REPUBLIC OF SOUTH AFRICA

Reportable
Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

Case no: C 666/11

In the matter between:

MARYKA GREEFF **Applicant**

and

CONSOL GLASS (PTY) LTD **Respondent**

Heard: **25 November 2011**

Delivered: **2 December 2011**

JUDGMENT

STEENKAMP J

Introduction

1] This is an application to make a settlement agreement an order of court in

terms of s 158(1)(c) of the Labour Relations Act[1] (the LRA).

Background

2] Maryka Greeff, the applicant, was employed by the respondent as an accounts manager.

3] The respondent embarked on a process in terms of section 189 of the LRA to consult with staff in contemplation of dismissals for operational requirements pursuant to a restructuring process.

4] On 8 October 2010, and while she was still employed by the respondent, the applicant ("the employee") entered into a written agreement with the respondent. That agreement was encapsulated in a letter that stipulated, *inter alia*, the following:

"1. The effective date of termination of your contract of employment will be 30 November 2010.

2. Subject to you being able to conclude the handover duties assigned to you during this period, you may not be required to work the contractual one month's notice period during the month of November and your last day at the office will be 31 October 2010. Should you however not be able to finalise these duties as required, you may be required to work part of or the entirety of your notice period."

5] The letter then sets out a severance package and other benefits due and stipulates that it is in full and final settlement of all claims that the employee may have, and that it precludes her from disputing the termination of her employment at the CCMA or this Court. She countersigned the agreement on 12 October 2010.

6] The employee subsequently asked to be released from her duties as from 18 October 2010. It is in dispute whether she was due to take up other employment as from that date or whether she merely needed to go to an interview for other employment; what is common cause, though, is that the respondent insisted that she work out her notice period; and that the

1 Act 66 of 1995.

respondent wrote to her on 18 October 2010 to place on record that it had accepted her resignation that she allegedly tendered on 12 October. She denies that she resigned and says that the respondent breached the settlement agreement. The respondent, on the other hand, alleges that the employee had resigned prematurely; that she was, therefore, in breach of the agreement; and that it no longer needed to pay her any severance pay.

7] It is common cause that there was a settlement agreement and that the respondent has not honoured it. The reasons therefor are, as explained above, that the respondent avers that the employee is in breach of the agreement.

8] The employee now seeks to have the settlement agreement an order of court in terms of s 158(1)(c).

Legal framework

9] Section 158(1)(c) reads as follows:

> "The Labour Court may –
>
> (c) make any arbitration award or any settlement agreement an order of the Court."

10] The same parties have previously approached this court in a review application concerning the application of s 142A of the LRA. In *Consol Glass (Pty) Ltd v CCMA & Others*[2] [*Consol Glass (1)*] I came to the conclusion that, in terms of that section, a settlement agreement such as this one could not be made an arbitration award by the CCMA. In this regard I aligned myself with the judgment of Van Niekerk J in *Molaba & others v Emfuleni Local Municipality*[3] and distinguished the facts of this case from those in *Tsotetsi v Stallion Security (Pty) Ltd*[4] and *Dell v HPD*

2 [2011] ZALCCT 22.

3 [2009] 7 BLLR 679 (LC).

4 (2009) 30 *ILJ* 2802 (LC).

Construction.[5]

11] Mr *de Kock*, who appeared for the employee in both cases, argued that my earlier decision in *Consol Glass (1) (supra)* did not mean that this court would not have jurisdiction to entertain the application in terms of s 158(1)(c). That is so because of the clear language in s 142A that I had to consider in the review application, ie that the CCMA may make any settlement agreement in respect of "any dispute that has been referred to the Commission" an arbitration award. The quoted clause does not form part of s 158(1)(c) and therefore, argued Mr de Kock, this court is not restricted from making the agreement an order of court in the same way that the CCMA is precluded from making it an arbitration award. In fact, he argued, the words "any arbitration award" call for a broad interpretation.

12] I agree that the language of s 158 is not as clear as that of s 142A. Yet I remain in agreement with the interpretation adopted in *Molaba.* As Van Niekerk J noted with reference to the earlier judgment in *Harrisawak v La Farge (SA)*[6]:

> "[8] The *Harrisawak* judgment was delivered before the 2002 amendments to the LRA were promulgated. Those amendments introduced section 142A and deleted the qualification in section 158(1)(c) that related to collective agreements. After the 2002 amendments, a settlement agreement concluded in the circumstances of *Harrisawak* can be made an arbitration award in terms of section 142A (because the dispute had been referred to the CCMA for conciliation) and it would not be necessary to seek this Court's intervention to secure the enforceability of the agreement. But that leaves open the question whether the broad interpretation afforded section 158(1)(c) in *Harrisawak* should survive the 2002 amendments.
>
> [9] I think not. The interpretation adopted in *Harrisawak* might suggest that this Court ought to entertain an application in terms of section 158(1)(c) only because the agreement in question settles an employment-related dispute. It implies that any party to the settlement of an employment-related grievance, whatever its nature, is entitled to approach the court to have that settlement

5 [2010] 6 BLLR 626 (LC).

6 (2001) 22 *ILJ* 1395 (LC); [2001] 6 BLLR 614 (LC).

made an order. It would also entitle any party to a collective agreement to have that agreement made an order, thus blurring the line between a constitutive and a judicial act, a line that section 142A clearly draws and that the broad architecture of the LRA preserves. A broad interpretation would also suggest that the limitations established by section 142A could be entirely undermined – none of the conditions attached to having a settlement agreement made an arbitration award in terms of that section would apply if a party were simply permitted to approach this Court to have any employment-related agreement made an order. Finally, a broad interpretation would blur the line between what are properly contractual claims to be enforced either by the civil courts, or by this Court under section 77(3) of the BCEA.

[10] An alternative, narrower interpretation of section 158(1)(c) is to limit its application to those instances where a party has validly referred a dispute to this Court for adjudication and where the dispute, at any time after the referral, has been settled. An interpretation to this effect would preserve the integrity of section 142A. It would also avoid all of the difficulties, conceptual and practical, that the broad interpretation presents."

13] I cannot add anything more, save to say that I agree fully.

14] In his oral argument in this application, and subsequent to my judgment in *Consol Glass (1),* Mr *de Kock* also referred me to the unreported judgment of Farber AJ in *Bramley v Wilde & Another.*[7] In that case, a settlement agreement that had not been referred for resolution in terms of the LRA was nevertheless made an order of court in terms of s 158(1)(c). But as the learned acting judge pointed out in the very first paragraph, that judgment was concerned with the interpretation of the section prior to its amendment by Act 12 of 2002. In those circumstances, it has been superseded by the amendment and its interpretation in *Molaba.*

Conclusion

15] I remain of the view that this is not a matter where the court should exercise its discretion in favour of making the settlement agreement an order of court in circumstances where no dispute has been referred to the

7 (2002) 11 LC 1.16.2 (J 4611/00, 28 November 2002).

court for adjudication.

16] The application is dismissed. In law and fairness, though, I do not deem it appropriate to make an order for costs.

_____

A J Steenkamp
Judge

APPEARANCES

APPLICANT:	C de Kock Instructed by Carelse Khan.
RESPONDENT:	AC Soldatos of Fluxmans Inc.