

Short Notes on:

The Extent of The High Court's Jurisdiction in Labour Matters

Introduction

The Constitutional Court recently confirmed the legal position of the High Court's jurisdiction in labour matters. The case involved the Office of the Public Protector, with the Applicant represented by Adv Ngcukaitobi SC and the Respondents represented by Adv Mpofu SC. It is always practice to consider the Labour Court to be the Court of first instance for labour law disputes once the CCMA structures have been exhausted. Therefore, the question to be discussed is if there is an interpretation to direct that the High Court can have concurrent jurisdiction with the Labour Court?

The Case

The relevant matter is that of *Baloyi v Public Protector and Others* (2020) ZACC27, wherein Ms Louisah Basani Baloyi (hereinafter referred to as the 'Applicant'), the former Chief Operations Officer in the Office of the Public Protector, sought to appeal the decision of the High Court in Gauteng, Pretoria Division. The High Court dismissed her application, reasoning that it was "essentially a labour dispute"¹ and therefore fell within the Labour Court's exclusive jurisdiction.

The Office of the Public Protector employed the Applicant on a five-year contract in February 2019. The employment contract included an initial probationary period of six months which could be extended for a period not exceeding twelve months, at which point her appointment would either be confirmed or terminated.² However, after working in the position for nine months, the Chief Executive Officer (hereinafter referred to as the 'CEO') of the Public Protector informed the Applicant that her contract would terminate as she was 'not suitable for the role of COO taking into account her overall capability, skills, performance and general conduct in relation to the position'.³

The Applicant contended that her probationary period was never extended. As a result, the termination that occurred nine months later was well out of time considering the contractual provisions to which the parties were bound.⁴ Furthermore, the CEO did not have the statutory

¹ *Baloyi v Public Protector and Others* (2020) ZACC27 at para 50.

² At para 3.

³ At para 4.

⁴ At para 34.

authority to terminate her contract and that by allowing the CEO to do so, the Public Protector herself was not complying with the obligations placed upon her office as per section 181(2) of the Constitution.⁵ The Applicant, therefore, launched an urgent application in the High Court for the appropriate relief.

The Relevant Legislative Provisions

The arguments relevant to the discussion on the High Court's jurisdiction in labour matters include section 157(1) and 157(2) of the Labour Relations Act (hereinafter referred to as 'the Act'). Section 157(1) simply directs that the Labour Court has exclusive jurisdiction in matters that are to be determined by the Labour Court, subject to the Constitution and section 173 of the Act.

However, section 157(2) of the Act directs that the Labour Court has concurrent jurisdiction with the High Court in any matter where there is alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution and arising from 'employment and from labour relations'.⁶

The Deciding Factors

The Court referred to two other matters as part of the reasoning for its decision, the first being *Fredericks v MEC for Education and Training Eastern Cape* [2001] ZACC 6 (hereinafter referred to as '*Fredericks*') and the second being *Gcaba v Minister for Safety and Security* [2009] ZACC 26 (hereinafter referred to as '*Gcaba*')

In *Fredericks*, the Court endorsed a previous decision directing that the Labour Court is not afforded general jurisdiction by section 157(1) of the Act and further, that the High Court's jurisdiction is not eliminated by this provision simply because a matter relates to that of employment.⁷

As for the relevance of *Gcaba*, the Court here ruled that when jurisdiction is being challenged, the applicant's pleadings are the determining factor. The wording, structure and supporting documentation of the application are relevant as it will set out under which act the applicant is relying. If the applicant relies on asserting a claim under the Labour Relations Act, then the Labour Court would have exclusive jurisdiction, and the High Court would not be able to hear the matter.⁸

⁵ The Constitution of the Republic of South Africa, 1996.

⁶ At para 27.

⁷ At para 24.

⁸ *Gcaba* at para 75.

Conclusion

After considering the above precedents and the Applicant's pleadings in the matter, the Court ruled in favour of the Applicant. The appeal was upheld with costs in favour of the Applicant, but the Court only confirmed that the High Court indeed had the jurisdiction to hear the matter. Therefore, the matter was remitted to the High Court to determine the merits of the case as the relief sort included the Applicants rights in terms of contractual and constitutional law.⁹

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⁹ At para 52.