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Lange v Headline Engineering South Africa (Pty) Ltd and Another [2010] ZALC 71

Judgement: Molahlehi J

Introduction

This is a civil claim brought by the applicant in terms of section 77 of the Basic Conditions of Employment Act 75 of 1997 (the BCEA). These proceedings were initially instituted on application during 2007. That application came before the court by way of motion proceedings.

Background facts

The case of the applicant in essence is that subsequent to his dismissal the first respondent refused to pay him the prescribed severance pay, leave pay due to him, payment of amounts in respect of deductions made from his salary in respect of a Provident Fund and short payment in his salary. The applicant also claims payment in an amount equal to six months remuneration in respect of unpaid notice pay including annual bonuses.

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This matter came before Tshabalala AJ, on application. On that day the court *inter alia* ordered payment by the respondents jointly and severally of the amount of R199,706.04 to the applicant and referred to matter to oral evidence. The issues to be determined in terms of that oral evidence are as follows:

- The validity and enforceability of Applicant's contract of employment; and
- The balance of the amount owing to Applicant by the respondent.

The respondents conceded that in the event of this court finding in favour on the applicant regarding the enforceability and validity of the contract of employment, the applicant is entitled to payment.

Issue to be decided

The court held that this matter turns on the validity and enforceability of the contract of employment. The key question to answer is whether or not the signatures on the document had been forged. Related to this question is also the manner in which the agreement came to the hands of the applicant.

Conflicting versions

The court held that there are two conflicting versions in relation to the signatures on the employment contract and the manner in which it was posted from Dubai to South Africa.



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Taking into account the totality of the evidence and circumstances of this case, the most probable and plausible version is that of the applicant.

Handwriting expert

The court held that the applicant called Greenfield as a hand writing expert. He testified about the signatures of both Messrs Mohammed and Faizel by comparing those signatures on the contract in question with those which were not disputed.

Survey of further evidence

The respondents did not call any expert to contradict what Greenfield had to say and therefore his testimony remained unchallenged. The court held that it had no reason to disbelieve him when he says that the signature on the contract is that of Faizel and Mohammed.

In addition to disputing the signatures on the contract of employment the respondents led evidence that sought to present a picture that the signatures were forged. An attempt was made in this respect to show that the two signatories could not have signed the document because it was not the same as the standard contract signed by other employees of the first respondent. The court held that It was clear, regard being had to the unchallenged evidence of the applicant, that he was not an ordinary employee and



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thus signed a contract different to the other employees of the first respondent at the time.

The evidence presented show very clear that the applicant placed himself at risk in seeking to sustain the profitability and survival of the first respondent. This evidence ties very well with the contract of employment and in particular that the applicant would have after three years been entitled to a profit share. It is difficult to comprehend that the applicant in all his commitments and risks taking steps on behalf of the respondent was only motivated by his friendship with the family of the shareholders of the first respondent.

The version of the applicant that the contract of employment was signed on behalf of the first respondent was corroborated.

The testimony of Mr Faizel is unsatisfactory in general but more importantly in relation to the meeting the applicant attended in Dubai during November 2005. He testified in this respect that he picked up the applicant at the airport and dropped him off again. It is highly improbable on the basis of these facts that the applicant went to Dubai, stole or found an envelope with the logo of Headline Engineering, put it in a dispatch plastic bag and sent it to himself in South Africa. The probability in the court's view supports the



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version that says Faizel had a discussion with the applicant in Dubai about his contract of employment and as a result thereof he (Faizel) thereafter sent the contract of employment to the applicant.

The strange thing about the case of the respondent is that despite the fraud they allege on the part of the applicant, they still went ahead and paid him his severance pay. The other strange thing about the case of the respondents, concern the inclusion of “director’s emoluments accrued” in the financial statements for 2006.

The case of the respondents was also based on seeking to have an inference drawn from that fact that the applicant presented his contract after a long period from the time he commenced his employment with the first respondent.

Credibility

Turning to the issue of credibility of applicant and his witnesses, There is no doubt that the applicant was nervous whilst in the witness box. The court said it however did not get the impression that this was due to the fact that he may have been in conflict with his conscious about the version he was presenting. He was nervous like any other witness would be and not because he had difficulty in telling the truth.



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One Benade on behalf of Applicant came out as the most honest and reliable witness. He had a good recollection of what happened and confirmed the version of the applicant to the extent of his involvement with the issue raised. Whilst as indicated above the respondents' contended that he was a biased witness, no convincing basis was set out in this regard.

Conclusion

In the light of the above discussion, the court was of the view that the applicant has on the balance of probabilities discharged his onus of proving the authenticity of the signatures on the contract of employment and its enforceability.

The court found that the first respondent and the applicant concluded a valid and enforceable contract of employment.

