

SOUTH AFRICA / JUDGMENT

Keepile v Lekwa - Teemane Local Municipality (JS144/2022) [2023] ZALCJHB 229 (19 July 2023)

[2023] ZALCJHB 229

COURT

Labour Court Johannesburg

BEFORE

Lallie

CASE / FILE NUMBER

JS144/2022

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

CASE

NO: JS144/2022

In

the matter between:

TSHEGOFATSO

MARGARET KEEPILE

Applicant

and

LEKWA

- TEEMANE LOCAL MUNICIPALITY

Respondent

Heard:

17 February 2023

Delivered:

This judgment was handed down electronically by circulation to the Applicant's and Respondent's Legal Representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing - down is deemed to be 16h00 on 19 July 2023.

JUDGMENT

LALLIE, J

- [1] The applicant was employed by the respondent as a Mayor's secretary on 1 June 2010. After her services were terminated on 31 July 2014, the applicant referred an unfair dismissal dispute to the South African Local Government Bargaining Council. The outcome of the dispute was an arbitration award dated 7 November 2014 in which the dismissal was found procedurally and substantively unfair. The applicant was granted the relief of re-employment with effect from the date of her dismissal to any post similar to the one she held on dismissal. The respondent was ordered to pay the applicant an amount of R34 604, 82 minus lawful deductions which is equivalent to remuneration she lost as a result of her dismissal. The applicant was ordered to tender her services on 13 November 2014. The respondent launched an application to have the award reviewed and set aside. The review application was dismissed on 4 December 2019. The applicant tendered her resignation with immediate effect on the same day. The respondent complied with paragraph 67 of the arbitration award by making the payment of the amount of R34 604, 82.
- [2] On 2 March 2022 the applicant filed a statement of claim in which she claimed from the respondent payment of the amount of R39 5094,76 which is equivalent to remuneration she would have earned from 1 November 2014 to 31 March 2017, the date on which she obtained employment from the North West Provincial Department of Education and Sports Development. The respondent took an exception against the statement of claim on the basis that it is vague and embarrassing and lacks the necessary averments to sustain a cause of action. It relied on two grounds. The first is that there was no contractual agreement between the parties for the period 1 November 2014 to 31 March 2017. The second is that in the absence of the contractual agreement, the basis for the quantification of the amount claimed by the applicant is not clear. The exception is opposed by the applicant.
- [3] Exceptions are regulated by Rule 23 of the Uniform Rules. Rule 23(1) provides that an exception may be delivered "where any pleading is vague and embarrassing or lacks averments which are necessary to sustain an action or defence ...". The excipient who is the respondent in this interlocutory application bears the onus to prove that the statement of claim is excipiable. In *Klokow v Sullivan*[1] the court re-affirmed that the consequences of deciding a matter on exception include an obligation by the defendant to show that no cause of action is disclosed on every possible interpretation that can reasonably be attached to the particulars of claim. The respondent

must therefore prove that it is impossible to ascertain the nature of the applicant's claim from the statement of claim, alternatively,

that the statement of claim fails to disclose a cause of action.

- [4] The applicant's case is clear, it is that the respondent failed to re-employ her in terms of an arbitration award and that she suffered loss of the remuneration she is claiming as a result. Whether the applicant will tender evidence to prove her claim at the trial is a totally different issue. The applicant's statement of claim complies with Rule 6 of the Labour Court Rules in that it contains the clear and material facts she based her claim on. The clarity of the facts and the legal issues arising from them makes it possible for the respondent to plead.
- [5] The respondent did not discharge the onus of proving that the statement of claim is excipiable as envisaged in Rule 23 of the Uniform Rules. All the respondent's arguments are based on its version that the applicant's claim is without merit. Even the authorities the respondent sought to rely on are relevant to their version on the merits of the applicant's claim. No allegations were made by the respondent in support of the assertion that the applicant's statement of claim is vague. Further, the applicant did not disclose what made it impossible for it to plead to the statement of claim. An alleged lack of merit does not constitute an impossibility to plead.
- [6] The authorities the applicant relied on deal specifically with Rule 23 of the Uniform Rules and Rule 6 of the Labour Court Rules which prescribes the averments which must be made in a statement of claim. In *Massamart Holding Ltd and Others v SACCAWU*[2] which forms part of those authorities, the court dealt with both rules and referred to with approval to the principle enunciated in *Klokow v Sullivan* (supra).
- [7] The respondent did not discharged to onus of proving that the statement of claim is excipiable. This application can, in the circumstances, not succeed.
- [8] The applicant sought a costs order against the respondent. Section 162 of the Labour Relations Act[3] (the LRA) requires that the law and fairness be taken into account before a costs order is granted. In this application the respondent relied, inter alia, on the applicant's omission to tender her services in terms of the arbitration award. The applicant submitted that the respondent's

conduct was unreasonable in that in a letter dated 21 November 2014 the respondent informed the applicant not to report for duty until the finalisation of the review application. The applicant should, in light of the unreasonableness not be out of pocket for opposing this application.

[9] In the premises, the following order is made:

1. The exception is dismissed.
2. The respondent is ordered to pay the applicant's costs of this application.

Z. Lallie

Judge of the Labour Court of South Africa

Appearances: For the Applicant: Advocate Le Roux Instructed by Symington De Kok Attorneys
For the Respondent: Ms Mokoetle of Sibeko Incorporated Attorneys

[1] 2006 (1) SA 259 at 265B

[2]

(2022) 43 IU 2051(LC).

[3] Act 66 of 1995 as amended.

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Prepared on 10 October 2026 · Esheria