

SOUTH AFRICA / JUDGMENT

Peter v Truworths Ltd (C07/2023)

[2023] ZALCJHB 213 (14 July 2023)

[2023] ZALCJHB 213**COURT**

Labour Court Johannesburg

BEFORE

K Naidoo

CASE / FILE NUMBER

C07/2023

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Source record**THE****LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG****Not****Reportable****case****no: C07/2023****In****the matter between:**

THEMBELANI
PETER Applicant
and
TRUWORTHS
LTD First
Respondent
Heard: 27
June 2023
Date
of Judgment: This

judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 10h00 on 14 July 2023.

JUDGMENT

K NAIDOO, AJ

1. This is an interlocutory application in which the respondent has raised an exception to the applicant's statement of claim. The underlying complaint raised by the respondent is that the applicant has failed to set out the factual basis upon which his claim is based. To this end, the respondent objects to the statement of claim on three grounds, namely: (i) that it does not comply with Rule 6(1)(b)(ii) of the Labour Court Rules; (ii) that it fails to disclose a cause of action that falls within the jurisdiction of this court; and, alternatively to the second ground, (iii) that it is vague and embarrassing.
2. The applicant was dismissed from the employ of Truworths Ltd on 20 July 2022, having been found guilty of gross insolence; gross insubordination; and incompatibility. Thereafter, for reasons that are not apparent, he referred an unfair labour practice dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) on 5 August 2022. In that dispute, the applicant appeared, amongst others, to have challenged the outcome of his disciplinary hearing. The CCMA dismissed this claim on 12 September 2022, though the arbitration award appears to be confined to the question of whether a previous final written warning was issued unfairly.
3. The applicant's statement of claim in this court was delivered on 20 February 2023. In the section of the statement of claim dealing with the material facts, the applicant lists a series of statements that take the form of legal conclusions, all in apparent support of his claim to be reinstated and to be paid damages arising out of what he contends is his unfair dismissal. There are 26 of these statements. In the section of the statement of claim dealing with the legal issues, the applicant repeats, almost identically, the same 26 statements. Annexed to the statement of claim are some 270 pages of documents, none of which are cross referenced in the statement of claim itself. There are accordingly no material facts set out in the applicant's statement of claim at all, not even those basic facts referred to above, which I have independently obtained from a reading of the supporting documents attached to the statement of claim.
4. The respondent's exception was delivered on 6 March 2023. In response to the exception, the applicant filed a 14-page affidavit in reply, much of which is argument. Notably, however, the applicant states in paragraph 9 of his affidavit that:

"[T]he respondent has the following on her disposal voice recordings, video footages, access to the applicant's work emails and Annexure B with 270 pages that has legal documents like settlement agreement from CCMA, doctor's report, email correspondence between all the parties that are involved, CCMA default arbitration award, etc; but there is no room for lies when the truth is seating right in front of you. Every paragraph on the applicant statement of claim is backed by either contract or legal document that is binding or email correspondence or voice recording, and the respondent has all of them in her disposal." (sic)

5. It is clear from the above extract that the applicant is labouring under the misapprehension that it is up to the respondent to figure out the facts upon which the claim is based, presumably by trawling through the various documents and other evidentiary material to which he refers and then somehow linking those documents to the legal conclusions to which he refers in the statement of claim. During argument before me at the hearing of this application, he confirmed his expectations in this regard. This is not an appropriate way to plead.
6. It is trite that a statement of claim serves a dual purpose. First, as the mechanism prescribed by the rules of this court to initiate

action proceedings; and, second, to inform the party against whom the claim is made of the material facts and legal issues arising from those facts upon which the applicant will rely to support his claim.[1] Rule 6(1)(b)(ii) requires the statement of claim to contain “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.” Those material facts must also contain sufficient factual and legal particularity so that both the respondent and the court know what the applicant is relying upon to succeed in its claim.[2] The applicant’s statement of claim falls well short of this standard.

7. This court’s rules do not prescribe a specific exception procedure, though exceptions are nonetheless common practice. The test is accordingly well established.[3] In order to succeed, the excipient must persuade the court that on every interpretation that the pleading in question can reasonably

bear, no cause of action is disclosed (*First National Bank of Southern Africa Ltd v Perry NO & others* 2001

- (3) SA 960 (SCA)). In the context of the requirements imposed by Rule 6(1)(b)(ii), this court in *Liquid Telecommunications (Pty) Ltd v Carmichael-Brown*

(2018) 39 ILJ 1779 (LC) held that:

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.[4]

8. In the present matter, I am mindful that the applicant is a self-represented lay litigant and that, to some extent, a degree of

latitude should be afforded to the applicant by not holding him “to the same standard of accuracy, skill and precision in the presentation of [his] case required of lawyers”.^[5] However, because there is simply no attempt whatsoever to set out the underlying facts upon which the claim is based, I have no difficulty concluding that the statement of claim is excipiable, at least because of its failure to meet the standard required under Rule 6. By way of example, in paragraphs 5.3 and 5.4 of the statement of claim, the applicant states, in the section dealing with the material facts, the following:

“5.3 Failing to comply with Truworths Whistleblower Policy which resulted on the applicant being subjected to psychological torture, discrimination, continuous victimisation, abuse and occupational detriment.

5.4 Subjecting the applicant to continuous victimisation, discrimination, harassment and abuse which had a negative impact on the applicant’s health and that led to the applicant being admitted to the Crescent Clinic.”

9. There are no underlying facts set out, at all, upon which these statements are based. At the very least, in order for the respondent to be in a position to plead in response to these allegations, and for the court to be apprised fully of the issues to be decided, the applicant ought to have at least set out whether he made a protected disclosure; what the nature of that disclosure was; what retaliatory measures the respondent allegedly pursued against him that resulted in the victimisation, psychological torture, discrimination and abuse to which he contends he was subjected; when these were allegedly perpetrated against him, by whom, and in what form; and what the resulting impact on his health was. The applicant has failed to set out any of this. He has not even attempted to do so. In relation to each of the remaining 24 statements, a similar approach is adopted, in which the applicant simply states a series of legal conclusions with no factual basis provided for those conclusions at all.
10. In my view therefore, allowing the claim to proceed in its present form would prejudice the respondent because it would simply be unable to plead in response thereto in any meaningful way. The exception must therefore succeed.
11. In addition to its complaint that the statement of claim does not comply with Rule 6(1)(b)(ii), the respondent seeks an order upholding the exception because it does not establish a cause of action that falls within the jurisdiction of this court. Despite the complete absence of any factual foundation in the statement of claim, various references are made to the dismissal being automatically unfair. As stated above, though the CCMA’s arbitration award was confined to the question of whether the respondent committed an unfair labour practice, the dispute that was referred, given the timing of the referral and the manner in which the applicant described the issues, may well be construed as incorporating the dismissal dispute. If the statement of claim is then amended to properly set out the factual basis for each of the applicant’s complaints against the respondent, it may follow that this court does have jurisdiction to adjudicate the dispute. However, in light of the approach I have adopted in relation to the relief to which the applicant is entitled, it is therefore, in my view,

premature to make any determination at this stage as to whether the claim engages this court's jurisdiction.

12. I am therefore inclined to uphold the exception only on the basis that it does not comply with Rule 6(1)(b)(ii) of this court's rules.
13. Regarding the relief to which the respondent is entitled, the general practice in our courts, once an exception is upheld, is for the respondent (in the exception) to be afforded an opportunity to amend. Here, the respondent seeks an order striking out the statement of claim in its entirety. A departure from the general practice is however only permissible in exceptional circumstances. In *Rowe v Rowe* [1997] ZASCA 54; 1997

(4) SA 160 (SCA), the SCA found that:

It does not appear from the judgment why the learned judge dismissed the claims instead of making the usual order setting aside the particulars of claim with leave to the appellant to amend if so advised. All I wish to add to the remarks in *Group Five Building Ltd v Government of the Republic of South Africa* [1993] ZASCA 4; 1993 (2) SA 593 (A) at 602C-604I is that it is doubtful whether this established practice brooks of any departure and that, in the rare cases in which a departure may perhaps be permissible, one expects to find the reasons in the court's judgment.

14. As indicated above, the applicant is a lay litigant. In his oral submissions at the hearing of this application, he expressed his scepticism at the employer's attempts, bona fide as they might have been, to advise him of his right to seek legal advice to cure the defects complained of in this application. He has now indicated his willingness to seek such advice. Whether or not the statement of claim is capable of being resurrected, is a matter that, in my view, can only be determined in due course. I am therefore not persuaded in these circumstances that there should be any departure from this general practice, and I am accordingly inclined to afford the applicant an opportunity to remedy the deficiencies in his statement of claim.
15. Finally, on the question of costs, the respondent seeks an order for costs, principally on the basis that the applicant was informed of his right to seek legal representation, and on numerous occasions was alerted to the deficiencies in his statement of claim. The general approach in this court that the ordinary rule of practice that costs follow the result does not apply to matters in this court. On balance, have decided not to depart from this practice.
16. In the circumstances, the following order is made:

Order:

1. The exception raised by the respondent to the applicant's statement of claim is upheld on the basis that it does not comply with Rule 6(1)(b)(ii) of the Labour Court Rules.
2. The applicant is granted leave to amend his statement of claim within 15 court days.
3. There is no order as to costs.

K Naidoo AJ

Acting Judge of the Labour Court of South Africa

Appearances:

For the applicant: In

person

For the respondent (excipient): Ms Vlok of Bradley Conradie

Halton Cheadle Attorneys

[1] Harmse v City of Cape Town

(2003) 24 ILJ 1130 (LC).

[2] Harmse v City of Cape Town, note 1 above, para 7.

[3] Harmse v City of Cape Town

(2003) 24 ILJ 1130 (LC). Followed recently in Jacobson v Vitalab

(2019) 40 ILJ 2363 (LC).

[4] Para 14.

[5] Xinwa and others v Volkswagen of South Africa (Pty) Ltd

[2003] 5 BLLR 409 (CC).

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Prepared on 9 October 2026 · Esheria