



CONSTITUTIONAL COURT OF SOUTH AFRICA

Louisah Basani Baloyi v Public Protector and Others

CCT 03/20

Date of judgment: 4 December 2020

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 4 December 2020 at 09h30, the Constitutional Court handed down judgment in an application concerning the High Court's jurisdiction over an unlawful termination of a fixed-term contract of employment.

The applicant is Ms Louisah Basani Baloyi, the former Chief Operations Officer in the Office of the Public Protector. Ms Baloyi was employed by the Office of the Public Protector on a five-year contract that provided for a six-month probation period, which could be extended for not more than twelve months. At the end of the probation period, the Office of the Public Protector would be entitled to either terminate Ms Baloyi's or confirm her appointment. Several months after Ms Baloyi's probation period ended, she was informed that the Office of the Public Protector was unable to confirm her permanent employment.

Ms Baloyi launched an urgent application in the High Court, Gauteng Division, Pretoria, on the basis that the termination of her employment was unlawful and that the Public Protector had not complied with her constitutional obligations in terms of section 181(2) of the Constitution. The High Court dismissed Ms Baloyi's application on the basis that it did not have jurisdiction over the dispute, which it said should have been brought before the Labour Court.

Ms Baloyi appealed directly to this Court seeking a review of the decision to terminate her employment and an order for reinstatement (review relief). She also sought a declaratory order that the Public Protector violated her constitutional obligations under section 181(2) of the

Constitution (declaratory relief). Ms Baloyi also challenged the High Court's finding that it did not have jurisdiction in relation to both the declaratory relief and the review relief (jurisdictional challenge).

In a unanimous judgment penned by Theron J, this Court granted Ms Baloyi leave to appeal directly in relation to the jurisdictional challenge, but refused leave to appeal in relation to the merits (comprising the review relief and the declaratory relief). The central question before this Court was thus whether, in terms of section 157(2) of the Labour Relations Act 66 of 1995 (LRA), the High Court and Labour Court enjoy concurrent jurisdiction over an alleged unlawful termination of a fixed-term contract of employment.

This Court affirmed that section 157(1) does not afford the Labour Court general jurisdiction in employment matters. By virtue of section 157(2) of the Labour Relations Act, the High Court and the Labour Court share concurrent jurisdiction in respect of employment-related disputes over which the Labour Court does not have exclusive jurisdiction. This means that the High Court's jurisdiction will not be ousted by section 157(1) simply because a dispute falls within the overall sphere of employment relations. The Labour Court's exclusive jurisdiction extends to disputes for which the Labour Relations Act creates specific rights and remedies, including, for example, unfair dismissal disputes.

The Court held that the termination of a contract of employment has the potential to found a claim for relief for infringement of the LRA *and* a contractual claim for enforcement of a right that does not emanate from the LRA. It is for the litigant to decide which cause of action to pursue.

This Court found that Ms Baloyi had advanced a claim for contractual breach and expressly disavowed reliance on the provisions of the LRA. The Court held, further, that while Ms Baloyi may also have a claim for unfair dismissal in terms of the LRA, nothing in the LRA required her to advance that claim in the Labour Court. As for the public law basis for the review relief and the declaratory relief based on section 182(1) of the Constitution, this Court held that neither of those claims fell within the exclusive jurisdiction of the Labour Court, in terms of section 157(1) of the LRA.

This Court concluded that the High Court erred in dismissing Ms Baloyi's application on the basis that it was "essentially a labour dispute" and that its jurisdiction was not engaged. Accordingly, it upheld Ms Baloyi's appeal against the High Court's finding on jurisdiction and remitted the matter to the High Court, Gauteng Division, Pretoria for a hearing *de novo*.¹

¹ A hearing *de novo* refers to a hearing where the matter is re-heard as if for the first time. No regard will be had to any of the prior findings made by the court in relation to the matter.