



Not reportable

**THE LABOUR COURT OF SOUTH AFRICA,
HELD AT CAPE TOWN**

Case No: C159/2020

In the matter between:

ERIK ANETUKU LEMBA

First Applicant

DID THIKAYA TSHAMALA

Second Applicant

KABEYA BUKASA

Third Applicant

BUTOYI LEONCE NAHIMANA

Fourth Applicant

ERIC NIMUBONA

Fifth Applicant

MPUTUILO GARCIA

Sixth Applicant

KASONGO WALANGA

Seventh Applicant

FIDELE SADRICMNZAYIKORERA

Eighth Applicant

SAFILI ZOZO

Ninth

Applicant

HASSAN GIHUNGU

Tenth Applicant

SETH TCHOMBO

Eleventh Applicant

OLIVIER NKESHIMANA

Twelfth Applicant

ALAIN BUZANGA MULUMBA

Thirteenth Applicant

and

METRO CITY PROTECTION SERVICES CC

Respondent

Date of Set Down: 28 January 2022

Date of Judgment: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 10h00 on 21 February 2022.

Summary: (Unfair retrenchment – procedurally unfair)

JUDGMENT

LAGRANGE J

Introduction

- [1] The matter concerns an alleged unfair dismissal for operational reasons, which the individual applicants claim was substantively and procedurally unfair. The respondent did file a notice of opposition but never filed an answering statement and when the matter was set down for hearing agreed to abide the outcome of the case, without appearing or presenting any argument as it was entitled to.

Summary narrative

- [2] The applicants undisputed version of events is that they were notified at the end of June 2019 by their employer in a letter dated 14 June that their contracts of employment would terminate at the end of that month, or on 1

July 2019 in the case of night shift workers. The reason for the termination of the contract was on account of the City of Cape Town ('the city') terminating the contract held by the respondent. The applicants were asked to file affidavits confirming the averments in their statement of case.

- [3] On the face of their own version, it appears that the cancellation of the respondent's contract by the city was the reason for their retrenchment. The applicants did not set out any factual basis for claiming that their retrenchment was substantively unfair, and only made a bald allegation to that effect. Consequently, the court must conclude that the cancellation of the contract by the city was not disputed as a justification for their retrenchment.
- [4] In relation to procedural fairness, it is apparent that no prior notice was given to the applicants of their possible retrenchment as required by s 189(3) of the Labour Relations Act, 66 of 1995, and there were no consultations of any kind as required by that section. They were also not paid full notice pay, leave pay and severance pay. Their monthly remuneration was also short paid in varying amounts from 19 January to 19 June 2019. The details of the short payment of remuneration are set out in pages 2 to 4 of Annexure "A" attached to the statement of case. The severance pay, notice pay and accumulated short pay are set out in pages 7 to 11 of the same annexure. They are also entitled to interest on these amounts which were due and payable to them when they were retrenched on 30 June or 1 July.
- [5] I am satisfied that the respondent completely failed to comply with the requirements of s 189 and that six months' remuneration would be appropriate compensation for such a gross disregard for the fair procedural requirements of a dismissal for operational reasons.

Order

- [1] The applicants' dismissal for operational reasons was procedurally unfair but substantively fair.
- [2] Within 15 days of the judgment, the respondent must pay each of the applicants the following amounts:

- 2.1 their outstanding wages, notice pay, leave pay and severance pay as detailed in pages 2 to 4 of Annexure "A" attached to the statement of case (amounting in the aggregate to R 211, 581.61), a copy of which is attached to the judgment;
- 2.2 interest at the prescribed rate of interest from the date of the termination of their services on the amounts referred to in paragraph 2.1 of this order, and
- 2.3 six months' remuneration as compensation, namely R 31, 500 (thirty one thousand five hundred rands).

[3] No order is made as to costs.

Lagrange J
Judge of the Labour Court of South Africa

Representatives:

For the Applicant:

C J May of BDP Attorneys

For the Respondent:

No appearance