



CONSTITUTIONAL COURT OF SOUTH AFRICA

National Union of Metal Workers of South Africa on behalf of Moses Fohlisa and Others v Hendor Mining Supplies (a division of Marschalk Belegings (Pty) Ltd)

CCT 04/16

Date of judgment: 30 March 2017

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 30 March 2017 the Constitutional Court handed down judgment in an application for leave to appeal that concerned the nature of a claim for arrear-wages following an employee's reinstatement under section 193(1)(a) of the Labour Relations Act, 1995 (Act).

During August 2003, 42 employees of Hendor Mining Supplies (Hendor), were dismissed for participating in a strike. On 16 April 2007 the Labour Court held that these dismissals were unfair, and the employees were reinstated with effect from January of that year (reinstatement order). An appeal against the reinstatement order was dismissed by the Labour Appeal Court in June 2009 and by the Supreme Court of Appeal on 15 September 2009. The employees were reinstated on 29 September 2009, but Hendor did not pay the arrear-wages from 1 January 2007 to 28 September 2009.

Dissatisfied, the employees issued a writ of execution for the arrear-wages in October 2010. This writ was set aside by the Labour Court in June 2011 on the basis that, since the reinstatement order was not a money-judgment, a valid writ could not be issued on its strength. The employees were directed to file a declaration setting out the amounts owed to each one of them. The employees brought a further application on 19 September 2012 claiming the arrear-wages. Hendor resisted the claim on the basis that, since a period of more than three years had elapsed from the date the Supreme Court of Appeal dismissed Hendor's application for leave to appeal against the reinstatement order, the claim had prescribed.

The Labour Court rejected Hendor's argument. It held that the claim for arrear-wages for the period 1 January 2007 to the date of reinstatement constituted a judgment debt, and therefore would only prescribe after 30 years. The Labour Appeal Court overturned the decision of the Labour Court, holding that a claim for arrear-wages arising out of a reinstatement order is a debt under the reinstated employment contract, and would therefore prescribe after three years.

In this Court, the employees argued that the Labour Court was correct in holding that the claim for arrear-wages was a judgment debt and as such, it would prescribe only after 30 years. In the alternative, they argued that the earliest they could reasonably have come to know that Hendor would not pay the arrear-wages was on 29 September 2009 when they reported for duty. Based on that, they submitted that from 29 September 2009 to the date they launched their claim the three-year period of prescription had not elapsed. Hendor argued in support of what the Labour Appeal Court had held.

The first judgment written by Madlanga J (Froneman J, Khampepe J, and Mbha AJ concurring), held that there was no legal distinction between the period before the reinstatement order and the period thereafter. He held that the claim for arrear-wages arose from the reinstatement order. Consequently, the arrear-wages constituted a judgment debt and, as a result, the claim will prescribe after 30 years. The first judgment upheld the appeal with costs.

The second judgment written by Zondo J (Mogoeng CJ, Jafta J and Mhlantla J concurring), Zondo J agrees with the first judgment that the claims have not prescribed, that the workers are entitled to payment of their wages for the entire period and that the appeal should be upheld. He also agrees that interest should be paid on the amounts owed and that Hendor should pay costs. However, he disagrees with the reasons given in the first judgment for the conclusion that the claim has not prescribed.

The second judgment states that the claim falls into two distinct periods. The one period is before the reinstatement order of 16 April 2007, namely from 1 January 2007 to 15 April 2007 (first period). The other is the period after the reinstatement order, namely, from 16 April 2007 to 28 September 2009 (second period).

The second judgment took the view that the claim relating to the first period was a judgment debt because its payment was ordered in the reinstatement order. It concluded that, since the prescription period for a judgment debt is 30 years, the claim for wages for that period had not prescribed. However, it took the view that the claim for the second period was not a judgment debt as the reinstatement order did not order payment of any wages for the second period. The reinstatement order simply directed that the workers be reinstated. The second judgment states that the claim was a contractual debt which was to be dealt with in terms of the principles of the law of contract. The reinstatement of the workers resulted in the restoration of the contracts of employment of the workers. The second judgment pointed out that the claim relating to the second period could not be a judgment debt. This is because the Labour Court did not and could not have adjudicated upon the question of wages which had not even fallen due for payment at the time it

made the reinstatement order. On the facts, the second judgment held that that the three-year period of prescription had not elapsed, hence its agreement with the outcome reached by the first judgment.