

SOUTH AFRICA / JUDGMENT

Dewlal v Cebra Lancet RSA (Pty) Ltd (JS685/24) [2025] ZALCJHB 236 (18 June 2025) [2025] ZALCJHB 236

COURT

Labour Court Johannesburg

BEFORE

W Kruger

CASE / FILE NUMBER

JS685/24

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case

No: JS

685/24

In

the matter between:

SUJITH
NAVIN
DEWLAL
Applicant
and
CEBRA
LANCET RSA (PTY)
LTD
Respondent

Heard:

27 May 2025

Delivered:

18 June 2025 (This judgment was handed down electronically by emailing a copy to the parties. The 18th of June 2025 is deemed to be the date of delivery of this judgment).

Summary: Rule 57 application is an irregular step where the Respondent failed to comply with the Rules of this Court. In casu the Applicant failed to show that the Respondent failed to comply with the Rules of Court. Held that the statement of case did not disclose a cause of action.

JUDGMENT

KRUGER, AJ

Introduction

[1] The Applicant filed a statement of case on 28 November 2024, where he stated that the material facts of the dispute were that the parties entered into a mutual separation agreement and in terms of clauses 2.1 and 4.3 –

‘2.1 With reference to the meeting held with you and Matthieu Gogue, CEO Cebra Lancet RSA (Pty) Ltd, on the 16 August 2024 and the meeting held with you, your line manager, Alain Dibajou and Jenny Maharaj, Head of Human Resources on the 21 August 2024, both parties have agreed to enter a non – prejudice discussion and a non-disclosure, full and final settlement agreement following the outcome of the disciplinary hearing.

...

2.2 The terms outlined in this agreement are confidential and must not be disclosed to any individual or entity outside of our parties involved.’

[2] The Applicant then alleged that the Respondent were in breach of the confidentiality clause and in terms of clause 55 of the statement of claim, the applicant asked for -

‘The damages sought is in the amount of R 800 000,00 (eight hundred thousand rand) for the impairment to the good name and/ or reputation of the Applicant that was intended to be maintained contractually, in good standing, by the Respondent under the agreement.’

[3] The Applicant then asked for the following relief –

‘56.1 declaring that the Respondent breached clauses 2 and 4 of the Agreement by disclosing the contents of the settlement discussions and the incidents which led to the termination of the Applicant’s employment with the Respondent;

56.2 declaring that the Respondent be prohibited from committing such further unlawful conduct in terms of its confidentiality obligations;

56.3 declaring that the Respondent is liable to pay damages in the amount of R 800 000.00 and accordingly ordering the Respondent to pay such damages to the Applicant.’

[4] On 16 January 2025, the Respondent filed a notice of exception in that the Applicant's statement of case failed to sustain a cause of action alternatively lacked averments which are necessary to sustain an action against the Respondent.

[5] The Respondent raised 6 (six) grounds for their exception, namely –

5.1 That the Applicant's reliance on clause 4.3 of the Agreement is misplaced as he does not rely on any other specific term of the Agreement in respect of which the Respondent's confidentiality obligations had allegedly been breached.

5.2 The prayer declaring that the Respondent be prohibited from committing such further unlawful conduct in terms of its confidentiality obligations is evidently premised upon a past breach thereof by the Respondent.

5.3 The Applicant's reliance on the alleged incidents of breach as detailed in paragraphs 7 to 33 of the statement of case is meaningless without reference to a substantive term of the Agreement breached by the Respondent.

5.4 The Applicant's prayer declaring that the Respondent be prohibited from committing such further unlawful conduct in terms of its confidentiality obligations is, in nature and effect, a prayer for final interdictory relief, and the court must be satisfied of:

5.4.1 A clear right;

5.4.2 An injury actually committed or reasonably apprehended;

5.4.3 The absence of a satisfactory remedy;

5.5 The Applicant did not allege the requirements for final interdictory relief.

5.6 A claim for the objective value of performance (damages in lieu of specific performance) is not competent in South African law, especially under circumstances where the monetary value of the

specific performance has not been agreed to or cannot be objectively determined.

[6] On 30 January, the Applicant brought an application in terms of Rule 57 of the rules on the basis that the Respondent had taken an irregular step by delivering its notice of exception, and this was based on two grounds –

6.1 The Respondent did not provide the Applicant the opportunity to remove the cause of complaint within 15 days.

6.2 The statement of case is not expiable, and the exception goes into the merits of the underlying claim.

Applicable Legal Principles

Rule 57 of the Labour Court Rules

[7] Rule 57 of the Labour Court Rules provides as follows:

‘(1) A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside.

(2) An application in terms of subrule (1) must be brought on notice to all parties specifying particulars of the irregularity or impropriety alleged and may be made only if:

(a) the applicant has not itself taken a further step in the cause with knowledge of the irregularity;

(b) the applicant has, within 10 days of becoming aware of the step, by written notice afforded to the other party an opportunity of removing the cause of complaint within 10 days;

(c) the application is delivered within 15 days after the expiry of the second period mentioned in paragraph (b) above.

(3) If at the hearing of the application the court is of the opinion that the proceeding constitutes an irregular or improper step, it may set it aside in whole or in part, either as against all the parties or against some of them, and grant leave to amend within a specified period or make any order it deems appropriate.

(4) Until a party has complied with any order of court made against that party in terms of this rule, the party may not take any further step in the cause, save to apply for an extension of time within which to comply with the order.’

[8] Rule 57 of the Labour Court Rules is similar to Rule 30 of the Uniform Rules of Court. In *Lekwa Local Municipality and Another v Afri-Infra Group (Pty) Ltd*[1] it was confirmed that one of the jurisdictional requirements of a Rule 30 application (and accordingly also a Rule 57 application) is that it applies only to irregularities of form, and not to matters of substance.

Rule 14 (1) of the Labour Court Rules

[9] Rule 14(1) of the Labour Court Rules provides as follows:

‘If a statement of claim is vague and embarrassing or lacks averments which are necessary to sustain an action or defence, any defendant may, within the period allowed for the filing of any subsequent pleading, deliver an exception and request the registrar to set it down for hearing, except that when a party intends to take an exception that a statement of claim is vague and embarrassing, that party must afford the plaintiff an opportunity to remove the cause of complaint within 15 days.’

[10] Rule 14(1) of the Labour Court Rules is to a large extent the equivalent of Rule 23(1) of the Uniform Rules of Court.

[11] On a proper interpretation of Rule 14(1) of the Labour Court Rules a party is only required to afford the other party an opportunity to remove the cause of complaint where such party intends to take an exception on the basis that a statement of case is vague and embarrassing.
[2]

[12] The following was stated by the Full Court in *Cochrane v City of Johannesburg*[3]:

‘The ‘irregular step’ mentioned in the rule related only to an irregular step taken by a party in respect of the Uniform Rules of Court. I am, accordingly, of the view that, if rule 30 was intended to serve as a notice of objection in respect of proceedings other than the Uniform Rules of Court, it would be casting the net far too wide and would lead to abuse. In any event, rule 30 was never intended to serve as a basis for the objection to procedural irregularities in respect of other legislation. Rule 30 was meant to deal with irregular steps taken by parties involved in litigation where the irregularity emanated from the use of the Rules of Court.’

[13] *Baloyi v United National Transport Union*[4]:

‘The starting point is that Rule 23 and Rule 30 are not applications but notices. The recipient of such a notice can either ignore the notice or do what the notice requires her to do. Should the recipient elect not to do what the notice requires it to do then the next step is activated namely the filing of an exception. The exception can be either opposed or the particulars of claim can be amended. If it is opposed and the court finds in favour of the excipient the court orders the amendment to be effected.’

Analysis

Rule 57 Irregular Step

[14] Rule 14 is clear. If the Respondent filed an exemption without affording the other party the opportunity to remove the cause of complaint that exception can only be irregular if the Respondent take exception because the statement of claim was vague and embarrassing. In casu this was not the case. The Respondent stated that the reason for the exception was that the Applicant’s statement of case failed to sustain a cause of action. The 15-day notice period as required in terms of Rule 14 was therefore not applicable.

[15] The Applicant failed to show where the Respondent had failed to comply with the Rules of the Court, and for that reason, the Application in terms of Rule 57 must fail.

[16] If the Applicant was of the view that the Application in terms of Rule 57 was without merit, then the Applicant should have opposed it in order for the court to make a finding.

The Exception

- [17] As a starting point, the Applicant relied on clause 4.3 of the settlement agreement and alleged that the Respondent was in breach of the settlement agreement. The Applicant did not rely on any other specific term of the agreement in respect of which the confidentiality obligations had been breached.
- [18] The Applicant asked for the Court to declare that the Respondent be prohibited from committing such further unlawful conduct in terms of its confidentiality obligations. This is a claim for specific performance, and the requirements are the same as for an interdict. As such, the Applicant must plead that (i) he has a clear right; (ii) an injury actually committed or reasonably apprehended and (iii) the absence of a satisfactory remedy[5]. In his pleadings, the Applicant failed to meet any of these requirements.
- [19] The Applicant asked for damages in the amount of R800 000.00. This is a claim for damages in lieu of specific performance. It was found in ISEP Structural Engineering and Plating (Pty) Ltd v Inland Exploration Co (Pty) Ltd[6] that our law did not recognise a claim for the objective value of the performance as an alternative remedy to specific performance. The SCA went so far as to find that the particulars of claim failed to disclose a cause of action.
- [20] Therefore the Applicant did not set out the exact terms of the agreement where the breach occurred. Furthermore, for his claim for specific performance the Applicant did not comply with the requirements of interdictory relief and lastly in terms of the damages that is claimed, this claim is not recognized in South African Law.
- [21] It therefore means that the Exception must be upheld. The Respondent asked that because of the deficiencies suffered by the Applicants statement of case, this Court must not grant the Applicant leave to amend his statement of case. I disagree. If it is so that if the Respondent were in breach of a mutual separation agreement, there must be consequences, and it would therefore be in the interest of justice to grant the Applicant the opportunity to amend his statement of case.

Costs

- [22] In this case the Court got its jurisdiction in terms of Section 77(3) of the BCEA. For that reason, costs must follow the result unless there are special circumstances. In this case, there were none. I am not granting costs on a punitive scale because the day spent in court could have been avoided if the Respondent had adhered to the Applicant's request to agree to the amendment of the statement of claim.

- [23] In the premises, I make the following order:

Order

1. The Application in terms of Rule 57 is dismissed with costs as on a party-party scale.
2. The Exception is upheld with costs as on a party party scale.

3. The Applicant is granted leave to amend his statement of case within a period of 15 days from this judgement. Failing to do so his claim will be regarded as dismissed.

W Kruger

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Venolan Naidoo

Instructed by:

Fasken (Incorporated in South Africa as Bell Dewar Inc.)

For the Respondent: Adv R Grundlingh

Instructed by:

Helena Strijdom Attorneys

[1] 2022 JDR 2254 (MN); [2022] ZAMPMBHC 65 at para 9.

[2] Viljoen v Federated Trust Ltd 1971

(1) SA 750 (O); [1971] 2 All SA 107 (O) at 753F; NKP Kunsmisverspreiders (Edms) Bpk v Sentrale Kunsmis Korporasie (Edms) Bpk en 'n ander 1973

(2) SA 680 (T) at 688D.

[3] 2011 (1) SA 553 (GSJ); [2010] ZAGPJHC 61 at para 31.

[4] Unreported GJ judgment, case number (2022/039818) [2025] ZAGPJHC 375 (3 April 2025); [2025] JOL 68821 (GJ) at para 9.

[5] Edrei Investments 9 Ltd (In Liquidation) v Dis- Chem Pharmacies (Pty) Ltd 2012 (2) SA 553 (ECP).

[6] 1981 (4) SA 1 (A) at 17 A-D. Confirmed in H and F Associates CC t/a Build-It Potchefstroom v Mohbro Properties CC–(Civil Appeal RC 03/2022) [2024] ZANWHC 147 (21 June 2024).

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