



EMPLOYMENT

Signed, sealed and settled

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Where the continuation of the employment relationship between an employer and employee breaks down, the parties may reciprocally agree to amicably part ways and usually enter into termination and settlement agreement. Under such an agreement the employee gives up the right to refer a dispute about the fairness of the termination, or other claims that they may have against the former employer. These kinds of agreements can also be entered into to settle a dispute already at the CCMA. A recent judgement handed down in ***Sello v Commission for Conciliation, Mediation and Arbitration and Others (JS98/2025)*** ("***Sello***") confirms the binding nature of these types of agreements and shows how difficult it is for a signatory to this kind of agreement to get out of its terms.

The employee, Sello, approached the Labour Court to set aside a Mutual Separation Agreement that he had entered into with his previous employer, The Falcons Body Corporate, to settle a dispute which he had referred to the Commission for Conciliation, Mediation, and Arbitration (CCMA) regarding his dismissal for misconduct. Sello, in contesting the enforceability of the settlement agreement, argued that although he had indeed signed the document, the Commissioner failed to adequately explain the terms of the agreement to him, "misled" him, and "unfairly, unreasonably and unduly influenced" him to sign the Agreement. Sello claimed that he was confused by the process and did not appreciate that by signing the agreement he would waive his right to pursue the dispute further. The agreement, Sello argued, should be disregarded and not enforced.

The Court considered Sello's version and unpacked the legal principles of the law of contract. Citing various case law, the Court affirmed the inviolability of contracts and the desire – and in fact need – to uphold contracts that have been ***freely entered into***, and thus considered whether the agreement signed by Sello had indeed been entered into voluntarily by him and without undue influence.

The Court examined the basis of Sello's alleged confusion, having regard for the simply-worded one-page agreement, Sello's active participation in the proceedings and evident understanding of complex legal terminology, and ultimately took great issue with Sello's purported lack of attempt to alleviate his confusion by himself. It held that at no point did he query the process or the agreement, and in reading the terms of the agreement, the Court was of the opinion that it would have been clear to Sello what he was undertaking.

The Court affirmed that a party to a contract cannot readily escape the consequences thereof by simply citing a failure to have the contents therein explained to them, particularly when the contract in question is relatively uncomplicated. Having regard for the above, and the facts of the matter before it, the Court dismissed the application.

Despite the judgement ruling in favour of the employer, this case nonetheless sheds light on what issues can and sometimes do indeed arise where an employer enters into a mutual separation agreement with an employee.

Any party to any legal matter always has an individual responsibility to take steps to remain informed of the process unfolding before them, in order to ensure their own protection. As is apparent from *Sello*, the binding nature of contracts is highly respected by our courts, and accordingly it will be very difficult to escape the obligations contained therein once same has been freely and voluntarily entered into, even if a party (by virtue of their own actions) does not fully grasp the implications thereof.

Thus, employees entering into mutual separation agreements must bear the maxim "*pacta sunt servanda*" in mind and remain cognisant of the fact that our courts will attempt to uphold the terms of the agreement so entered as far as is reasonably permissible within the bounds of the law.



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