

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN**

CASE NO: J 2218/08

FOURIE, FERDINAND LUKAS

Applicant

and

STANFORD DRIVING SCHOOL

Respondent

and 34 related cases

JUDGMENT

VAN NIEKERK J

Introduction

[1] A total of 48 matters were enrolled for hearing in a specially convened motion court, all of them emanating from attorneys Jansen Inc, and all but one of them unopposed. In terms of a directive issued by the Judge President, the applicants in each case had been called upon to show cause why the applications should not be dismissed on the basis of this court's judgments in *Mtokafana Ephraim Mayo v Bull Brand Foods (Pty) Ltd* (2010) 31 ILJ 951 (LC) and *Indwe Risk Services (Pty) Ltd v Hester Petronella van Zyl* (2010) 31 ILJ 956 (LC). I shall deal with these judgments and their implications in due course.

[2] Fourteen applications were removed from the roll on the basis that they had been settled, or for some other acceptable reason. Each of the remaining

applications raised one or more separate complaints, the vast majority of which have their roots in the Basic Conditions of Employment Act (BCEA).

The applicable legislation

[3] All of the applicants initially sought directly to enforce rights under the BCEA, relying on s 77 (1) of the Act. In *Bull Brand Foods (Pty) Ltd (supra)*, I held that the scheme of the BCEA (and s 77(1) in particular) did not contemplate that this court could be approached as an agency of first instance to enforce the provisions of the Act. My reasoning in relation to s 77 of the BCEA is reflected in the following extract from the judgment:

[4]...In my view, the provisions of this section do no more than confer a residual exclusive jurisdiction on this Court to deal with those matters that that the Act require be dealt with by the Court. The wording of the section does not confer a jurisdiction on the Court to deal with matters that must be dealt with, in the first instance, by duly appointed functionaries. Mr. Scholtz then relied on s 77A (g) (which empowers the Court to make orders dealing with any matter necessary or incidental to performing its functions in terms of the Act) as the basis on which the Court was entitled to order payment of the notice pay claimed by the applicant. This submission confuses the issue of jurisdiction with the powers conferred on this Court to deal with matters under its jurisdiction – the fact that the Court is accorded the power to deal with matters necessary or incidental to performing its statutorily defined functions does not serve to expand the ambit of those functions.

[5] In the absence of any provision in the BCEA that confers jurisdiction to this Court to enforce the provisions of the Act directly and as an agent of first instance, the applicant's claim is misconceived. To hold otherwise would entirely undermine the

system of enforcement established by Chapter 10 of the Act. Chapter 10 establishes the mechanisms to monitor and enforce the protections guaranteed by the Act. In summary, the entry point into the system is the office of the labour inspector, to whom complaints may be made. The labour inspector is required to endeavour to seek an undertaking from the employer against whom the complaint is made (s 68), failing which the inspector may, if the inspector has reasonable grounds to believe that an employer has not complied with the Act, issue a compliance order (s 69). An employer may object to a compliance order by making representations to the director-general (s 71) and appeal to this Court in terms of s 72 against any order made by the director-general. In terms of s 73, the director-general may apply to this Court to have a compliance order made an order of Court in terms of s 158 (1) (a) of the Labour Relations Act. What relevance and purpose would this carefully crafted system continue to have if employees were entitled to bypass it and approach this Court for orders directly enforcing the provisions of the Act?

[6] The BCEA clearly contemplates that this Court has a general supervisory function in the statutory scheme of enforcement (given its appellate functions in terms of s 72), that it should facilitate the enforcement of orders made by the appropriate functionaries (given its powers to make compliance orders of Court) and that it should ultimately act to impose punishment for continued breaches of the Act (given the Court's powers to impose fines in terms of schedule 2 to the Act). In short, the Act does not extend to this Court those functions that are reserved for the labour inspectorate, and in particular, it does not contemplate that this Court may grant orders that would effectively amount to the compliance orders contemplated by s 69.

[4] This view was recently confirmed by Basson J in *Indwe Risk Services (Pty) Ltd v Van Zyl: Van Zyl v Indwe Risk Services (Pty) Ltd*. To the extent that each of the applicants seeks orders that have the effect of directly enforcing the Act, their applications must fail.

[5] In the *Bull Brand* judgment, I refrained from expressing a view on whether it was competent for a party to approach this court to enforce a basic condition of employment as a contractual term. In these proceedings, Mr Scholtz, who appeared for all of the applicants, has seized the opportunity to pursue this argument. In most of the applications before me, supplementary affidavits have been filed, all of them (but for the personal details of the deponents and certain introductory matters) cast in identical form. The salient paragraphs of the standard form affidavit introduce a claim based in contract, and read as follows:

Section 4 of the BCEA provides for the following:

A basic condition of employment constitutes a term of any contract of employment except to the extent that-

- (a) any other law provides a term that is more favourable to the employee;*
- (b) the basic condition of employment has been replaced, varied, or excluded in accordance with the provisions of the Act; or*
- (c) a term of the contract of employment is more favourable to the employee than the basic condition of employment.*

In terms of Section 77(3) of the BCEA, the above Honourable Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any Basic Conditions of Employment constitutes a term of that contract.

I furthermore confirm that I have been properly advised by my attorneys of record in respect of all alternative remedies available in

order to enforce my rights. I have however elected to proceed with this application and not to enforce any of the available alternative remedies, for Inter alia the following reason:

It is public knowledge that the Department of labour's execution of the enforcement powers is inefficient and constantly fails to bring a dispute to finality, for inter alia the following reasons:

The shortage of manpower at the department;

Public's huge demand and the Department's failure to assist the public within a reasonable period of time;

People having to wait in long queues for days, and electing to discontinue their dispute and/or a complaint as a result of becoming frustrated and not being in a position to attend the department's offices for long periods of time on a regular basis;

Employers, and as a result of making use of attorneys or employers organizations, raising complex defences resulting in Department's officials being reluctant to assist the employee;

The Department's failure to effectively enforce the employee's rights without having to approach the above honourable Court.

The Magistrate Court not being a specialist court and therefore not always in a proper position to consider relevant disputes;

The Magistrate Court not possessing jurisdiction to grant a specific performance order;

The labour Court having exclusive jurisdiction in respect of disputes in terms of Section 77(1) of the Basic Conditions of Employment Act 75 of 1997.

Wherefore I pray for the relief as per my notice of motion (sic).

[6] It should be noted at this point that none of the supplementary affidavits reflect facts that are within the personal knowledge of the deponents. The reasons recorded by the individual applicants as to why they elected to bring their applications is based on so-called 'public knowledge' of conditions that prevail in the offices of the Department of Labour. None of these conditions are reflected by any personal experience, and to the extent that these are claimed to be the subject of public knowledge, there is no

evidence provided of either the conditions themselves or the nature and extent of any public knowledge of them.

[7] That issue aside for the moment, the question that arises in each of the applications before me is whether the BCEA entitles an aggrieved party to enforce the provisions of the Act as contractual terms, and to rely on the concurrent jurisdiction that this court enjoys under s 77 of the BCEA to enforce them. The starting point is s 4 of the Act which provides, with some exceptions, that a basic condition of employment constitutes a term of any contract of employment. A 'basic condition of employment' is defined in s 1 to mean '*a provision of this Act or sectoral determination that stipulates a minimum term or condition of employment*'. In *Bartmann & another t/a Khaya Ibhubesi v De Lange & another* (2009) 30 ILJ 2701 (LC), Todd AJ expressed his reservations about whether it could be said that an obligation under the BCEA to furnish certificates, information regarding remuneration and the like could be said to constitute basic conditions of employment (at paragraph [38] of the judgment). For the purposes of these proceedings, I am prepared to accept that they are, and that they may be enforced as contractual terms. I deal with this issue below; in the context of the prayers for costs on a punitive scale that accompanies virtually every application before me.

[8] In so far as the question of jurisdiction to entertain contractual claims that arise out of a basic condition of employment is concerned, s 77 of the BCEA reads as follows:

"(1) Subject to the Constitution and the jurisdiction of the Labour Appeal Court, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters in terms of this Act, except in respect of an offence specified in sections 43, 44, 46, 48, 90 and 92.

(2) The Labour Court may review the performance or purported performance of any function provided for in this Act or any act or omission of any person in terms of this Act on any grounds that are permissible in law.

(3) *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.*

(4) *Subsection (1) does not prevent any person relying upon a provision of this Act to establish that a basic condition of employment constitutes a term of a contract of employment in any proceedings in a civil court or an arbitration held in terms of an agreement.*

(5) *If proceedings concerning any matter contemplated in terms of subsection (1) are instituted in a court that does not have jurisdiction in respect of that matter, that court may at any stage during proceedings refer that matter to the Labour Court.”*

[9] Also relevant is s 77A (e), which empowers this court to make any appropriate order, including an order “*making a determination that the court considers reasonable on any matter concerning a contract of employment in terms of s 77 (3), which determination may include an order for specific performance. An award of damages or an award of compensation...*”

[10] In general terms, it is clear therefore that the BCEA establishes dual enforcement mechanisms – an employee can elect to refer a complaint to the labour inspectorate, or seek to enforce a basic condition of employment in a civil court or in this court as a term of the employment contract. This general rule is subject to the limitations imposed by s 70 of the BCEA on the issuing of compliance orders by labour inspectors, some of which would preclude an aggrieved employee from seeking to enforce a basic condition of employment through the monitoring and enforcement mechanisms established by part A of chapter 10 of the Act. Thus, an employee that is employed in any one of the categories listed in s 6 (1) (for example, a senior managerial employee) may not seek a compliance order, nor may any person whose monetary claim has been payable for longer than 12 months (see s 70 (d)). In these circumstances, the employee only has the remedy of a contractual claim. Section 74 of the Act contemplates the consolidation of proceedings where an employee institutes proceedings related to an unfair dismissal in this Court,

the CCMA or a bargaining council with jurisdiction. In this event, this court or the arbitrator, as the case may be, may also determine any claim for an amount owing in terms of the BCEA, subject to the conditions set out in s 74(2)(a) to (c).

[11] The effect of these provisions is succinctly summarised by Paul Benjamin in his commentary on the BCEA:

“An employee may choose to recover any amount owing to that employee in terms of the BCEA-

- *by making a claim in either the Small Claims Court, the Magistrate’s Court, the High Court or the Labour court;*
- *if the employee has been dismissed, by instituting the claim jointly with proceedings in the Labour Court or an arbitration concerning the fairness of the dismissal. This claim is restricted to amounts that have not been outstanding for longer than one year;*
- *by making a claim in terms of the Act jointly with proceedings in the Labour Court in which the employee claims that he or she has been discriminated against for exercising a right in terms of the Act.*¹

[12] None of the claims before me concern unfair dismissal or discrimination for exercising a right in terms of the Act; each of them is a claim to recover amounts owed in terms of the Act or for the delivery of certificates and information that an employer is obliged to furnish. In each case in which a amendment to a statement of claim has been filed to reflect the claim as one for eth enforcement of a contractual term, it seems to me that the amendments should be granted, and it is so ordered.

[13] Turning next to the issue of costs, s I have noted, virtually all of the applications before me incorporate a claim for costs on the scale as between

¹ Thompson and Benjamin South African Labour Law vol 1 BB1-44 at para 39, footnotes omitted.

attorney and own client. Claims of this nature were discussed by Basson J in *Indwe Risk Services* (supra), at paragraph [37] of the judgment, and I do not intend to add anything more save to say that orders for costs on this punitive scale ought not to be routinely sought, as the applicants in the present matters appear to have done, and they are certainly not routinely granted. Section 162 of the LRA empowers this court to make orders for the payment of costs, according to the requirements of the law and fairness. The vast majority of the claims in the matters before me fall within the jurisdiction of either the small claims court or the magistrates' courts.² It would be manifestly unfair in these circumstances to burden a respondent with an order for costs on the scale that it ordinarily applied in this court, a court equivalent in status to a division of the High Court, when the less costly alternatives of the small claims court and the magistrates' courts were available to them.

[14] For this reason, I intend to grant no order for costs in those applications where the value of the claims concerned falls within the jurisdiction of the small claims court, and to deny or limit costs orders to the magistrates' court scale where the value of the claim concerned falls between the limits that apply to the small claims court and the magistrates' court respectively. I intend to qualify that approach by applying the approach adopted by Todd AJ in *Bartmann & another t/a Khaya Ibhubesi* (supra), where the court deferred a decision on an order for costs in circumstances where the litigation was not warranted by the legal costs being incurred, and could not on any reasonable construction be said to be commercially viable. The court recorded its concern in regard to what it considered to be an abuse of process in the form of multiple applications either to enforce various provisions of the BCEA or to claim rights under employment contracts where the costs incurred exceed the value of enforcement or the amount in issue, and where the same result could be more effectively achieved by reliance on chapter 10 of the BCEA. In each of the matters before me, as I have observed, the applicants have sought to consolidate any multiple claims, but the spectre remains of costs being sought in respect of claims that are not commercially viable, or are better dealt with

² The jurisdictional thresholds are R7000 and R100 000 respectively.

under chapter 10. This consideration is relevant particularly to claims under s 29 of the Act (for the delivery of particulars of employment), claims under s 33 (for information relevant to remuneration) and claims under s 42 for certificates of service. Where these are claimed, it is not unreasonable to expect the applicants concerned to articulate the precise reasons for requiring these documents, if only to allay concerns that the claim is intended primarily to generate costs that will ultimately sought to be recovered from the relevant respondents. This is especially so in matters where applicants' contracts of employment have been terminated, and where the purpose of this information is not immediately apparent. None of the applicants in the matters before me have recorded the precise reasons underlying their requests for particulars of employment, certificates of service, information regarding remuneration and the like, and while I do not intend to refuse them orders that these documents should be delivered, I do not intend to make any order for costs in these matters.

Individual applications

[15] Against this background, I turn to consider the applications on the roll, identifying each by the name of the applicant and the case number.

[16] Case no J 2218/08, J2221/08, J 2223/08: *Ferdinand Lukas Fourie v Stanford Driving School*

The applicant was employed by the respondent until his dismissal in September 2008. He earned an average monthly salary of R4 000. The first of these matters (J 2218/08) is an application for default judgment, filed consequent on a statement of claim that was served and filed on 19 August 2009. The original statement of claim seeks an order directing the respondent to issue a certificate of service in terms of s 42 of the BCEA, and costs on the scale as between attorney and own client. The second matter (J 2221/08) is similarly an application for default judgment, the proceedings were initiated by a statement of claim filed on 11 December 2008. In this matter, the applicant seeks an order compelling the respondent to provide information in terms of s

33 of the BCEA relating to his remuneration. An amendment to the statement of claim was filed on 18 March 2010, in terms of which the applicant claims the same relief in terms of s 4 read with s 77 (3) of the BCEA. In case J 2223/08 the applicant claims delivery of written particulars of employment in terms of s 29 of the BCEA. In both the second and third applications, costs are sought on the scale as between attorney and own client. Finally, there is an application to consolidate the matters. In the absence of any compelling reason on the papers as to why the certificate and written particulars claimed are necessary or required, I intend to make the following order:

1. The application to consolidate applications J2218/08 and J2221/08 is granted.
2. The respondent is directed to provide the applicant with the information contemplated by s 33 (1) of the BCEA and to furnish the applicant with a certificate of service as contemplated by s 42 of the BCEA.
3. There is no order as to costs.

[17] Case no J 2363/08, J2364/08 *JH van Heerden v Umhwati Home Owners Association*

The first of these matters is an application for an order directing the respondent to issue a certificate of service in terms of s 42 of the BCEA, and to pay the costs of the application on the scale as between attorney and own client. On 15 March 2010, the applicant filed a supplementary affidavit in which he avers that he is entitled to the relief he seeks 'in terms of my contract of employment.' In the second application, the applicant seeks an order directing the respondent to furnish him with written particulars of employment in terms of s 29 of the BCEA. There is also a supplementary affidavit drawn in the standard form. Finally, there is an application to consolidate the applications. For the reasons recorded above, I intend to make the following order:

1. The application to consolidate applications J 2363/0008 and J2364/08 is granted.

2. The respondent is directed to furnish the applicant with written particular of employment in terms of s 29 and with a certificate of service as contemplated by s 42 of the BCEA.
3. There is no order as to costs.

[18] J2616/08, J2617/08, J2618/08 *Coetzee, Magdalena Susanna Elizabeth v Theuns Serfontien t/a Diascan Wellness Centre Potchefstroom*

In these applications, the applicant had sought orders respectively directing the respondent to furnish information relating to remuneration in terms of s 33, leave and notice pay, and a certificate of service. These orders were granted by Basson J on 8 may 2009, with no order as to costs. That notwithstanding, in each of these matters, the applicant's attorney had filed a notice in terms of Rule 22B requesting the Registrar to place the matters on the unopposed motion roll. The notices were filed on 29 January 2010. In each matter, the applicant signed and filed a supplementary affidavit in the standard form. Finally, the applicant's attorney filed an application to consolidate the applications. In view of the fact that each of these applications is already the subject of an order of this court, I intend to grant the following order in respect of each application:

1. The application is removed from the roll.

[19] J238/09, J239/09, J240/09 *Langa Mabona v CS & VA (Pty) Ltd; Langa, Samuel v Corporate Investigating & Veracity Assessment (Pty) Ltd*

These are applications in which the applicant seeks in J 238/09 an order compelling the respondent to issue a certificate of service, with costs on the scale as between attorney and own client, in J239/09 an order directing the respondent to furnish written particulars of employment, with costs on the scale as between attorney and own client, and in J 240/09, an order compelling the respondent to furnish information regarding remuneration, with costs on the scale as between attorney and own client. In each case, a

supplementary affidavit in the standard form has been filed. Finally there is an application to consolidate the applications. For the reasons stated above, I intend to make the following order:

1. The applications filed under J238/09, J 239/09 and J240/09 are consolidated.
2. The respondent is ordered to furnish the applicant with written particulars of employment, information regarding remuneration contemplated by s 33 of the BCEA and a certificate of service as contemplated by s 41 of the BCEA.
3. There is no order as to costs.

[20] J 398/09, J399/09, J474/09 *Ferreira, Renier v City Square Trading* 155

These are applications in which the applicant seeks an order directing the respondent to issue a certificate of service (J 398/09), written particulars of employment (J 399/09) and information regarding remuneration (J 474/09). In each case, costs on the scale as between attorney and own client is sought. Further, in each case, the applicant has filed a supplementary affidavit in the standard form. There is also an application to consolidate the applications. For the reasons stated above, I intend to make the following order:

- 1, The applications filed under J 398/09, J 399/09 and J 474/09 are consolidated.
2. The respondent is ordered to furnish the applicant with a certificate of service, as contemplated by s 41 of the BCEA, written particulars of employment as contemplated by s 29 of the BCEA and information regarding remuneration, as contemplated by s 33 of the BCEA.
3. There is no order as to costs.

[21] J607/09 *Moleboge, Gabatloloe Johannes v Tswaing Local Municipality*

This is an application for an order directing the respondent to pay a travelling allowance totalling R5 550.16, and costs on the scale as between attorney and own client. The applicant claims that he was entitled to a travelling allowance, at a rate of R2, 38 per kilometre travelled for a period of three months after relocation. The applicant claims that payments of the allowance totalling R 5 550.16 have been approved and remain unpaid. In the absence of any opposition to the application, and on the basis that the value of the claim falls within the jurisdiction of the small claims court, I intend to make the following order:

1. The respondent is ordered to pay the applicant the sum of R5 550.16, with interest thereon calculated at 15,5 % per annum *a tempore morae* until date of payment.
2. There is no order as to costs.

[22] J836/09, J858/09 *Goosen, Clinton James v Bard –Con Projects cc*

The applicant avers that he was employed by the respondent from 28 June 2008 to 26 September 2008, at a salary of R12 000 per month. In these applications, the applicant seeks an order compelling the respondent to furnish written particulars of employment and a certificate of service, with costs on the scale as between attorney and own client. In second matter, total of R12 788.15 being overtime pay, notice pay and the value of accrued leave. In each case, the applicant has filed a supplementary affidavit in standard form and his attorney has filed an application seeking the consolidation of these matters. For the reasons stated above, and in the absence of any opposition to the applicant's claim, I intend to grant the following order:

1. The application to consolidate claims J 836/09 and J858/09 is granted.

2. The respondent is ordered to furnish the applicant with a certificate of service as contemplated by s 41, and with written particulars of remuneration as contemplated by s 29 of the BCEA. There is no order as to costs in respect of this part of the Order.
3. The respondent is ordered to pay the applicant the sum of R 12 788.15, with costs, on the magistrates' court scale as between party and party.

[23] J 944/09 *Sckickerling, Jacoba Lodewika v Buisfontien Safari Lodge*

The applicant was employed by the respondent as an assistant manager from 5 December 2008 to 6 March 2009, at an average salary of R7 000 per month. She claims delivery of written particulars of employment and a certificate of service, and costs on the scale as between attorney and own client. For the reasons stated above. I intend to make the following order:

1. The respondent is ordered to furnish the applicant with written particulars of employment as contemplated by s 29 of the BCEA and with a certificate of service contemplated by s 41 of the BCEA
2. There is no order as to costs.

[24] J1111/09 *Ntsane, Ratau Johannes v Henry Els t/a On Site Security*

In this application, the applicant claims a total of R4 705.72, being the value of accrued leave not paid, wages equivalent to one weeks' remuneration and the value of a deduction from remuneration that the applicant claims was unlawful. In the absence of any position to the applicant's claim, and given the value of the claim, I intend to make the following order:

1. The respondent is directed to pay the applicant the sum of R4 705.72, plus interest calculated at 15.5% per annum *a tempore morae* until date of payment.
2. There is no order as to costs.

[25] J1195/09, J1200/09 *Mandile, Giovanni v Blue Magnolia Trading 198 cc*

The applicant avers that he was employed by the respondent on 15 September 2008 until his retrenchment on 20 May 2009. In case J 1195/09, he claims payment of R13 774.72 being leave pay, notice pay, severance pay, remuneration, and an unlawful deduction from his remuneration. In case J1200/09, the applicant claims delivery of a certificate of service and written particulars of employment. For the reasons stated above, I intend to make the following order:

1. The applications under J1195/09 and J1200/09 are consolidated.
2. The respondent is to furnish the applicant with written particulars of employment and a certificate of service as contemplated by s 29 and s 41 of the BCEA respectively. There is no order as to costs in respect of this part of the Order.
3. The respondent is directed to pay the applicant the sum of R 13 774.72, plus interest calculated at 15.5% per annum *a tempore morae* until date of payment, with costs, on the magistrates' court scale, as between party and party.

[26] J 1349/09, J 1350/09 *Lottering, Hettie Lorinda v Global Pact Trading 300 t/a Property Skillz*

The applicant was employed as an assistant to the bond centre manager from 7 April 2008 until her retrenchment on 15 April 2009, at a rate of remuneration of R8085.00 per month. The applicant seeks an order directing the respondent to furnish information regarding particulars of remuneration for the period March to April 2009, and a certificate of service in terms of s 42 of the BCEA. Under case number J1350/09, the applicant claims payment of R22 956.47, being pro rata salary (R12 127.50), notice pay (R7468.00), severance pay (R1867.21), and the value of accrued leave (R1493.76). in the absence of

any opposition to the application and for the reasons stated above, I intend to make the following order:

1. The matters under case numbers J1349/09 and J1350/09 are consolidated.
2. The respondent is directed to deliver to the applicant a certificate of service as contemplated by s 42 of the BCEA and particulars of remuneration in the form as contemplated by s 33 of the BCEA. There is no order as to costs in respect of this part of the Order.
3. The respondent is ordered to pay the applicant the sum of R22 956, 47, plus interest calculated at the rate of 15.5% *a tempore morae* until date of payment, with costs, on the magistrates' court scale as between party and party.

[27] J1639/09, J1656/09 *Evers, Heather Sharron v Global Pact Trading 300 t/a Property Skillz*

The applicant was employed by the respondent as a financial assistant, from 1 October 2007 to 28 April 2008. In matter J1639/09, she claims delivery of a certificate of service in terms of s 42 of BCEA and written information regarding remuneration in terms of s 33. In matter J1656/09, she claims R14 390.30, being salary (10 000.00) notice pay (R4618.94), severance pay (R1867.21), accrued leave (R1616.63), less an advance of R3000.00 set off by the applicant. In the absence of opposition to the application and for the reasons stated above, I intend to make the following order:

1. The matters under case numbers J1639/09 and J1656/09 are consolidated.
2. The respondent is directed to deliver to the applicant a certificate of service as contemplated by s 42 of the BCEA and particulars of remuneration contemplated by s 33 of the BCEA. There is no order as to costs in respect of this part of the order.

3. The respondent is ordered to pay the applicant the sum of R14 390.30, plus interest calculated at the rate of 15.5% *a tempore morae* until date of payment, with costs on the magistrates' court scale as between party and party.

[28] J2084/09 *Visser, Christo v Timberman*

The applicant was employed on 20 September 2008 until his dismissal on 20 July 2009, at a gross monthly remuneration of R3 500. The applicant seeks an order directing the respondent to issue a certificate of service, to furnish written information regarding remuneration and to provide written particulars of employment. For the reasons stated above, I intend to make the following order:

1. The respondent is ordered to furnish the applicant with a certificate of service contemplated by s 42 of the BCEA, written information regarding remuneration contemplated by s 33 of the BCEA; and written particulars of employment contemplated by s 29 of the BCEA.
2. There is no order as to costs

[29] J2123/09, J2124/09 *Heenop, Johan Izak v Heenop, Johann and Heenop Johan Izak v Mama She's Waste Recyclers*

Claim by first applicant for payment of R46 117.55, by second applicant for R46 117.55. The applicants were employed as general managers of respondent's Potchefstroom branch, from August 2003 to September 2007. Each applicant earned a gross salary of R12 500, 00 per month. The claim brought under case number J2123/09 is for certificates of service, written particulars of employment and written information regarding remuneration. The second claim, brought under case number J2124/09, is for payment of R46 117.55. For the reasons stated above, I make the following order:

1. The applications filed under case numbers J 2123/09 and J2124/09 are consolidated.

2. The respondent is directed to furnish the first and second applicants with written particulars of employment contemplated by s 29 of the BCEA, and with certificates of service contemplated by s 42 of the BCEA. There is no order for costs in respect of this part of the order.
3. The respondent is ordered to pay the first and second applicants the amount of R46 117.55 each, with interest at the rate of 15,5% per annum *a tempore morae* until date of payment, with costs on the magistrates' court scale, as between party and party.

[30] J 2139/09, J 2169/09 *Williams, Lee v Gestener North West*

The applicant was employed as a service controller from 28 February 2009 to date of her resignation on 13 May 2009. In these proceedings, the applicant claims R923.78, being remuneration earned but not paid. In addition, the applicant claims delivery of a certificate of service, and written particulars of employment. In the absence of opposition to the application and for the reasons stated above, I intend to make the following order:

1. The applications filed under J2139/09 and J2169/09 are consolidated.
2. The respondent is directed to furnish the first and second applicants with written particulars of employment contemplated by s 29 of the BCEA, and with certificates of service contemplated by s 42 of the BCEA.
3. The respondent is ordered to pay the applicant the sum of R 923.78, plus interest at the rate of 15,5% per annum *a tempore morae* until date of payment.
4. There is no order as to costs.

[31] J 22167/09 *Schuute, Phillips v Amis*

The applicant was employed as safety officer from 1 August 2009 until his dismissal on 4 September 2009. He earned a monthly salary of R18 000. In these proceedings the applicant claims R26 723.74, being leave pay, notice pay and unpaid remuneration for the period of his employment. In the absence of opposition to the application and for the reasons stated above, I intend to make the following order:

1. The respondent is ordered to pay the applicant the sum of R 26 723.74, plus interest at the rate of 15,5% per annum *a tempore morae* until date of payment, with costs on the magistrates' court scale, as between party and party.

[32] J2202/09 *Nkato, Daniel Thlone v Henry Else t/a On site Security*

The applicant was employed by the respondent as a security guard from 1 November 2006 until 21 November 2007, at a monthly remuneration of R2500.00. In these proceedings, the applicant claims payment of R6 246.22 being notice, remuneration for August 2008 and for the period 27 October 2008 to 18 November 2008, and the value of leave accrued but not paid. He also seeks an order for costs on the scale as between attorney and own client. In the absence of opposition to the application and for the reason stated above, I make the following order:

1. The respondent is ordered to pay the applicant the sum of R 6 246.22, plus interest at the rate of 15,5% per annum *a tempore morae* until date of payment.
2. There is no order as to costs.

[33] J2260/08 *Nkato, Daniel Thlone v Protea Coin*

This was the only opposed matter on the roll, having been postponed sine die on 19 December 2008. . In his application filed on 19 November 2008, the applicant sought an order directing the respondent to supply him with written

particulars of employment in terms of s 29 (1) of the BCEA. For the reasons stated above, I intend to make the following order:

1. The respondent is directed to furnish the first and second applicants with written particulars of employment contemplated by s 29 of the BCEA.
2. There is no order as to costs.

[34] J2329/09, J2330/09 *Burger Martin v Aether Energy cc.*

The applicant was employed as a project sales consultant from 1 April 2009 to 15 June 2009. He earned R53 800 per month. In the claim filed under J 2329/09, the applicant seeks delivery of a certificate of service and information concerning remuneration. Under case no J 2330/09, the applicant seeks payment of R215 035 .49, being R201 750 that the applicant claims was offered and accepted as a settlement of outstanding salary but not paid, and the value of leave accrued in the sum of R13 285 .49. In the absence of opposition to the application and for the reason stated above, I intend to make the following order:

1. The applications filed under case numbers J 2329/09 and J2330/09 are consolidated.
2. The respondent is directed to furnish the applicant with written particulars of employment contemplated by s 29 of the BCEA, and with certificates of service contemplated by s 42 of the BCEA. There is no order for costs in respect of this part of the order.
3. The respondent is ordered to pay the first and second applicants the amount of R46 117.55 each, with interest at the rate of 15,5% per annum *a tempore morae* until date of payment, with costs on the scale as between party and party.

[35] I accordingly make the orders set out at the conclusion of each of the paragraphs numbered [16] to [34] above.

ANDRE VAN NIEKERK
JUDGE OF THE LABOUR COURT

Appearances:

For the applicants Mr W Scholtz, Jansens Attorneys Inc

For the respondent in case number J 2260/08 Ms Lancaster, McRoberts
Attorneys.

Date of application: 25 March 2010

Date of judgment: 23 September 2010