, and having regard to the Mayoral Committee document and the quantification attachment, the increases in salary that the employees received, in lieu of the car allowance, originally in the sum of R11750.00 per annum (just under R1000.00 a month) and later a further sum of R4800 per month amounting to about R5800.00 was to be deducted from the lump sum payment. This to my mind means that with the payment of the lump sum, the employees would no longer receive the R5800.00 they had been receiving at the time. Hence, it cannot be said that the settlement resulted in a reduction of the employees’ monthly salary. Furthermore, there is merit in the respondent’s argument that payment of the lump sum and the continued payment of the “loco-allowance” that the employees were receiving

would have meant that the employees would be receiving a double car allowance. It is not probable that this is what the respondents

intended.

[32] With regard to the increased costs of R190 403.39 per month, here again, there is no evidence that this was to be an on-going monthly increase or whether the quantification document was to be read to mean that this costs was to be limited to a period of four months⁵ between the period of the date of implementing the increased salary and the date of the signing of the settlement agreement. Furthermore,

nothing is said as to why or how it came about that the heading of Column G of the quantification document attached to the final

settlement document was “total salary” and not “basic salary” as in the earlier document.

[33] It was further common cause that the respondent was from the outset against paying the employees a car allowance. This is in fact what gave rise to the grievance. The fact that the respondent maintained this view is confirmed in the Mayoral Committee document under the heading “Policy Implications”, which states that the reason why the respondent sought to set aside the arbitration award was because for the respondent “implementing a loco allowance for employees who are not required to travel is problematic”

[34] In the circumstances, the appellants have failed to get off the starting blocks to satisfy this Court that, on a balance of probabilities, both the appellants and the respondent when signing the settlement agreement were of like minds, holding the view that the “loco-allowance” that was being paid to the employees would continue to be paid. The issue of rectification therefore does not arise.

[36] In the result, I make the following order:

‘The appeal is dismissed with costs’.

Waglay AJP

I agree

Leeuw JA

Murphy AJA

APPEARANCES

FOR THE APPELLANTS: Adv B Du Plessis SC

Instructed by Cheadle Thompson & Haysom

FOR THE RESPONDENT: Adv P Kennedy SC

Instructed by Bowman Gilfillan Inc

1Extrinsic evidence can be brought in to deal with issues that do not contradict the terms of the agreement for eg. Whether it is properly signed. See SAI Investments v Van Der Schyff NO 1999 (3) SA 340 (N) see also Telcordia Technologies Inc. v Telkom SA Ltd

[2006] ZASCA 112; 2007 (3) SA 266 (SCA) at paragraph 115.

2 1947

(4) SA 860 (W) at 863-4.

3 2004

(6) SA 29 SCA para 2 at 38J to 39B.

4See paragraph 26 above.

5At the bottom of the quantification document when costing the total settlement costs the sum of just over R190 000 was calculated only over a period of four months.

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