

SOUTH AFRICA / JUDGMENT

Taylor v Merchants SA (Pty) Ltd

(C871/2018) [2020] ZALCCT 13 (7 May 2020)

[2020] ZALCCT 13

COURT

Labour Court Cape Town

BEFORE

H Rabkin-Naicker

CASE / FILE NUMBER

C871/2018

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IN

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not

Reportable

Case

no: C871/2018

In

the matter between:

ANDRE

CRAIG TAYLOR Applicant

and

MERCHANTS

SA (PTY) LTD Respondent

Date

heard: 27 February 2020

Delivered:

By email 7 May 2020

JUDGMENT

[1] The respondent raises a point in limine and an exception to applicant's statement of claim. The applicant has referred:

- (a) An alleged unfair discrimination dispute in terms of section 6(1) of the Employment Equity Act 55 of 1998 (the EEA); and
- (b) An alleged automatically unfair dismissal in terms of section 186(1)(e) read with section 187(1)(f) of the LRA.

- [2] The respondent avers that the Amended Statement of Claim is excipiable on the basis that it does not disclose a cause of action and/or is vague and embarrassing.
- [3] In as far as the EEA claim is concerned the respondent company raises an exception on jurisdiction in that it states that the Amended Statement of Case does not contain an allegation that a discrimination dispute has been referred to the CCMA or conciliated by that body. In other words, the respondent is seeking that an exception be upheld where there is an absence of evidence on the face of the pleading. This evidence includes the referral form to the CCMA, the jurisdictional ruling made by the CCMA, and the certificate of outcome referred to in the Amended Statement of Claim.
- [4] In *Media 24 Ltd v SA Taxi Securitisation (Pty) Ltd (Avusa Media Ltd as Amici Curiae)*[1] the SCA dealt with the distinction between a special plea and an exception stating that
- “The way in which the special plea was formulated, is certainly reminiscent of an exception rather than a special plea. In essence it is aimed at alleged defects in the respondent's case that appears from its particulars of claim while a special plea generally requires the introduction of new facts from outside the plaintiff's pleadings.”*
- [5] The first point of exception herein requires new facts to be introduced outside the amended statement of claim and thus stands to be dismissed. It is in essence a special plea on jurisdiction which should be decided by the trial court at whatever stage it deems necessary. As an exception it cannot be upheld.
- [6] The second to eighth complaints are, in essence, allegations that the averments in question lack sufficient particularity for the purposes of pleading. I am not going to traverse each and every complaint. I deal with the third cause of complaint as an example of the respondent's approach. Paragraphs 9.8. and 9.9 of the Amended Statement of Claim read as follows:
- “9.8...Many other able-bodied employees made use of the disabled toilet throughout the day, resulting in the disabled toilet being constantly occupied. As a result, the Applicant often had limited or no access to ablution facilities at her workplace in which she worked approximately 8 hour shifts. On one occasion, the Applicant attempted to make use of the disabled toilet eight times in a row, and each time found it was occupied...”*
- 9.9 In desperation, the Applicant resorted to using the general disabled toilet on the ground floor of the building in which the Respondent's offices were situated.”
- [7] The respondent requires the applicant to provide particularity as to the “many other abled-bodied persons, on which days the toilet was allegedly occupied and the one occasion on which the Applicant attempted to make use of the toilet eight times in a row, and whether there was limited access to the toilet.

[8] These issues go to the type of evidence (facta probantia) that may be dealt with in preparation for the trial and at trial. The respondent should have no problem in pleading to the averments in question. Prejudice to a litigant faced with an embarrassing pleading must ultimately lie in an inability properly to prepare to meet his opponent's case.[2] This is not the case here.

[9] I am in agreement with the submissions of the Applicant that the Rules of the Labour Court do not require that an elaborate exposition of all the facts be contained in the Statement of Claim[3]. The pre-trial conference and pre-trial minute allow for the distillation of common cause facts and facts in dispute as well as

the issues the court is required to decide and the precise relief claimed. The particulars sought by the respondent in its second to eighth Causes of Complaint can be dealt with in due course.

[10] In the premises, I make the following order, cognizant that the applicant is being represented pro bono.

Order

1. The exception to the Amended Statement of Claim is dismissed with costs.
2. The Respondent is to file its Response to the Amended Statement of Claim within 10 days of receipt of this order.

H. Rabkin-Naicker

Judge of the Labour Court

Appearances:

Applicant: Bowman Gilfillan Inc

Respondent: Eversheds Sutherland (SA) Inc

[1] 2011 (5) SA 329 (SCA)

[2] Levitan v Newhaven Holiday Enterprises CC 1991 (2) SA 297 (C) at 298 A-D

[3] See Harmse v City of Cape Town (2003) 24 (ILJ) 1130 (LC)

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Prepared on 12 October 2026 · Esheria