



REPUBLIC OF SOUTH AFRICA

Not reportable

**THE LABOUR COURT OF SOUTH AFRICA,
IN JOHANNESBURG
JUDGMENT**

Case no: J 168/13

In the matter between:

**PATRICK MANYATHELA AND
OTHERS**

Applicants

and

**COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION**

First Respondent

JOHN SHARDLOW (N.O.)

Second Respondent

GAYATRI PARE MILLS

Third Respondent

Heard: 21 May 2013

Delivered: 22 May 2013

Summary: (Application to compel disclosure of wage information – Exception)

JUDGMENT

LAGRANGE, J

Introduction

- [1] This matter concerns a second application by a group of employees of the third respondent to compel it to provide "copies of job grades and collective agreement". The reason why the CCMA and a Commissioner were apparently cited is because the CCMA Commissioner ruled that he had no jurisdiction to make such an award. The third respondent excepted to the application after serving the applicants with a notice to amend their application failing which it would launch the exception application. The applicants had previously launched a similar application in December last year, which it appears they intended to withdraw but mistakenly identified this application as the one they intended to withdraw. For all practical purposes, I will proceed on the basis that the only application still before the court is the one launched by the applicants on 28 March 2013.
- [2] The matter was set down for hearing of the application to compel. The applicants' counsel, Mr Mounogotla, at first sought to persuade me that since the application had been unopposed but now appeared to be opposed, the matter should be removed to the opposed roll.
- [3] It is true that the third respondent had not filed a notice of opposition or an answering affidavit by the time the matter was heard, but it had filed a notice of exception and had made it unmistakably clear that it reserved its right to file its answering papers once the exception had been determined. In the circumstances, it can hardly be said that the application to compel was uncontested. In any event, it was impossible to deal with the application to compel without dealing with the objection raised to the application in the form of the notice of exception.
- [4] Accordingly, the exception, which the applicants had opposed was also addressed when this matter was heard. The fundamental difficulty raised by the notice of exception is that the facts and the legal basis for the applicants' entitlement to receive the information they seek were not

pleaded in the founding affidavit. Applicant's counsel ventured to suggest that the claim was based on a constitutional right to information, but conceded that such a right should not be directly enforced before other remedies had been attempted. In any event, the application to compel does not even disclose a constitutional right as the legal basis for the applicants' claim.

- [5] It emerged in argument, though this was not set out in the applicants' founding affidavit, that the most likely reason for the request was that the applicants believed they were being underpaid in terms of the bargaining council agreement covering their terms and conditions of employment. If that is indeed the case, the applicants would seem to have a more direct remedy for addressing their complaint, which has not been utilised. Be that as it may, the application to compel production of the information, which is vaguely described, does not set out the legal basis for the right the applicants seek to assert.
- [6] The applicants were given an opportunity to amend their statement of claim before the exception was filed and were represented throughout in this matter by an attorney, who should have paid more heed to the notice of the intention to except.
- [7] In the circumstances, the exception must succeed. I am reluctant to impose costs on the applicants on this occasion, though in an ordinary court they would probably be compelled to pay the respondent's costs. However, should they persist with this matter and fail to set out a recognised basis in law for their alleged right to the information, they will have less reason to expect lenience in regard to a future cost award in the matter.
- [8] There are other less serious deficiencies in the statement of claim which are addressed in the order below.

Order

- [9] The third respondent's exception is upheld to the extent that the applicants' statement of claim does not comply with the requirements of sub rules 6(b)(i),(ii),(iii) and subrule 6(e).

[10] Should the applicants wish to pursue the application, they must file a notice of their intention to amend their statement of case by 31 May 2013.

[11] No order is made as to costs.



R LAGRANGE, J
Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT: Mr Mounogkgotla instructed by Mchunu Attorneys

THIRD RESPONDENT: Ms L Erasmus instructed by De Beer Minnaar