

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

Case no: C289/2021

In the matter between:

BEATRICE THERON

Applicant

and

RAINBOW FARM (PTY) LTD

Respondent

Date of Hearing: 29 June 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 14h00 on 1 July 2022

Summary: Application in terms of section 158(1)(c) of the LRA; dispute of fact as to whether employer complying with settlement agreement; application of the rule in *Plascon-Evans* precluding relief. Application dismissed.

JUDGMENT

LESLIE AJ

Introduction and background

[1] This is an application in terms of section 158(1)(c) of the Labour Relations Act 66 of 1995 ("the LRA") to make an arbitration award an order of this court.

[2] The relevant facts may be summarised as follows:

2.1 The parties entered into a settlement agreement under the auspices of the CCMA on 30 March 2015, following the referral by the applicant of an unfair dismissal dispute to conciliation.

2.2 In terms of this settlement agreement, the respondent undertook *“to endeavour to find suitable employment for the applicant, taking into consideration her injury and occupational detriments.”* The parties agreed that *“if suitable work arises, [the applicant] will be given first option for the job.”*

2.3 It is common cause that the respondent subsequently offered the applicant a position, albeit at a lower salary than she had earned in her previous post.

2.4 The respondent alleges that the applicant rejected (turned down) the offer of employment.

2.5 In her replying affidavit, the applicant did not pertinently deny that she turned the offer down. Her version is that she told the respondent that she would obtain a legal opinion in light of the lower salary. This version is confirmed by a shopsteward who accompanied her on the day in question.

2.6 The settlement agreement was made an arbitration award by the CCMA on 23 July 2020, in terms of section 142A(1) of the LRA. The applicant now seeks this award to be made an order of court.

[3] The issue for determination is whether the respondent has complied with its obligations under the settlement agreement. If it has, no purpose would be served in making the award an order of court.¹

¹ *SA Post Office Ltd v CWU obo Permanent Part-time Employees* [2013] 12 BLLR 1203 (LAC) para 21.

Analysis

[4] As set out above, it is common cause that the respondent offered the applicant employment, as envisaged in the settlement agreement. There was no obligation on the respondent to offer the applicant employment on the same terms or salary as before. Its obligation was limited to giving the applicant the first option for suitable work, if any.

[5] The respondent alleged that the applicant turned down its offer of employment. This allegation was not pertinently denied by the applicant in reply. Even if she had denied this, it would not have altered the outcome of this matter. This is an application for final relief. Disputes of fact fall to be resolved in accordance with the test laid out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) 634E-G. A final order can only be granted in motion proceedings if the facts stated by the respondent, together with the admitted facts in the applicant's affidavits, justify the granting thereof.² The applicant has fallen short of meeting this requirement.

[6] The application accordingly falls to be dismissed. Since neither party pressed for costs, no order of costs will be made.

Order

[1] The application is dismissed.

[2] There is no order as to costs.

Graham Leslie

Acting Judge of the Labour Court of South Africa

Representatives -

For the Applicant: J Duba, Legal Aid South Africa

² *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA) 491H-I.

For the Respondent: Mr E Geldenhuys, Macgregor Erasmus Attorneys Inc.