



**THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable  
Case no: JA75/2023

In the matter between:

**JOHAN JANSEN VAN VUUREN**

**Appellant**

and

**HEAVEN SENT GOLD SA (PTY) LTD**

**First Respondent**

**GRYPON GOLD (PTY) LTD**

**Second Respondent**

and

Case no: JA76/2023

In the matter between:

**JOANNÉ JANSEN VAN VUUREN**

**Appellant**

and

**HEAVEN SENT GOLD SOUTH AFRICA PROPERTY  
& INVESTMENT (PTY) LTD**

**First Respondent**

**HEAVEN SENT GOLD BUSINESS TRUST**

**Second Respondent**

**Heard: 6 March 2025**

**Delivered: 17 March 2025**

**Coram: Savage AJP, Sutherland and Davis AJJA**

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## JUDGMENT

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### **SAVAGE, AJP**

#### Introduction

[1] In issue in the two appeals before this Court, which are before us with the leave of the Labour Court and are considered together given the commonality of facts and issues in dispute, is whether the Labour Court held the necessary jurisdiction to determine the appellants' claims in terms of section 77(3) of the Basic Conditions of Employment Act<sup>1</sup>, which provides that:

'The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract.'

[2] At the outset of the hearing, the appellants sought that the late filing of their respective appeal records be condoned, given the challenges faced by them in having the appeal record prepared. The application was not opposed, and the Court can find no reason to refuse such application having regard to the extent of the delay, the reasons for it, the nature of the matter, interests of justice and considerations of prejudice. The appeal is therefore reinstated, and the late filing of the record condoned.

#### Background

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<sup>1</sup> Act 75 of 1997.

[3] Mr Johan Jansen van Vuuren, referred to as the first appellant, and Mrs Joanné Jansen van Vuuren, referred to as the second appellant, each entered into a 'Termination of Services and Settlement Agreement' on 14 January 2021: the first appellant with Heaven Sent Gold Business Trust and Gryphon Gold (Pty) Ltd (Gryphon Gold), the latter being the second respondent in JA 75/2023 (the first appeal); and the second appellant with Heaven Sent Gold Property & Investment (Pty) Ltd and Heaven Sent Gold Business Trust, being the first and second respondents in JA 76/2023 (the second appeal).

[4] The settlement agreement entered into with the first appellant records that:

4.1 his employment with Gryphon Gold terminated with effect from 1 January 2020 (the termination date);

4.2 from 1 January 2020 until 15 January 2021, any services performed by him were performed in the capacity of an independent contractor through the Janse Van Vuuren Trust (the Trust) and not as an employee;

4.3 that Gryphon Gold would pay the Trust an amount equal to nine months' contributions, in the amount of R16 294,00, in respect of the first appellant's membership of the medical aid scheme of which he was a member on the date of termination of his employment;

4.4 the first appellant will receive payment of his normal monthly employee remuneration for the period until the termination date, together with 25 days accumulated leave pay due to him as an employee, which will be paid within 14 days of the termination date;

4.5 the first appellant will be paid an independent contractor payment equal to R3 150 000,00, a first tranche of R1 050 000 within 14 days of the termination date and a second tranche of R2 100 000 on 21 February 2021.

[5] The settlement agreement entered into with the second appellant records similarly, save that:

5.1 her employment with Heaven Sent Gold Property and Investment Company (Pty) Ltd terminated with effect from 1 August 2020, from which date she was to render services as an independent contractor until 15 January 2021;

5.2 she will be paid 23 days accrued leave due to her as at termination of her employment;

5.3 she will be paid an amount equal to nine months' contributions, being R16 294,00, in respect of her membership of the medical aid scheme of which she was a member on the date of termination of her employment; and

5.4 she will be paid an independent contractor payment equal to R1 350 000,00, with the first tranche of R450 000 to be paid within 14 days of the termination date and the second tranche of R900 000 to be paid on 28 February 2021.

[6] When the appellants were not paid the amounts agreed, they approached the Labour Court to enforce payment. The first appellant claimed payment of a total amount of R3 868 374,00 and the second appellant a total amount of R1 946 273,35. The first appellant contended that the total amount due was made up of R3 150 000, being the independent contractor fee due in terms of the agreement, his monthly remuneration in the amount of R350 000, 25 days accumulated leave pay in the amount of R380 444,78 and R146 646 in relation to nine months' medical aid contributions. The second appellant contended that the total amount due was made up of R1 350 000,00, being the independent contractor fee due in terms of the agreement, her monthly remuneration in the amount of R150 000, 23 days accumulated leave pay in the amount of R150 000 and R146 646 in relation to nine months' medical aid payments. Before the Labour Court, both appellants abandoned the relief sought to have their settlement agreements made an order of Court.

[7] In opposing the relief sought, the respondents took issue with the fact that the total amounts claimed were precisely the amounts reflected in invoices submitted by the appellants, which were attached to their founding papers, in which the payment sought was described as a "(s)ervice fee as an independent contractor". These amounts were unrelated to the employment relationship, with the result that section 77(3) did not apply and the Labour Court lacked jurisdiction to determine the matters. It was submitted that a genuine dispute of fact existed regarding the amounts claimed, which could not be resolved on the papers.

Judgment of the Labour Court

[8] The Labour Court found that the payment of normal monthly employee remuneration and accrued leave until the termination of the contract of employment were claims arising from and concerning a contract of employment and were, therefore, in terms of section 77(3), justiciable by the Court. The claims for medical aid contributions were found, however, to relate to the period post-termination of employment during which the appellants provided services as independent contractors and were not related to a contract of employment and were, therefore, not justiciable.

[9] The Labour Court granted judgment in favour of the first appellant against Gryphon Gold (Pty) Ltd for the sum of R350 000 for monthly remuneration owed and R380 444,78 in respect of accrued annual leave, with his other claims dismissed for want of jurisdiction. Judgment was granted in favour of the second appellant against Heaven Sent Gold South Africa Property and Investment (Pty) Ltd, for R150 000 in respect of monthly remuneration owed and R150 000 in respect of accrued annual leave due, with her other claims dismissed on the same basis. No order of costs was made in either matter.

#### On appeal

[10] The appellants contend on appeal that the Labour Court erred in dismissing their claims for payment of their services rendered as independent contractors and in respect of agreed medical aid contributions. This was so in that the settlement agreements are agreements collateral to the employment contract, since they had the effect of terminating the employment of the appellants and as such, amount to a "*matter concerning a contract of employment*" as envisaged in section 77(3). These claims were therefore argued to be justiciable by the Labour Court since the entire agreement concerned a contract of employment as envisaged in section 77(3).

[11] The respondents oppose the appeal on the basis that the independent contractor fee and contribution to medical aid were not claims collateral to their employment contracts. This, it was argued, was evident from the fact that the appellants' employment relationships terminated in January and August 2020, and

the settlement agreements with the appellants were entered into in January 2021. In their cross-appeal, the respondents contend that a genuine dispute of fact existed in relation to the quantum of the amounts claimed and seek an order that the Labour Court's orders in respect of the payment of monthly remuneration and accrued leave be set aside. This, given that the appellants failed to plead that such remuneration had not been paid and the amounts outstanding in respect of such remuneration or leave pay were not quantified. Instead, the appellants invoiced the respondents for payment of an independent contractor service fee, the total amount of which invoices equals the amount claimed in their respective notices of motion. As a result, it was contended that a genuine dispute of fact exists as to the amounts owing to each appellant.

### Evaluation

[12] The determination as to whether a matter concerns an employment contract and therefore falls within the ambit of section 77(3) is both fact and context-dependent. A dispute that "*relates to, is linked to, or connected with an employment contract*" falls within the ambit of section 77(3),<sup>2</sup> as does an agreement terminating the employment contract.<sup>3</sup> However, where a number of distinct claims exist in an agreement, each claim must be scrutinised to determine whether section 77(3) applies or not.<sup>4</sup> The fact that one claim may be justiciable does not make all claims recorded in an agreement justiciable.

[13] The appellants sought that a wide interpretation be afforded to section 77(3) on the basis that the settlement agreement concluded concerned the termination of employment, which created a sufficient link to their contracts of employment. However, the settlement agreement went further than simply resolving issues pertaining to the appellants' employment. It recorded the agreed terms of an independent contractor agreement entered into between the parties, one which was clearly not concerned with the previous employment contracts. In addition, it made

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<sup>2</sup> *Lewarne v Fochem International (Pty) Ltd* [2019] ZASCA 114; (2019) 40 ILJ 2473 (SCA) at para 8.

<sup>3</sup> *University of the North v Franks and Others* [2002] ZALAC 13; (2002) 23 ILJ 1252 (LAC) at paras 29-30.

<sup>4</sup> *SA Municipal Workers Union on behalf of Morwe v Tswaing Local Municipality and Others* [2022] ZALAC 107; (2022) 43 ILJ 2754 (LAC) at para 9.

provision for payment of medical aid contributions subsequent to the termination of the appellants' employment, when such contributions did not concern the appellants' prior employment contracts.

[14] The Labour Court correctly undertook a careful analysis of the terms of the settlement agreement to determine which claims reflected in it were concerned with the appellants' employment contracts and which were not. This approach accorded with the express language of section 77(3), which grants the Labour Court jurisdiction, concurrent with the civil courts, "*to hear and determine any matter concerning a contract of employment*". A sensible meaning, one that does not lead "*to insensible or unbusinesslike results*" and which accords with the express language and apparent purpose of the provision,<sup>5</sup> is not one which expands the jurisdiction of the Labour Court to matters which do not relate to or concern an employment contract simply because an agreement records agreement on some matters which do concern such a contract. Such an interpretation would not accord with the express language of the statute.

[15] The agreement to provide services as an independent contractor is not concerned with the appellant's employment contract, although that agreement was entered into when agreeing to terminate the employment contract. Similarly, the agreement to make payment of medical aid contributions during the period in which the appellants provide services as independent contractors is patently a matter not concerned with the employment contract.

[16] For these reasons, the Labour Court's finding that the appellants' claims for payment of monies claimed for services rendered as independent contractors and for medical aid contributions were not justiciable cannot be faulted. Whereas the Court correctly concluded, in relation to the payment of remuneration that was expressly agreed in the settlement agreement and the payment of accrued leave, that both matters were concerned with and related to the contract of employment entered into between the parties and that the Labour Court consequently had the requisite jurisdiction to determine such claims.

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<sup>5</sup> *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) at para 18.

[17] The quantum of the payments claimed in respect of remuneration and leave pay was set out in the appellants' founding papers and were capable of determination. These amounts were not contradicted by the respondents, nor did the respondents dispute that the monies due had not been paid. The Court correctly concluded that the globular sum claimed by the appellants less the independent contractor fee and medical aid contributions amounted to the sum due in respect of unpaid remuneration and accrued leave. The Labour Court consequently did not err in making the orders that it did, granting in relation to unpaid remuneration and accrued leave pay that it did.

[18] For these reasons, both the appeal and the cross-appeal cannot succeed and fall to be dismissed, with the orders of the Labour Court permitted to stand. Since neither party has been successful on appeal, there is no reason in law or fairness why an order of costs should be made in this matter.

[19] For these reasons, the following order is made:

Order

1. The appeal is reinstated, and the late filing of the record is condoned.
2. The appeal and cross-appeal are dismissed.
3. There is no order as to costs.

SAVAGE AJP

Sutherland AJA and Davis AJA agree.

APPEARANCES:

FOR THE APPELLANTS: L Hollander

Instructed by Swarts Weil Van der Merwe Greenberg Inc.

FOR THE RESPONDENTS: M J Engelbrecht SC and F Karachi (heads by G A Fourie SC and F Karachi)

Instructed by Werksmans Attorneys