THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Reportable

Case No: J2888/14

In the matter between:

JUNIA SENNE	**First Applicant**
LERATO MPOFU	**Second Applicant**
LUCAS JOHANNES BURGER	**Third Applicant**
ALEX VAN ZYL	**Fourth Applicant**

and

FLEET AFRICA (PTY) LTD	**Respondent**

Heard: **6 - 9 October 2015**

Delivered: **12 February 2016**

Summary: **Voluntary retrenchment settlement agreements preceded by expiry of "second generation outsourcing agreement" – respondent attempting to resile from agreements on the basis that, when same were concluded, applicants were not employees of respondent – Section 197 of LRA providing that, pursuant to transfer of a business as a going concern, certain legal consequences flow from**

the transfer – Section 197 stipulating that one legal consequence is the substitution of the new employer in the place of the old employer but not stipulating when that occurs – that legal consequence is a question of fact to be determined on a case-by-case basis – applicants entitled to declaratory orders that agreements are valid and binding.

JUDGMENT

BOYCE AJ

Introduction

[1] The genesis of this matter, an action in which the applicants seek, *inter alia*, orders that voluntary retrenchment settlement agreements ("the retrenchment agreements"), concluded between the applicants and the respondent, are valid and binding, is the expiry of a so-called "second generation outsourcing agreement" (sometimes also referred to as a "second outsourcing agreement"). The matter, however, had very little to do with the aforementioned "second generation outsourcing agreement"/"second outsourcing agreement", and the primary issue concerned the timing of the substitution of the new employer ("the City of Johannesburg") in the place of the old employer ("the respondent"), as contemplated by Section 197 (2) (a) of the Labour Relations Act 66 of 1995, as amended ("the LRA").

[2] The essence of the respondent's defense to the applicants' claims was that, at the time of the conclusion of the retrenchment agreements:

2.1 There had been a transfer of a business as a going concern, the subject matter of the "second generation outsourcing agreement", in terms of Section 197 of the LRA;

2.2 Upon the transfer of the business as a going concern, the City of Johannesburg was automatically substituted in the place of the respondent (the old employer) in terms of Section 197 (2) (a) of the LRA;

2.3 The respondent was, therefore, not the employer of the applicants when the retrenchment agreements were concluded and the retrenchment agreements were, consequently, invalid and unenforceable.

Background

[3] The first applicant, Junior Senne (Senne), was employed by the respondent from 1 July 2008, while the second applicant, Lerato Mpofu (Mpofu), was employed by the respondent from 5 May 2003. The third applicant, Lucas Johannes Burger (Burger), and the fourth applicant, Alex van Zyl (van Zyl), were employed by the City of Johannesburg from, respectively, May 1969 and 1 January 1986. On 1 April 2001, pursuant to the transfer of a business as a going concern in terms of Section 197 if the LRA, the employment contracts of Burger and van Zyl were transferred from the City of Johannesburg to an entity called Super Fleet Power Plus Performance, and then to the respondent.

[4] The City of Johannesburg concluded an outsourcing agreement with the respondent, and then with an entity called Phakisaworld Fleet Services ("PFS"), in terms of which vehicles of the City of Johannesburg were serviced and maintained. When the outsourcing agreement expired, the business of servicing and maintaining the vehicles of the City of Johannesburg was transferred, in terms of Section 197 of the LRA, to the City of Johannesburg, and this transfer constituted the "second generation outsourcing agreement"/"second outsourcing agreement" referred to in paragraph [1] supra.

[5] It was common cause that the outsourcing agreement which had been concluded between the City of Johannesburg and the respondent expired on 28 February 2012. Subsequent to the expiry of the aforementioned outsourcing agreement, an arbitration (before Advocate Alistair Franklin SC) and an appeal arbitration (before Advocates John Myburgh SC, Andrew Redding SC and Anton Myburgh SC) took place by agreement between the parties.

[6] Pursuant to the abovementioned arbitration, Advocate Franklin SC granted an order in the following terms:

6.1 Declaring that the transfer of assets, rights and obligations from the respondent (Fleet Africa (Pty) Ltd) to the City of Johannesburg on 1 March 2012, on the expiry of the "second generation outsourcing agreement"/"second outsourcing agreement" (which had been concluded between the respondent and the City of Johannesburg), was a transfer of a business as a going concern in terms of Section 197 of the LRA;

6.2 Declaring that the date of transfer of the business as a going concern was 1 March 2012;

6.3 Ordering the City of Johannesburg to comply with its obligations to the employees of the transferred business in terms of Section 197 of the LRA.

[7] On 29 May 2012 the abovementioned appeal tribunal dismissed the appeal which had been launched by the City of Johannesburg and, in dismissing the appeal, held, *inter alia*, that:

7.1 Upon the expiry of the "second generation outsourcing agreement"/"second outsourcing agreement", the business in question (fleet management services) was transferred as a business, or part of business, as contemplated by Section 197 of the LRA;

7.2 The servicing and maintenance of vehicles of the City of Johannesburg (which had been the business operated by the respondent and, at the time of the arbitration, by PFS) continued as an "identifiable economic entity", and the business was, therefore, transferred as a going concern as contemplated by section 197 of the LRA;

7.3 The employment contracts of employees who were involved with the servicing and maintenance of vehicles of the City of Johannesburg were automatically transferred as a result of the transfer of the business in question;

7.4 Applying the principles set out in *Aviation Union of SA and Another v SA Airways (Pty) Ltd and Others (2011) 32 ILJ 2861 (CC)*, the appeal tribunal held that:

a) The initial transaction to the respondent was clearly a transfer of a business as a going concern;

b) The economic entity that was transferred comprised the rights and obligations to service and maintain the vehicles of the City of Johannesburg;

c) On termination of the "Second outsourcing agreement" with the respondent, the City of Johannesburg did not divest itself of the requirement for vehicles and the concomitant requirement for servicing and maintaining those vehicles;

d) The maintaining and servicing of vehicles of the City of Johannesburg constituted an "identifiable economic entity";

e) The termination of the "second outsourcing agreement", consequently, constituted a transfer of a business as a going concern, as contemplated by Section 197 of the LRA.

The Pleadings

[8] **The statement of case**: It was common cause that the four applicants concluded retrenchment agreements with the respondent on, respectively, 7 May 2012 (Senne), 15 May 2012 (Mpofu), 14 May 2012 (Burger) and 18 May 2012 (van Zyl), and the essential averments made in the statement of case are**:**

1) "To date hereof the respondent has failed to honour the terms of the settlement agreement and its failure aforesaid can be seen to be a repudiation of the settlement agreement, which repudiation the applicants do not accept";

2) "In the abovestated premises the applicants maintain that factually it has been established that a valid and binding retrenchment agreement, the settlement agreement, has been concluded between the respondent and the applicants and as such the applicants are entitled to payment of their voluntary retrenchment packages";

[9] **The statement of defense**: The respondent resisted the claim for the declaratory relief sought by the applicants, viz. that the retrenchment agreements are valid and binding, and, in that regard, raised the following 5 points *in limine:*

1) "POINT *IN LIMINE* ONE – EXCLUSION OF THE THIRD AND FOURTH RESPONDENT (sic) **FROM THIS APPLICATION BY VIRTUE OF ANY VOLUNTARY RETRENCHMENT AGREEMENT BEING RENDERED VOID FOR NO-COMPLIANCE WITH SECTION 197 (6) OF THE ACT";**

2) **"JURISDICTIONAL POINT *IN LIMINE* TWO – AGREEMENTS VOID BECAUSE THEY WERE CONCLUDED WITHOUT AUTHORITY";**

3) **"POINT *IN LIMINE* THREE – VOLUNTARY RETRENCHMENT SETTTLEMENT AGREEMENTS VOID BECAUSE NO EMPLOYMENT RELATIONSHIP IN EXISTENCE BETWEEN THE PARTIES AT THE MATERIAL TIME OF THE CONCLUSION OF VOLUNTARY RETRENCHMENT AGREEMENTS AND THE AGREEMENTS ARE VITIATED BECAUSE OF COMMON MISTAKE";**

4) **"POINT *IN LIMINE* FOUR – AGREEMENTS NOT ENFORCEABLE BECAUSE THE APPLICANST**(sic) **HAVE BREACHED THE AGREEMENTS OR HAVE ABANDONED THE AGREEMENTS BY NOT ENFORCING THEM AND BY ACQUIESING IN THE TRANSFER";**

5) **"POINT *IN LIMINE* FIVE – JURISDICTION OF THE ABOVE HONOURABLE COURT".**

The Evidence Adduced during the Trial

[10] The respondent did not persist with the abovementioned "point *in limine* one" and the evidence summarized herein (which was, in the main, common cause, alternatively, not disputed by the respondent) has, consequently, been limited to the two main issues which fell to be determined, viz.:

10.1 Whether the retrenchment agreements are void because, at the time of the conclusion thereof, the respondent was not the employer of the applicants;

10.2 Whether the applicants waived and/or abandoned their right to enforce the retrenchment agreements.

[11] The evidence of van Zyl (the fourth applicant), *apropos* the abovementioned two issues, disclosed the following:

11.1 He signed a retrenchment agreement with the respondent on 18 May 2012;

11.2 In terms of the retrenchment agreement aforementioned:

a) It was in full and final settlement of, *inter alia*, any entitlement to a transfer to the City of Johannesburg in terms of Section 197 of the LRA;

b) The respondent agreed to pay him an amount of R435 325.75;

c) Subsequent to the conclusion of the retrenchment agreement:

i) He continued working for the respondent, as a diesel mechanic, until 30 September 2012;

ii) He was paid his salary by the respondent until 30 September 2012;

iii) His employment with the City of Johannesburg commenced on 1 October 2012 and his salary was paid by the City of Johannesburg from 1 October 2012;

iv) During a meeting on 16 May 2012 the respondent's attorney, William Berry, explained to the respondent's employees, including van Zyl, that, in order for the respondent to have certainty, those employees who had been involved with the contract with the City of Johannesburg (to service and maintain its vehicles) could receive a "double benefit", which would be the conclusion of a retrenchment agreement with

the respondent and the transfer of their employment contracts to the City of Johannesburg;

v) The applicants instituted action against the respondent, to enforce their retrenchment agreements, after the Labour Court (per Rawat AJ), in the matter of *Erica Nijs v Fleet Africa (Pty) Ltd and City of Johannesburg (case no. J2115/12)*, granted an order declaring that a valid and binding settlement agreement was concluded between Erica Nijs and Fleet Africa (Pty) Ltd during May 2012.

[12] The evidence of Burger (the third applicant), *apropos* the two main issues to be determined (vide paragraph [10] supra) disclosed the following:

12.1 He signed a retrenchment agreement with the respondent on 14 May 2012;

12.2 In terms of the retrenchment agreement aforementioned:

a) It was in full and final settlement of, *inter alia*, any entitlement to a transfer to the City of Johannesburg in terms of Section 197 of the LRA;

b) The respondent agreed to pay him an amount of R944 772.08;

c) Subsequent to the conclusion of the retrenchment agreement:

i) He continued working for the respondent until September 2012;

ii) He was paid his salary by the respondent until 30 September 2012;

iii) His employment with the City of Johannesburg commenced on 1 October 2012 and his salary was paid by the City of Johannesburg from 1 October 2012;

iv) During a meeting on 14 May 2012, the respondent's attorney, William Berry, explained that, in order for the respondent to have certainty, those employees who had been involved with the contract with the City of Johannesburg (to service and maintain its vehicles) could accept voluntary retrenchments (from the respondent) and still pursue their rights against the City of Johannesburg;

v) The applicants instituted action against the respondent, to enforce their retrenchment agreements, after the Labour Court (per Rawat AJ), in the matter of *Erica Nijs v Fleet Africa (Pty) Ltd and City of Johannesburg (case no. J2115/12)*, granted an order declaring that a valid and binding settlement agreement was concluded between Erica Nijs and Fleet Africa (Pty) Ltd during May 2012.

[13] The evidence of Mpofu (the second applicant), *apropos* the two main issues to be determined (vide paragraph [10] supra) disclosed the following:

13.1 She signed a retrenchment agreement with the respondent on 15 May 2012;

13.2 In terms of the retrenchment agreement aforementioned:

a) It was in full and final settlement of, *inter alia*, any entitlement to a transfer to the City of Johannesburg in terms of Section 197 of the LRA;

b) The respondent agreed to pay her an amount of R187 496.13;

c) Subsequent to the conclusion of the retrenchment agreement:

i) She continued rendering services to the respondent, as a fleet administrator, until 17 May 2012;

ii) She was paid her salary by the respondent until September 2012;

iii) She was transferred to the City of Johannesburg, as a fleet administrator, during August 2012;

iv) During a meeting on 20 April 2012 the respondent's attorney, William Berry, explained that, in order for the respondent to have certainty, those employees who had been involved with the contract with the City of Johannesburg (to service and maintain its vehicles) could, as a "sweetener" or "bonus", accept voluntary retrenchments (from the respondent) and still pursue their rights against the City of Johannesburg;

v) She initiated action against the respondent, to claim the amount referred to in the retrenchment agreement (i.e. R187 496.13) approximately two years after the conclusion of the retrenchment agreement because she knew that she had a period of three years in which to pursue her rights.

[14] The evidence of Senne (the first applicant) *apropos* the two main issues to be determined (vide paragraph [10] supra) disclosed the following:

14.1 She signed a retrenchment agreement with the respondent on 7 May 2012;

14.2 In terms of the retrenchment agreement aforementioned:

a) It was in full and final settlement of, *inter alia*, any entitlement to a transfer to the City of Johannesburg in terms of Section 197 of the LRA;

b) The respondent agreed to pay her an amount of R175 280.95;

c) Subsequent to the conclusion of the retrenchment agreement:

i) She continued working for the respondent, as a contract manager, at the premises of the respondent's client (Pikitup) until 30 June 2012;

ii) She was paid her salary by the respondent until 30 September 2012;

iii) Her employment with the City of Johannesburg, still as a contract manager at Pikitup, commenced during January 2013, although her salary was paid by the City of Johannesburg from October 2012;

iv) The second applicant (Mpofu) told Senne that the respondent's attorney, William Berry, had said that, by concluding a retrenchment agreement with the respondent, she would be receiving a "double bonus" since she could also be transferred to the City of Johannesburg;

v) She initiated action against the respondent, to claim the amount referred to in the retrenchment agreement (i.e. R175 280.95) approximately two years after the conclusion of the retrenchment agreement because:

* She knew that she had a period of three years in which to claim the amount in the retrenchment agreement;
* She was waiting for the outcome of the application of a colleague (Erica Nijs) in the Labour Court.

[15] The evidence of the respondent's former Human Resources Director, Nontuthuko Masuku (Masuku), *apropos* the two main issues to be determined (vide paragraph [10] supra), disclosed the following:

15.1 At the end of February 2012 the respondent's fleet management contract with the City of Johannesburg expired and it was not renewed;

15.2 As at the end of February 2012 some 180 to 200 of the respondent's employees were working on the aforementioned fleet management contract;

15.3 Following the expiry of the respondent's fleet management contract with the City of Johannesburg, at the end of February 2012:

a) A retrenchment process in terms of Section 189 of the LRA commenced;

b) The respondent decided to offer all of its employees affected by the Section 189 process voluntary retrenchment agreements.

15.4 According to Masuku, in her evidence in chief:

a) The purpose of the voluntary retrenchment agreements was to accommodate those employees who would not be transferred back to the City of Johannesburg;

b) Employees would not be eligible for voluntary retrenchment agreements and transfers back to the City of Johannesburg.

15.5 The applicants were offered voluntary retrenchment agreements at a time when the respondent was “not sure” if they would be transferred back to the City of Johannesburg.

15.6 During cross examination, Masuku:

a) Admitted that, when the applicants concluded the retrenchment agreements with the respondent, they (i.e. the applicants) were employees of the respondent;

b) Agreed that the retrenchment agreements were concluded because the respondent wanted certainty;

c) Conceded that the retrenchment agreements are still valid;

d) Admitted that the respondent offered the applicants the retrenchment agreements in exchange for them waiving any entitlement to be transferred to the City of Johannesburg in terms of Section 197 of the LRA.

Who was the applicants’ employer when the retrenchment agreements were concluded?

[16] The respondent’s contention that the retrenchment agreements are void was predicated on the argument that, since the expiry of the “second generation outsourcing agreement”/”second outsourcing agreement” (on 28 February 2012) constituted a transfer of a business as a going concern, as contemplated by Section 197 of the LRA, the respondent was not the employer of the applicants when the retrenchment agreements were concluded.

[17] This argument by the respondent is devoid of substance quite simply because the existence or otherwise of an employment relationship is a factual question which must be determined on the available evidence regardless of whether there has been a transfer of a business as a going concern in terms of Section 197 of the LRA. Stated differently, the automatic substitution, in respect of contracts of employment, of the new employer in the place of the old employer, is a consequence which flows, by operation of law, from the transfer of a business as a going concern in terms of Section 197 of the LRA, and the said substitution is a consequence which is separate and distinct from the transfer of the business.

[18] In the matter of *Aviation Union of SA and Another v SA Airways (Pty) Ltd and Others (2011) 32 ILJ 2861 (CC)*, the Constitutional Court (per Jafta J) noted that Section 197 (2) of the LRA lists legal consequences which flow from a transfer of a business, or part of a business, as a going concern. One of these consequences is embodied in Section 197 (2) (a) of the LRA, viz.: "The new employer is automatically substituted in the place of the old employer in respect of all contracts of employment in existence immediately before the date of transfer".

[19] The fact that the automatic substitution of the new employer in the place of the old employer, in respect of contracts of employment, is but one of the legal consequences which flow from a transfer of a business in terms of Section 197 of the LRA, was clearly spelt out by Jafta J as follows in *Aviation Union of SA v SA Airways, supra, at 2873A – D:*

> "The text of s197 (2) makes it plain that its application is dependent on the existence of a transfer. It says if a transfer contemplated in the Section takes place, the legal consequences it specifies will be activated. For the consequences to be triggered, a business must be transferred as a going concern. Once a transfer of this kind occurs, it automatically carries with it all contracts of employment that existed immediately before the transfer took place. The basket of what is transferred consists of the business and employment contracts. This simultaneous transfer of business and contracts of

employment does not require any declaration by a court. The employment contracts are automatically transferred together with the business. The person to whom the business is transferred replaces the employer in terms of those contracts and assumes all obligations of the previous employer. He or she also acquires the contractual rights of the previous employer."

[20] Although Jafta JA did state in the abovementioned extract from the judgment in *Aviation Union of SA v SA Airways*, that the "simultaneous transfer of business and contracts of employment does not require any declaration by a court", I did not understand the learned Judge to be saying that there is always a simultaneous substitution of the new employer in the place of the old employer when a business is transferred in terms of Section 197 of the LRA. While it is true that, pursuant to a transfer of a business in terms of Section 197 of the LRA, "the new employer is automatically substituted in the place of the old employer", it would seem to me, as a matter of logic, that the timing of the aforementioned substitution is something which is required to be ascertained on the facts of each case. The word "automatically" in Section 197 (2) (a) of the LRA signifies nothing more than that, following a transfer of a business in terms of Section 197 of the LRA, the affected employees are not required to conclude new employment contracts with the new employer, and it does not follow that the legal consequence in question, viz. the substitution of the new employer in the place of the old employer, always occurs simultaneously (viz. at the same time) with the transfer of the business from the old employer to the new employer.

[21] Section 197 (2) (a) of the LRA, moreover, does not stipulate that the substitution of the new employer in the place of the old employer occurs simultaneously with the transfer of the business as a going concern and, although that is often the case, there are obviously situations where the substitution of the new employer in the place of the old employer does not factually occur simultaneously with the transfer of the business. These situations would include a case where the old employer, the new employer and the affected employees agree that, post the transfer of the business as a going concern, the affected employees will continue

rendering services to the old employer for a specified period of time. Another such situation could occur when, as happened in the present matter, the old employer, the new employer and the affected employees were not aware, and/or disagreed, that a termination of a "second generation outsourcing agreement"/"second outsourcing agreement" constituted a transfer of a business as a going concern as contemplated by Section 197 of the LRA.

[22] Having regard to the aforegoing, and given that the date when the new employer substitutes the old employer is a factual question, it is plain from the evidence adduced during the present trial that the respondent *in casu* was, indeed, the employer of the applicants when the retrenchment agreements were concluded. This finding, which effectively disposes of points *in limine* two, three and five in the respondent's statement of defense (vide paragraph [9] supra), was reinforced by the following facts which were clearly established during the course of the trial:

22.1 After signing a retrenchment agreement with the respondent on 18 May 2012, van Zyl:

a) Continued working for the respondent as a diesel mechanic until 30 September 2012;

b) Was paid his salary by the respondent until 30 September 2012;

c) Commenced his employment with the City of Johannesburg only on 1 October 2012;

d) Was paid his salary by the City of Johannesburg from 1 October 2012.

22.2 After signing a retrenchment agreement with the respondent on 14 May 2012, Burger:

a) Continued working for the respondent until September 2012;

b) Was paid his salary by the respondent until 30 September 2012;

c) Commenced his employment with the City of Johannesburg only on 1 October 2012;

d) Was paid his salary by the City of Johannesburg from 1 October 2012.

22.3 After signing a retrenchment agreement with the respondent on 15 May 2012, Mpofu:

a) Continued working for the respondent, as a fleet administrator, until 17 May 2012;

b) Was paid her salary by the respondent until September 2012;

c) Was only transferred to the City of Johannesburg, as a fleet administrator, during August 2012.

22.4 After signing a retrenchment agreement with the respondent on 7 May 2012, Senne:

a) Continued working for the respondent, as a contract manager at the premises of the respondent's client (Pikitup), until 30 June 2012;

b) Was paid her salary by the respondent until 30 September 2012;

c) Commenced her employment with the City of Johannesburg (as a contract manager at Pikitup) only during January 2013;

d) Was paid her salary by the City of Johannesburg from October 2012.

22.5 The unchallenged statements by William Berry, the respondent's attorney, during meetings on 20 April 2012, 14 May 2012 and 16 May 2012, that employees who had been involved with the respondent's contract with the City of Johannesburg (to service and maintain its vehicles) could conclude retrenchment agreements with the respondent and, in addition, could pursue their rights to have their employment contracts transferred to the City of Johannesburg;

22.6 The concessions, during cross examination, by the respondent's former Human Resources Director (Masuku) that:

a) When the applicants concluded the retrenchment agreements with the respondent, they were employees of the respondent;

b) The aforementioned retrenchment agreements are still valid.

Did the applicants waive and/or abandon their rights to enforce the retrenchment agreements?

[23] The respondent contended that the retrenchment agreements are not enforceable because the applicants "breached" or "abandoned" the retrenchment agreements, "acquiesced" in their transfer to the City of Johannesburg, and "repudiated" the retrenchment agreements (i.e. point *in limine* four). This contention by the respondent, as I understood the argument, is based on the

doctrine of election in that, following the outcome of the appeal arbitration, the applicants elected to accept the benefit of continued employment with the City of Johannesburg, thereby repudiating the retrenchment agreements, and they are, or so the argument went, barred from enforcing the said retrenchment agreements.

[24] At the outset, it must be noted that there was not a scintilla of evidence that the applicants "breached", "abandoned", or "repudiated" the retrenchment agreements, or waived their rights in terms of same. There was also no evidence adduced during the trial that the applicants "acquiesced" in their transfer to the City of Johannesburg. On the contrary, the evidence before me shows that:

24.1 The retrenchment agreements were not, in any way, "breached", abandoned" or "repudiated" by the applicants;

24.2 The applicants did not, at any stage, waive their rights in terms of the retrenchment agreements;

24.3 The outcome of the arbitration and the appeal arbitration was simply that the termination of the "second generation outsourcing agreement"/"second outsourcing agreement" constituted a transfer of a business as a going concern, as contemplated by Section 197 of the LRA, and the applicants did not exercise an "election" to accept the benefit of continued employment with the City of Johannesburg.

[25] When the respondent failed to honour the retrenchment agreements, and pay the applicants the amounts reflected therein, the applicants were perfectly entitled to approach this court for relief, and there is no merit whatsoever in the respondent's argument that the applicants are barred and/or precluded from enforcing the retrenchment agreements. The finding of the arbitrator, and the

appeal tribunal, that the termination of the "second generation outsourcing agreement"/"second outsourcing agreement" constituted a transfer of a business as a going concern in terms of Section 197 of the LRA, did not, by any stretch of the imagination, amount to the exercising of an "election" by the applicants. The applicants are, consequently, not barred or precluded from enforcing the retrenchment agreements.

The relief sought by the applicants

[26] Having regard to the aforegoing, and given that the respondent was undoubtedly the employer of the applicants when the retrenchment agreements were concluded, the applicants are entitled to enforce the retrenchment agreements and to the relief sought by them. The defenses raised by the respondent were ill-considered and without substance and I was singularly unimpressed with the respondent's stubborn refusal to honour the retrenchment agreements which it had concluded with the applicants. The respondent, after all, was fully aware, when it concluded the retrenchment agreements with the applicants, that there was a chance that the expiry of the "second generation outsourcing agreement"/"second outsourcing agreement" would be found to constitute a transfer of a business as a going concern, as contemplated by Section 197 of the LRA. The applicants are, consequently, entitled to the declaratory relief sought by them and payment of the amounts reflected in the retrenchment agreements.

Costs

[27] The applicants seek an order for costs in their statement of claim and, since the applicants have been successful in this action, there is no reason why the respondent should not be ordered to pay the applicants' costs. I have also borne in mind that there is no longer a relationship between the parties and the requirements of law and fairness require costs to follow the result.

Order

[28] In the result, I make the following order:

1. The voluntary retrenchment settlement agreements, concluded between the applicants and the respondent, are declared to be valid and binding.

2. The respondent is ordered to pay to the applicants the following amounts reflected in the voluntary retrenchment settlement agreements:

   2.1 Junia Senne: R175 280.95;

   2.2 Lerato Mpofu: R187 496.13;

   2.3 Lucas Johannes Burger: R944 772.08;

   2.4 Alex van Zyl: R435 325.75.

3. Interest is to be paid by the respondent on the above amounts at the prescribed *mora* rate of interest:

   3.1 In respect of Junia Senne, from 7 May 2012 until date of payment;

   3.2 In respect of Lerato Mpofu, from 15 May 2012 until date of payment;

   3.3 In respect of Lucas Johannes Burger, from 14 May 2012 until date of payment;

   3.4 In respect of Alex van Zyl, from 18 May 2012 until date of payment.

4. The respondent is ordered to pay the applicants' costs of suit.

_____

Boyce AJ

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicants:	Mr M Hennig of Martin Hennig Attorneys
For the Respondent:	Mr S. Maritz
Instructed by:	William Berry Attorneys.