

SOUTH AFRICA / JUDGMENT

Nefale v Office of the Premier Gauteng Province (JS 900-19) [2021] ZALCJHB 84 (2 June 2021) [2021] ZALCJHB 84

COURT

Labour Court Johannesburg

BEFORE

F Coetzee

CASE / FILE NUMBER

JS 900-19

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case

no: JS 900-19

In

the matter between:

KHATHUTSHELO

NEFALE

Applicant

and

OFFICE

OF THE PREMIER GAUTENG PROVINCE

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

JUDGMENT

COETZEE, AJ

- [1] The respondent applied to court for an order striking out the applicant's statement of case dated 24 November 2020. The application is unopposed.
- [2] The applicant served his statement of case dated 31 October 2019 and the respondent received it only on 25 August 2020, almost ten months later.
- [3] The respondent filed an exception on 21 October 2020. The applicant pursued an application for default judgement set down on 10 November 2020 when the Court dismissed the application for default judgement and ordered that the exception be set down on the opposed roll.
- [4] The applicant elected to file a second statement of case dated 24 November 2020. The respondent regarded this as an irregular step and filed a notice in terms of Rule 11 read with Rule 30 of the Uniform Rules of Court affording the applicant an opportunity to remove the complaint directed at the statement of claim of 24 November 2020. The applicant has not withdrawn the second statement of claim.
- [5] It may well be that the applicant intended the statement of case of 24 November 2020 as an amendment to the original statement of case. This however is not evident from the procedure that the applicant adopted or the content of the document.
- [6] There is no indication in the statement of case of 24 November 2020 that the respondent is granted an opportunity to object to any amendment, if any, introduced thereby and it took the form of a statement of case to which the respondent had to answer.

Analysis

- [7] There is no provision in the Rules to add a second statement of case once a statement of case has been served and filed and has not been withdrawn. The correct procedure for an applicant would be to give notice of an intention to amend, followed by an amendment if it is not objected to. Otherwise the first statement of defence must be withdrawn.
- [8] The procedure adopted by the applicant is prejudicial to the respondent in that respondent is called upon to file a second statement of defence for which the Rules also do not provide. The respondent is further prejudiced in that it would be impossible to formulate a statement of defence against a second statement of case while the first statement of case remains alive. There are also no specific amendments formulated in the second statement of case to indicate to the respondent what is new in dispute.
- [9] The statement of case dated 24 November 2020 should be set aside as an irregular procedure.

Costs

[10] This is an interlocutory matter where the respondent is successful. The applicant is unrepresented. Having regard to the relevant factors there is no reason to make a cost order.

[11] The following order is hereby made:

Order

1. The applicant's (second) statement of case dated 24 November 2020 is set aside as an irregular proceeding.
2. There is no order as to costs.

F. Coetzee

Acting Judge of the Labour Court of South Africa

Appearances:

The matter has been determined on paper.

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