

IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case no: D 847-15

Not Reportable

In the matter between:

MONDLI COLLIN KWEYAMA

Applicant

and

TRANSNET COC LTD

Respondent

Heard: 4 November 2019

Judgment delivered: 28 January 2020

JUDGMENT

WHITCHER J

[1] The sole issue at this stage of litigation between the parties is whether the Labour Court has jurisdiction to adjudicate the applicant's statement of claim. The respondent contends that the Labour Court does not have jurisdiction because, in its view, the applicant's claim concerns a dispute between a lessor (the respondent) and lessee (the applicant), in particular a rental related dispute. The respondent further contends that section 77(1) of the Basic Conditions of Employment Act, 1997 ("the BCEA") does not give the Labour Court jurisdiction which was never conferred on it by section 157 of the Labour Relations Act, 1995.

[2] The starting point is the applicant's statement of claim, which pleads as follows:

2.1 The applicant is an employee of the respondent.

2.2 In May 2011, the applicant and the respondent concluded a written lease agreement over residential property owned by the respondent.

2.3 The relevant material terms of the lease agreement were that the applicant was required to pay the respondent the amount of R2300.00 per month as rental, and either party was entitled to cancel the lease agreement, giving the other party reasonable notice of its intention to do so.

2.4 On or about 15 May 2013, the applicant delivered a notice terminating the lease agreement.

2.5 **Notwithstanding such termination**, the respondent **continued** to deduct the rental from the applicant's salary.

2.6 The deductions were not authorised in writing, effected in respect of any debt specified in an agreement, required or permitted in terms of a law, collective agreement, court order or arbitration award, nor made to reimburse the respondent for losses or damages arising out of the applicant's employment with the respondent, as required by sections 34(1) and (2) of the BCEA.

2.7 The aforementioned facts give rise to the following legal issues:

2.7.1 The deductions made by the respondent from the applicant's salary **pursuant to the cancellation of the lease agreement** on 15 May 2013, were in contravention of sections 34(1) and (2) of the BCEA.

2.7.2 The applicant is entitled to be repaid the amount of money deducted by the respondent **pursuant to the cancellation of the lease agreement**. [My emphasis]

[3] The applicant prays for the refund of the arrear rental amount deducted from his salary by the respondent from 30 May 2013 [**that is, from the date he purportedly cancelled the lease agreement**].

[4] Section 34(1) of the BCEA provides as follows:

(1) An employer may not make any deduction from an employee's remuneration, unless –

- (a) Subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or
- (b) The deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.

[5] Section 34(2) provides as follows:

A deduction in terms of subsection (1)(a) may be made to reimburse an employer for loss or damage only if –

- (a) The loss or damages occurred during the course of employment and was due to the fault of the employee;
- (b) The employer followed fair procedure and has given the employee a reasonable opportunity to show why the deductions should not be made;
- (c) The total amount of the debt does not exceed the actual amount of the loss or damage; and
- (d) The total deductions from the employee's remuneration in terms of this subsection do not exceed one-quarter of the employee's remuneration in money.

[6] Thus, section 34 of the BCEA prohibits an employer from making deductions from an employee's remuneration, subject to certain exceptions. An employer is not allowed to make deductions from an employee's remuneration, without fulfilling specific requirements, failing which results in a contravention of s34 of the BCEA.

[7] Section 77(1) of the BCEA provides as follows:

- (1) Subject to the Constitution and the jurisdiction of the Labour Appeal Court, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters in terms of this Act.

[8] If the applicant's pleaded case merely concerned the unlawfulness of the deductions **by virtue of the allegation that the lease agreement had been cancelled (which is a pleaded contention)**, this court would not have jurisdiction because the case would merely concern a lease/rental related dispute.

[9] However, the applicant's pleaded case goes beyond that. In addition, he alleges that in effecting the deductions for rent [and, according to the

respondent, for alleged damage to the rented property], the respondent failed to comply with the provisions of sections 34(1) and (2) of the BCEA, and that the exceptions in sections 34 are not applicable to the deductions.

[10] In *Amalungelo Workers' Union and Others v Philip Morris South Africa (Pty) Limited and Another*,¹ the applicants alleged that the respondents had contravened section 34 of the BCEA. The respondents had deducted tax in respect of company cars from the employees' salaries. The applicants approached the Labour Court for an order compelling the respondents to refund the amounts deducted as well as an interdict restraining the respondents from making these deductions in the future. The matter ended up before the Constitutional Court where the issue for determination was whether the Labour Court has jurisdiction to adjudicate the applicants' claim that their employer had made unlawful deductions from their remuneration. The Court considered the correct interpretation of section 77 of the BCEA. It held that section 77 of the BCEA was designed to promote access to the Labour Court in relation to claims based on the BCEA, and that on a proper reading of section 77 as a whole the Labour Court enjoys exclusive jurisdiction in respect of all matters arising from the BCEA.

[11] In an earlier matter, *Lewarne v Fochem International (Pty) Ltd*,² the SCA confirmed the Labour Court has jurisdiction to determine a claim under the BCEA.

[12] That said, it must be emphasized that if the applicant elects to continue with his case, the Labour Court is only empowered to adjudicate whether the deductions were in compliance with section 34 of the BCEA. Based on the applicant's pleadings, this will concern whether:

"The deductions were not authorised in writing, effected in respect of any debt specified in an agreement, required or permitted in terms of a law, collective agreement, court order or arbitration award, nor made to reimburse the respondent for losses or damages arising out of the applicant's employment with the respondent".

¹ [2019] ZACC 45.

² (1073/18) [2019] ZASCA 114 (18 September 2019).

[13] On the issue of costs, the respondent should not have persisted with its specific claim in the face of the clear meaning of Section 77(1) of the BCEA and the Constitutional Court decision. On the other hand, the court's limited jurisdiction is a relevant issue in this matter, considering my finding in paragraph [12] above. The applicant did not concede this limited jurisdiction.

Order

1. The respondent's point *in limine* (jurisdiction) is dismissed.
2. There is no order as to costs.

Benita Whitcher

Judge

APPEARANCES:

For the Applicant: Advocate S Singh, instructed by Henwood Britter & Caney

For the Respondent: Advocate L.G.P. Ledwaba, instructed by Mfinci Bahlmann Inc