

REDDY AJ

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN

Not reportable
CASE NO. JS 1062/09

In the matter between:

A LOWIES

Applicant

and

THE VICE-CHANCELLOR OF THE
UNIVERSITY OF JOHANNESBURG

First Respondent

THE CHAIRPERSON OF THE
DISCIPLINARY ENQUIRY

Second Respondent

Date of Hearing: 10 AUGUST 2011

Date of Reasons: 7 SEPTEMBER 2011

JUDGMENT

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[1] This is a hearing of interlocutory applications by the applicant and the first respondent.

[2] In the main dispute before this Court, the applicant alleges an automatically unfair dismissal by the University of Johannesburg and seeks relief in respect thereof as follows:

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1. reinstatement into his former post at the University of Johannesburg;
2. compensation for the automatically unfair dismissal in an amount of 24 months salary;
3. costs of the action.

[3] The first respondent excepted to the applicant's current statement of case for lack of a cause of action as the University of Johannesburg was not cited as a respondent.

[4] The first respondent has also brought other exceptions but elected not to proceed with them.

[5] Both exceptions were delivered out of time and no application for condonation was submitted by the first respondent. As the first respondent only intends pursuing the exception relating to the University of Johannesburg not being cited as a respondent, I will not deal with the other exceptions.

[6] Subsequent to the delivery of the exception, the applicant sought to join the University of Johannesburg as a respondent and to amend its statement of case. It also withdrew the second respondent as a party to the matter. These applications were not opposed by the respondent.

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[7] The applicant filed a notice to amend its statement of case. The amended statement of case was not delivered. On direction from this Court, an amended statement of case was filed. There was no correlation between the amendments in the notice to amend and the amended statement of case. For this reason, it is not necessary for me to refer to the pleadings in the original statement of case and the intended amendments in the notice to amend.

[8] At the hearing of the applications, the applicant sought to withdraw the application to amend its statement of case and the application to join the University of Johannesburg. It intends substituting the first respondent with the University of Johannesburg and amending its statement of case differently to that set out in its notice to amend. It wishes to deal with all ancillary issues that may arise at a pre-trial conference.

[9] It is clear from the above that the pleadings in this matter are in a confusing and muddled state. In this state, they will be of no assistance to this Court when deciding the issues in the main dispute.

[10] The applicant submitted that the reason why his pleadings are so haphazard is because the applicant's representatives changed and the erstwhile attorneys are to be blamed for the poor state of affairs. Unfortunately for the applicant, this does not explain the continued ineffective representation post the change in representatives.

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[11] Both parties have brought applications, some of which lack necessary condonation applications; others do not follow through with the intended relief and are abandoned and replaced by other applications. There is no clear way through this quagmire.

[12] The parties' representatives also did not assist the Court in their respective attitudes to the matter. The most practical solution is to give direction to the parties so that the main dispute may be adjudicated as soon as possible.

The exception

[13] The first respondent excepted to the statement of case for a lack of cause of action as the University of Johannesburg is not a party to the proceedings.

[14] The applicant referred the dismissal dispute against the University of Johannesburg. The referral form and the certificate of non-resolution both record the University of Johannesburg as the respondent. It is clear that the University of Johannesburg is a party to the dispute and should have been cited in the statement of case. As the relief was not sought against them the Vice Chancellor and the Chairman of disciplinary hearing need not have been cited as the first and second respondents.

[15] The exception is upheld. Having upheld the exception, I can exercise my discretion in allowing the applicant to amend its pleadings. The applicant intended amending its pleadings in any event. There are issues in the applicant's claim which

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are best tested by evidence. Further, given the first respondent's exception and its submission in Court that it will not oppose the citing of the University of Johannesburg as a respondent, it is not appropriate or justifiable to dismiss the applicant's statement of claim.

[16] The applicant is given leave to withdraw its current applications, to amend the citation of the respondent and to amend its statement of case.

[17] The following order is made:

1. The applicant is given leave to withdraw the current applications to join the University of Johannesburg and to amend its statement of case;
2. The exception is upheld;
3. The applicant is given leave to amend its statement of case within 10 court days of the date of this order in accordance with the applicable rules for amendments to pleadings;
4. The applicant, first respondent and the University of Johannesburg are directed to follow the normal course of pleadings once the application to amend is delivered;
5. Should there be any objections to the intended amendments to the statement of case, the parties are directed to set that application down for hearing within 10 court days of the objections being delivered;

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6. The parties are directed to hold a pre-trial conference within 15 court days of the response to the statement of case being filed;
7. A pre-trial minute must be filed within 20 court days thereafter;
8. Any interlocutory applications or points *in limine* that may arise must be recorded in the pre-trial minute and must be dealt with in terms of the rules for the conduct of proceedings and directives of the Labour Court;
9. There is no order as to costs.


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Appearances:

For the applicant: Mr Van Jaarsveld instructed by Van Greunen and Associates Inc.

For the first respondent: Mr Lennox instructed by Mahons Attorneys