

CASE NO : D353/2000 Revised/Reportable
DATE : 1 March 2001
RAMLALL HARRISAWAK versus LA FARGE (SOUTH AFRICA)

JUDGMENT

PILLAY J

- [1] This is an application in terms of section 158(1)(c) of the Labour Relations Act No 66 of 1995, (the "LRA") to have an oral settlement agreement made an order of court. There are substantial disputes of fact. However, the parties are agreed that the points raised *in limine* can be dealt with on the facts that are either common cause or on the basis of the applicant's case.
- [2] The first point *in limine* is that the settlement agreement was not entered into under the auspices of the Commission for Conciliation, Mediation and Arbitration (CCMA). Hence, it was submitted, the Court does not have jurisdiction.
- [3] It is common cause that the applicant had referred his dismissal dispute to the CCMA for conciliation which was unsuccessful.
- [4] Before arbitration, the parties entered into a settlement. The terms of the settlement on the applicant's version was that the applicant would be employed on a twelve-month fixed term contract. The settlement occurred without the direct intervention of the CCMA. In the circumstances, Mr Lawrence submitted for the respondent, it was a private agreement not determined by the CCMA at conciliation or arbitration and should therefore be enforced in the civil courts as the cause of action arose from the agreement itself and not from the employer/employee relationship. (Du Toit *et al*, 3rd edition, at page 582.) Support for this view cannot be found in section 158(1)(c) which reads:
"The Labour Court may make any arbitration award or any settlement agreement other than a collective agreement an order of court."
- [5] The interpretation that Mr Lawrence seeks to place on section 158(1)(c) is

restrictive and not justified by the use of the words "any" before the word "settlement" in the section. Furthermore, the settlement agreement relates to the employment relationship. The stated purpose of the LRA is to provide effective dispute resolution in labour disputes. That includes the provision of services by personnel competent and qualified to resolve labour disputes. Moreover, the dispute at the time the settlement agreement was entered into was pending as an arbitration before the CCMA.

[6] In the circumstances, the Court has jurisdiction to hear a dispute relating to the enforcement of the settlement agreement about an employment dispute concluded without the direct intervention of the CCMA.

[7] As a result of the settlement agreement, the applicant tendered his services which were accepted. Thereafter, the contract of employment was terminated. The facts that led to the termination of the contract are in dispute. Mr McGregor conceded that it was immaterial who was responsible for the subsequent breach of the agreement for the purposes of determining the second point *in limine*.

[8] The second point *in limine* was that the application falls to be dismissed as, on the applicant's version, he tendered his services which were accepted; what occurred thereafter was a new cause of action.

[9] On this ground I find in favour of the respondent. In the circumstances the application is dismissed.

[10] The Court has considered the submissions relating to costs. The points raised *in limine* are novel. The applicant was *bona fide* in bringing this application. In the circumstances, there is no order as to costs.

JUDGE PILLAY

IN THE LABOUR COURT OF SOUTH AFRICA Revised/Reportable

HELD AT DURBAN

Case No D353/2000

In the matter between:

RAMLALL HARRISAWAK

Applicant

and

LA FARGE (SOUTH AFRICA)

Respondent

PRESIDING OFFICER

JUDGE PILLAY

FOR APPLICANT
Deney's Reitz Inc

MR MacGREGOR

FOR RESPONDENT
Garlicke & Bousfield Inc

MR LAWRENCE

**JUDGMENT
1 MARCH 2001**

**SNELLER RECORDINGS (PTY) LTD
DURBAN**

TEL:- 031-266-5452

FAX:- 031-266-5459