

In the matter between:

JULIA TANDI STEELE

Applicant

and

RIGA BOUTIQUE CC

Respondent

Date of hearing: 16 August 2011

Date of judgment: 19 August 2011

JUDGMENT

Conradie AJ

1. In this matter the Applicant referred a dispute to this Court in terms of Section 77 (3) of the Basic Conditions of Employment Act, 75 of 1997 (BCEA).
2. According to the Applicant she was employed by the Respondent on 19 January 2009, as an Assistant Store Manager based at the Waterfront.
3. In October 2009 she was promoted to the position of Store Manager, which position she held until 17 August 2010 when she alleges that she was dismissed by the Respondent.
4. According to the Applicant she reported to a Mr Adriaan Vaakel and had limited contact with the managing members of the Respondent i.e. Mr and Mrs Kaplan.

5. On 17 August 2010 Mr Kaplan requested her to meet him at a coffee shop at the Waterfront. On her version she was told at this meeting that she needed to leave as her services were no longer required at the Waterfront. The Applicant also claims that she was presented with a document titled "Settlement Agreement", but which Kaplan explained to her was a letter of resignation.
6. The Applicant refused to sign the document as she felt that it was forced on her and she had no intention to resign from her employment. She was, however, instructed by Kaplan to vacate the store and to hand in her keys at the close of her shift on that day.
7. The Applicant refused to sign the document and indicated that she would get back to Kaplan the following Wednesday. This meeting, however, only took place on Monday 23 August 2010 at the Cavendish Square Shopping Mall. At this meeting the Applicant again protested against the "letter of resignation" and questioned the process and method followed by the Respondent in arriving at the decision to terminate her employment. No explanation was provided by Kaplan. However, the document was amended to refer to retrenchment, instead of resignation.
8. The Applicant claims that she was under the impression that the document would be the first step in a retrenchment process to be followed by the Respondent and as a result signed the document. She also claims that she did not understand, or realise that the document that she signed, was in full and final settlement, nor did she intend that it should be.
9. The Applicant subsequently referred an unfair dismissal dispute to the CCMA. The Respondent's legal representatives, however, raised a point *in limine* that the CCMA did not have jurisdiction due to the fact that a full and final settlement

agreement had been entered into between the Applicant and the Respondent. The Commissioner appointed to hear the matter ruled in favour of the Respondent in respect of the point *in limine*.

10. The Applicant then referred this matter on 9 December 2010, and on 20 December 2010 the Respondent filed a Statement of Response.

11. It appears from the Respondent's Statement of Response that much of that which the Applicant alleges is denied.

12. There is clearly in my view a material dispute of fact which would need to be resolved on the basis of oral evidence. If regard is had to the Rules of this Court, then "*if a material dispute of fact is foreseen, Rule 6 may be used to initiate the determination of any matter concerning of contract of employment in terms of Section 77(3) of the Basic Conditions of Employment Act.*"¹

13. It appears that this is the route which the Applicant set upon, hence the referral to this Court in the form of a Statement of Case. However, the Respondent raised a point *in limine* in its statement of response on the basis that a valid settlement agreement was concluded between the parties and accordingly the Applicant is precluded from raising the dispute before this Honourable Court. This point *in limine* was followed up by a substantive application on affidavit in support of the preliminary objection. The Applicant thereafter filed an answering affidavit and the Respondent filed a replying affidavit.

14. It is this application in support of the *point in limine* raised by the Applicant which was set down for determination before me. I raised the concern that based on the Statement of Case it appeared that the Applicant was seeking to have the settlement agreement set aside as well as for this Court to rule on the fairness of

¹ See footnote 5 to Rule 6 of the Rules for the Conduct of Proceedings in the Labour Court.

the dismissal, if any. It was pointed out to the representative for the Applicant that this Court would not have jurisdiction to entertain a dismissal dispute in circumstances where such a dispute was not conciliated. The Applicant's representative conceded that that would then leave only the issue of the validity of the settlement agreement to be determined and that such a determination could only be made on the basis of oral evidence in light of the substantial dispute on the papers.

15. This matter in my view should not have been dealt with on the basis of an application. The rule referred to above is clear that in the event that a dispute of fact is anticipated in a Section 77 (3) referral then that matter should be dealt with by way of a Statement of Claim. This is exactly the procedure which the Applicant followed to begin with. The parties now unfortunately find themselves in the position where the only way in which the validity of the settlement agreement can be determined is if the matter is indeed heard by way of oral evidence.

16. Although the Respondent launched a substantive application in respect of its point *in limine*, it is not possible to blame the Respondent for the fact that the matter was set down for the preliminary point to be heard. I say this because it has a bearing on the issue of costs.

17. In the circumstances I make the following order

17.1. The dispute referred to this Court in terms of Section 77(3) of the BCEA is to be determined by way of oral evidence as envisaged by Rule 6 of the Rules of this Court.

17.2. There is no order as to costs.

Conradie AJ

Appearances

For the applicants: F H Cronjé

Instructed by: Cronjés Incorporated Attorneys

For the respondents: P Maharaj

Instructed by: Cliffe Dekker Hofmeyr Inc

LABOUR COURT