IN THE LABOUR COURT OF SOUTH AFRICA

REPORTABLE

HELD AT JOHANNESBURG

Case No. **J5981/01**

In the matter between:

CHILOANE, JARLOS AND OTHERS
Applicant

and

REMA TIP TOP INDUSTRIAL (PTY) LTD
Respondent

J U D G M E N T

NTSEBEZA AJ:

1. This is an application in which there is a claim of unfair retrenchment by the Applicants, which they allege occurred on 15 June 2001. The Applicants deny accepting a voluntary package and allege that any monies that they took were taken on a without prejudice basis. They deny that they signed any documents in full and final settlement of their claims. In

Court the Applicants' representative, Mr Luthuli, requested the Court to allow the Applicants' to lead oral evidence of what happened to them in relation to their alleged retrenchment. He was keen to demonstrate that there was no valid agreement that had been arrived at between the parties and that the effort by the Respondent to raise a point *in limine*, to that effect, was a ploy on his part to prevent the Court from hearing the Applicants' case.

2. The Respondent on the other hand has raised a point *in limine* in which it argues that there has been a consensual termination of the employment relationship since the Applicants entered into written agreements with Respondent, in full and final settlement of all claims, and accepting a voluntary retrenchment package. Ms da Costa, who appeared for the Respondent, argued that there are contracts in place, which remain in place until they have been vitiated by the Applicants. The Applicants cannot seek to withdraw from those contracts without bringing an application to set the agreements aside. Further, the voluntary packages which were received by the Applicants, so argued Ms da Costa, have not been tendered by them.

3. Ms da Costa submitted that it was common cause between the parties that the Applicants had attended meetings with the Respondent on 10, 17 and

29 May 2001 and on 5 and 12 June 2001. The Applicants had been represented by one Mkhize and one Luthuli at the meetings in May and in June. The minutes of these meetings, which form part of the bundle, were admitted by both parties to be a true reflection of what occurred at the meetings. Ms da Costa submitted that the Applicants admitted that they had attended at the offices of the Respondent on 14 June 2001 where all of them, except Mr Chiloane, signed the written agreements in full and final settlement in respect of voluntary retrenchment. Chiloane had signed the agreement but had included the words, **"I am not satisfied. But I am forced due to lay-off. (*sic*!) I will like to go ahead, …."**. The Respondent did not accept this qualification whereafter on 18 June 2001 Chiloane returned and signed the agreement unconditionally and without any complications. Ms da Costa submitted that the Applicants, -and this was common cause according to her, -had accepted the voluntary package which offered two weeks per completed year of service, as opposed to one week per completed year of service as had been offered during the two meetings between the parties.

4. The Applicants had received the following voluntary retrenchment packages which included notice pay and leave pay, according to the submission by Ms da Costa which she argued was common cause:-

Jarlos Chiloane	-	R 5 415,32
Bongani Mgeza	-	R18 706,68
Leonard Makhathini	-	R10 881,47
Lloyd Manmyatha	-	R 7 878,76

5. Insofar as the Applicants were now seeking to allege that they were **"forced"** to sign the said written agreements and that they should therefore not be bound by them, and insofar as they have not tendered the return of their retrenchment packages received in terms of these agreements that had been signed, and insofar as the Applicants have not alleged how they were **"forced"** to sign the agreements, Ms da Costa submitted that the only inference that flows from these circumstances is that the parties had entered into valid binding agreements that terminated their employment relationship by consent as between the parties. There was no question of an unfair retrenchment and the written agreements were in full and final settlement of any and all claims against the respondent arising out of the mutual termination of their employment relationship. Insofar as an employee who validly agrees to the termination of his employment contract cannot be said to have been dismissed, the Applicants have no case in respect of unfair retrenchments since no dismissal as envisaged by section 186 of the Labour Relations Act No. 66 of 1995 ("the Act") has taken place. On that basis, Ms da Costa argued

that the point *in limine* must be upheld. For authority for the proposition that an employee who validly agrees to the termination of his employment contract cannot be said to be dismissed, I was referred to United Tobacco Co Ltd v Baudach 1997 [18] ILJ 506 [LAC].

6. Ms da Costa also referred to Ackrow and Another v Northern Province Development Corporation [1998] BLLR 916 [LC] at 920F-G, where my sister Ms Justice Revelas stated the following:

"The employment relationship between the parties in this matter was terminated by agreement. The applicants were not dismissed and therefore there was no termination of service for operational requirements."

In another case referred to by Ms da Costa, Kynoch Feeds (Pty) Ltd v CCMA and Others [1998] 19 ILJ 836 [LC] at 849G-H my sister Revelas again stated that an agreement between an employer and an employee to terminate a contract of employment is not a **"dismissal"** as defined by section 186(a) of the Act, or in any other sense.

7. Having read and perused all the documents and the points not in dispute not having been contested by Mr Luthuli to be in dispute, I am satisfied

that the Applicants fully and voluntarily entered into and signed the written agreements terminating their employment relationships and that they accepted the voluntary retrenchment packages. I reject the allegation that they were **"forced"** to sign the written agreements. I accept the submission that they were all aware of their rights when they agreed to accept the voluntary retrenchment packages. In the circumstances, the point *in limine* succeeds. The application is dismissed. None of the parties argued for costs even though in the pleadings the Respondent asked for a punitive costs order against the Applicants jointly and severally. Since that was not pursued in this Court, I will not order any costs. There is therefore no order as to costs.

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D B NTSEBEZA

ACTING JUDGE OF THE LABOUR COURT

Date of hearing: 24 July 2002

Date of Judgment: 27 August 2002

For the Applicants: **MR LUTHULI**

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