

SOUTH AFRICA / JUDGMENT

Coetzee v Ivanhoe Mines SA (Pty) Ltd (JS844-20) [2021] ZALCJHB 78 (2 June 2021)

[2021] ZALCJHB 78

COURT

Labour Court Johannesburg

BEFORE

F Coetzee

CASE / FILE NUMBER

JS844-20

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

no: JS844-20

In

the matter between:

DIANA
COETZEE
Applicant
and
IVANHOE
MINES SA (PTY)
LTD
Respondent

Heard:

2 June 2021

Delivered:

This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 2 June 2021.

Summary:

Exception – statement of claim
lacks factual averments

JUDGMENT

COETZEE, AJ

- [1] The parties are referred to as in the main application.
- [2] The applicant filed her statement of claim alleging an unfair retrenchment.
- [3] The respondent excepted to the statement of claim on the basis that it is vague and embarrassing and that the respondent was prejudiced because the applicant did not allege any facts to support her allegations as to the legal issues. In the absence of the factual allegations the respondent is unable to meaningfully, or at all, formulate and file a statement of defence.
- [4] The applicant pleaded as follows:
- "6. The section 189 notice does not comply with section 189 of the Labour Relations Act.
7. The respondent retrenched the applicant.
- 7.1 The retrenchment was not procedurally; or
- 7.2 substantively fair."
- [5] The statement of claim is devoid of any alleged facts upon which the allegations of an unfair retrenchment are based.
- [6] The relevant part of rule 6[1] reads as follows:
- "Statement of Claim
- (1) A document initiating proceedings, known as a "statement of claim", may follow the form set out in Form 2 and must—
- (a) ...
- (b) have a substantive part containing the following information:
- (i) ...
- (ii) a clear and concise statement of the material facts, in chronological order, on which the party relies, which statement must be sufficiently particular to enable any opposing party to reply to the document;
- (iii) a clear and concise statement of the legal issues that arise from the material facts, which statement must be sufficiently particular to enable any opposing party to reply to the document; and ... "

- [7] The applicant in response to the exception filed a document headed "Further Particulars" on 23 November 2020. In this document the applicant sought to address the notice of exception and substantially did so. The applicant provided the further particulars unsolicited and in support of the statement of claim.
- [8] The respondent's attorneys of record addressed correspondence to the applicant wherein they stated that respondent did not wish to approach the litigation in a technical fashion but wished to deal with the merits of the claim but considered itself unable to do so due to the lack of relevant facts in the statement of claim. They also asked, repeatedly, the applicant to amend her statement of claim to incorporate the factual allegations. In her letter she relied upon the respondent's onus to prove that the dismissal was fair and to set out the respondent's factual response and legal issues arising therefrom. The respondent, correctly, submits that the onus does not dictate the content of the statement of claim or the statement of defence.

Discussion

- [9] In *Irving v AMIC Trading (Pty) Ltd* [2] the Labour Court held that a plaintiff cannot, in responding to an exception, rely on the fact that apart from the allegations contained in the statement of case, the defendant of his own knowledge, knows what case he is required to meet. It is incumbent upon the applicant to set out her case.

- [10] In respect of Rule 6, in *Harmse v City of Cape Town*[3], Waglay J (as he then was) said the following:

"[6] The statement of claim serves a dual purpose. The one purpose is to bring a Respondent before the Court to respond to the claims made of and against it and the second purpose of a statement of claim is to inform the Respondent of the material facts and the legal issues arising from those facts upon which applicant will rely to succeed in its claims.

- [7] The material facts and the legal issues must be sufficiently detailed to enable the Respondent to respond, that is, that the Respondent must be informed of the nature or essence of the dispute with sufficient factual and legal particularity so that it knows what it is that the Applicant is relying upon to succeed in its claim.
- [8] The Rules of this Court do not require an elaborate exposition of all facts in their full and complex detail – that ordinarily is the role of evidence, whether oral or documentary. There is a clear distinction between the role played by evidence and that played by pleadings – the pleadings simply give the architecture, the detail and the texture of the factual dispute are provided at the trial. The pre-trial conference provides an occasion for the detail or texture of the factual dispute to begin to take shape. In terms of rule 6(4)(b) the parties in the pre-trial conference must attempt to reach consensus on facts that are common cause, facts that are in dispute, the issues that the Court is required to decide and the precise relief claimed. "

[11] The applicant is obliged to plead various relevant facts that she would rely upon. The statement of case does not contain those factual allegations. The absence of such facts will also make it impossible at a pre-trial meeting to reach consensus on

facts

in dispute and those who are disputed.

The approach to exceptions

[12] Van Niekerk J in *Liquid Telecommunication (Pty) Ltd v Carmichael-Brown*[4] dealt with the Labour Court's approach to exceptions as follows:

"[12] As a starting point, the Uniform Rules are not applicable to proceedings in this court. Rule 11 of the Rules of this Court provides, amongst other things, that if a situation arises for which the Rules do not provide the court may adopt any procedure that it deems appropriate (own emphasis) in the circumstances (see Rule 11 (3)).

[13] Rule 11 (3) has often been cited as a basis for applying the Uniform Rules into this court's practice and procedure. This court has recognised that in the absence of any Rule concerned specifically with exceptions, parties may, under Rule 11, have recourse to Rule 23 of the Uniform Rules (see, for example, *Volscenck v Pragma Africa (Pty) Ltd* (2015) 36 ILJ 494 (LC)). But this court has never gone so far as to suggest that parties are obliged or entitled to conduct litigation in this court on the basis of the Uniform Rules. It is clear from the formulation of Labour Court Rule 11 (3) that the Uniform Rules are not a form of default procedure in this court, nor is it open to litigants and their representatives to rely selectively on the Uniform Rules in the conduct of litigation in this court. Rule 11 (3) is permissive, and provides that the court (not the parties and their representatives) may sanction the use of a procedure not contemplated by the Rules when this is appropriate. In other words, Rule 11 (3) establishes a procedural mechanism for the convenience of the court. It is not an invitation to practitioners to invoke the Uniform Rules and conduct litigation in this court on the basis that the Uniform Rules apply.

[14] This is not to say that there is no procedure applicable in this court when a party contends that a pleading is vague and embarrassing, or discloses no cause of action or defence. Until the Rules of this court are amended so as specifically to regulate the filing of exceptions, Rule 11, as this court has held, is an appropriate basis on which to file an exception, and that Uniform

Rule 23 is an appropriate guide as to when and how an exception should be filed. What I wish to emphasise is that this limited

application of Rule 11 is not the gateway to the wholesale importation and application of the Uniform Rules, and thereby the creation of a parallel system of procedure in this court. In the present instance, for example, the thrust of the excipient's complaints is that the respondent has failed to comply with the provisions of Uniform Rule 18, which regulates generally pleadings in

the High Court. Whether or not the respondent's statement of claim is excipiable is to be determined by reference to Rule 6 of the Rules of this court, not Rule 18 of the Uniform Rules. Rule 6 requires no more than that a party referring a statement of claim

record in a concise manner the relevant facts on which that party relies, and also in concise terms, the legal issues that arise. In the absence of any directive to the contrary, this is all that is required, and the standard against which any pleading is to be measured."

- [13] In the current matter the respondent does not attempt to import and rely upon rules of the High Court, but on Rule (6) for purposes of enabling the respondent to respond to the statement of claim. In *Liquid Telecommunication*, Van Niekerk J quoted with approval the views expressed by Waglay J, as he then was, as to the emphasis on complying with Rule
- (6) so as to inform the Court and the respondent of the facts, not the evidence, upon which the applicant wishes to rely. Both the court and respondent need to know what the applicant's case is about in respect of factual allegations and legal issues.
- [14] The same principle must apply to an exception such as this where there is a lack of factual allegations to enable the respondent to plead.
- [15] When the respondent pleads to the statement of claim, it will also be expected of the respondent to similarly state the facts and legal issues so as to enable the applicant at the pre-trial conference to deal with same.
- [16] In this matter the applicant relies upon an allegation of an unfair dismissal for operational reasons, both in respect of substance and procedure. She does not inform the Court of the factual allegations why the procedure allegedly is unfair, nor of the factual allegations as to why in substance the dismissal was unfair.
- [17] The reasons advanced by the applicant why she does not wish to amend the statement of claim, is unconvincing to say the least. The applicant cannot expect the respondent to plead to a statement of claim which clearly lacks at least the averments contained in the document that she presented containing her "further particulars" but that does not form part of the statement of claim or is provided for in the rules.
- [18] In the absence of an amendment to her statement of claim, this matter cannot proceed orderly to a pre-trial conference. The purpose of a pre-trial conference is to deal with the factual and legal issues and to separate the admitted facts from the facts in dispute. The material facts and legal issues contained in the statement of case must be sufficiently detailed to enable the respondent to respond and that means[5]:

"...that the Respondent must be informed of the nature or essence of the dispute with sufficient factual and legal particularity so that it knows what it is that the Applicant is relying on upon to succeed in its claim."

- [19] Van Niekerk J clearly stated that[6]:

"[17] Care must be taken to distinguish the facts which must be proved in order to disclose a cause of action from the facts necessary to prove them. The determination of the latter, in each particular case, is essentially a matter of substantive law rather than procedure (Alphedie Investments (Pty) Ltd v Greentops (Pty) Ltd 1975

(1) SA 161 (T))."

Summary

[20] The applicant's statement of claim lacks the facts upon which the applicant wishes to rely and does not inform the Court and the respondent to enable the Court to understand the applicant's case and the respondent to plead thereto.

[21] The exception succeeds.

Costs

[22] This is an interlocutory matter where the respondent is successful. Having regard to the relevant factors there is no reason to make a costs order.

[23] The following order is hereby made:

Order

1. The exception succeeds.
2. The applicant's statement of claim is vague and embarrassing lacking the factual averments to enable the respondent to plead.
3. The applicant is granted 14 days in which to amend her statement of claim, if she so wishes, failing which the statement of claim is struck out.
4. There is no order as to costs.

F. Coetzee

Acting Judge of the Labour Court of South Africa

Appearances:

The matter has been determined by video conference.

For the applicant: In person

For the First Respondent: Adv E Tolmay

Instructed by:

Webber Wentzel Attorneys

[1] Rules for the Conduct of Proceedings in the Labour Court

- [2] (JS104/2014) 2014 ZALCJHB 418 at [14] and [15]
 - [3] [2003] 6 BLLR 557 (LC)
 - [4] (2018) 39 ILJ 1779 (LC) (27 March 2018)
 - [5] Harmse *supra*
 - [6] Liquid Telecommunication *supra*
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