

EMPLOYMENT

Employees signing mutual separation agreements under duress

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Signing mutual separation agreements under duress

Whether a threat of police action amounts to duress when signing a mutual separation agreement.

Summary

The dismissal of an employee was found to be fair in the instance where no signs of duress were proven in obtaining a confession of theft and the signing of a mutual separation agreement. A threat of police action does not amount to duress.

Facts

This was the issue considered by the Commission for Conciliation, Mediation and Arbitration (“**CCMA**”) in the case of *Vena and others / Sanitech [2022] 2 BALR 209 (CCMA)*. Nine employees were required to give a video confession and sign a mutual separation agreement by a forensic auditor of the employer. This was after the employees were caught and implicated in the theft and sale of company property.

After the relevant employees had been gathered in a boardroom, the evidence against them was explained. They were advised that the company would take the matter no further if they signed separation agreements. The employees signed the agreements and later claimed that they had been forced to do so. The employer denied that the employees had been forced to sign the agreements.

Where a person seeks to set aside a contract, or resist the enforcement of a contract on the ground of duress based on fear, the following elements must be established:

1. The fear must be a reasonable one.
2. It must be caused by the threat of some considerable evil to the person concerned or his family.
3. It must be a threat of an imminent or inevitable evil.
4. The threat or intimidation must be unlawful or *contra bonos mores*.
5. The moral pressure used must have caused damage.

In this instance, the onus rested on the employees to prove the above elements. The employees alleged that they were intimidated in making the confessional video by the forensic auditor. The employees further alleged that the separation agreement had been covered by the hands of the forensic auditor and that they were, therefore, unaware as to the contents of the document they signed.

CCMA's Findings

In the group video, the applicants individually confirmed that they were not forced or threatened to sign the separation agreement and that they were certain that they wanted to proceed with the separation agreement. The Commissioner noted that the employees were relaxed and they smiled in the video with no signs of fear, intimidation, threats or duress.

The only inducement that had been held out to the applicants was that they would be reported to the police if they did not sign. The allegation that the employees were merely acting on the basis of instruction by the forensic auditor in the video was therefore not established.

It was further found that the agreement had been labelled as a separation agreement which would not have been covered by the forensic auditor as the pages would have to be lifted in order to sign the agreement in the manner that it was.

Importance of the judgment

All the elements of duress must be established in order to resile from a contract. The mere suggestion of police involvement is not enough to constitute duress.

Read more on the [termination of the employment relationship in terms of the UI-19](#).

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