

IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT BRAAMFONTEIN)

Case No. JS 591/02

In the matter between:

PATRICK C SING LI

Applicant

and

Omega Holdings Ltd

First Respondent

**SHANGHAI INDUSTRIAL INVESTMENT (HOLDINGS)
COMPANY LIMITED**

Second Respondent

JUDGMENT

1. The Applicant in this matter has instituted proceedings in this Court against the Respondents, alleging that he was unfairly dismissed for operational requirements and, in addition, the Applicant has a number of money claims against the Respondents.
2. It is in connection with these latter claims that the Respondents take issue, *in limine*, contending that this Court lacks jurisdiction to entertain these claims.

The basis for this contention is that this Court only has jurisdiction to entertain the claims in question if they have been conciliated by the CCMA. Because it is common cause that they were not, the contention is that this Court accordingly lacks jurisdiction.

3. The claims in question are set out in paragraphs 16, 17, 18 and 19 of the Statement of Case. I do not intend to repeat what is pleaded.
4. The Respondents say that Section 74 (2) of the Basic Conditions of Employment Act ("the BCEA") is applicable to the aforesaid claims (which I shall refer to from now on as the ("money claims")). If the Respondents are right then there is a difficulty for the Applicant because none of the money claims have been conciliated in terms of the Labour Relations Act.
5. The applicable portions of Section 74 (2) of the BCEA reads as follows :

"If an employee institutes proceedings for unfair dismissal, the Labour Court or the Arbitrator hearing the matter may also determine any claim for an amount that is owing to that employee in terms of this Act if –

a *the claim is referred in compliance with Section 191 of the Labour Relations Act, 1995; ..."*

6. It was submitted by Counsel for the First and Second Respondents that even if the Applicant labels his claims "*contractual*" these claims would only be enforceable in this Court, by virtue of Section 77 (3) of the BCEA and therefore, in the premises, the Applicant's claims "*quite obviously*" constitute claims in terms of the BCEA, within the meaning of Section 74 (2) of the BCEA.
7. I do not agree that a reliance on Section 77 (3) of the BCEA in order to invoke jurisdiction automatically means that the claims in question are therefore claims in terms of the BCEA within the meaning of Section 74 (2) of the BCEA. In fact, Section 77 (3) says precisely the opposite. The section reads :

"The Labour Court has concurrent jurisdiction with the Civil Courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract" (my underlining).

8. Quite clearly then the Labour Court has concurrent jurisdiction to determine any matter concerning a contract of employment and it does not matter that the issue in question does not involve a basic condition of employment covered by the BCEA. This is consistent with the provisions of Section 4 of the BCEA which provides that a basic condition of employment constitutes a term of any contract of employment except to the extent that :

"... a term of the contract of employment is more favourable to the employee than the basic condition of employment".

Therefore the only requirement in order to found jurisdiction is that the matter must relate to a contract of employment.

9. Section 74 (2) of the BCEA is therefore, in my opinion, not necessarily of application to all matters in respect of which the Labour Court has concurrent jurisdiction with the High Court in terms of Section 77 (3) of the LRA. That is so because Section 74 (2) is only of application where, firstly, the claims are linked to proceedings for unfair dismissal and, secondly, where the claim is for :

"an amount that is owing to that employee in terms of this Act ...".

10. In this matter the money claims are linked to a dismissal, but the Applicant does not plead reliance on the BCEA in order to found those claims. The money claims are founded in the contract alleged between the parties. It may be so that some of these claims also straddle certain sections of the BCEA but the pleader places no reliance on those sections in order to found the money claims. Accordingly, the Applicant does not plead that these claims are in respect of amounts due to the Applicant in terms of the BCEA. The claims all arise and are so claimed, so the Applicant says, in terms of a contract of employment between the parties. Therefore, in my opinion, Section 74 (2) is of no application to these claims.
11. Section 77 (3) of the Labour Relations Act gives this Court a concurrent jurisdiction with the Civil Courts to *"hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract"*.
12. This Court therefore has jurisdiction to entertain those claims set out in paragraphs 16, 17, 18 and 19 of the Statement of Case by virtue of Section 77 (3) of the BCEA. That is, in fact, the section pleaded by the Applicant as

founding jurisdiction in regard to these claims.

13. The only reference to any obligation to conciliate a claim before the Labour Court in Part B of Chapter 10 of the BCEA is to be found in Section 74 (2). It follows that if Section 74 (2) is not applicable then there is no obligation to conciliate the claim because the Labour Court has jurisdiction in terms of Section 77 (3) of the BCEA.

14. In the result the Respondents' points *in limine* are dismissed with costs.

DATED at DURBAN this 25th day of APRIL 2003.

N P WOODROFFE AJ