



**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG**

CASE NO JS 103/12

JACOBUS SCHALK COETZEE

APPLICANT

and

SA WATER CYCLE GROUP (PTY) LTD

1ST RESPONDENT

MVELASERVE LTD

2ND RESPONDENT

Application heard: 5 March 2014

Judgment delivered: 5 March 2014

JUDGMENT

VAN NIEKERK J

[1] This is an interlocutory application brought in terms of rule 11 of the rules of this court in which the applicant seeks leave to amend his statement of claim. The

applicant's notice of intention to amend, dated to April 2013, is some 29 pages long. The respondents objected to the proposed amendment in two respects, on the basis that the proposed amendments would result in pleadings that are excipiable. First, the respondents contend that the amendments fail to establish that a protected disclosure, as envisaged by the Protected Disclosures Act, 26 of 2000, was made. Secondly, the respondents contend that the amendments fail to establish that the second respondent has any direct and substantial interest in the matter. A third objection, to the effect that the amendments failed to establish that this court's jurisdiction to grant the relief sought, is related to the first.

[2] This matter has a history. In response to his statement of claim filed on 7 February 2012, the respondents raised three special pleas. These were set down for argument on 17 April 2013, when the court directed that the matter be removed from the roll and that the special pleas be argued at trial. The applicant had, as at that date and during the same month, filed a notice of its intention to amend its statement of case. On 18 April 2013, the respondents filed a notice of objection to the proposed amendments. The present application was filed in May 2013 in terms of which and in the face of the respondents' objections, the applicant seeks leave to amend his statement of claim. To the extent that there may be any residual confusion concerning the court order made on 17 April 2013, it seems to me that the directive has been overtaken by events and that in the present circumstances, it is no longer applicable since the issues raised in the present proceedings, in effect, address the objections taken by way of special plea.

[3] I turn first to the objection to the amendment reflected in paragraph 2 of the notice of intention to amend. The proposed amendment would reflect that the second respondent has been joined on the basis that substantially the same questions of law and fact as between the first respondent and the applicant stand to be resolved. The respondents concede that the first respondent is a wholly owned subsidiary of the second respondent. This is not disputed, nor is it disputed that the applicant was employed by the first respondent and dismissed

by the first respondent. In short, the second respondent has no relationship with the applicant other than its being the sole shareholder of the first respondent.

- [4] It is a well-established principle that a party may only be joined as a respondent in litigation if that party has a direct and substantial legal interest in the matter. While the second respondent may have an indirect financial interest in the outcome of the present litigation, this is not a sufficient ground for it to be joined. There is no basis in the present circumstances for any order to be made against the second respondent and it ought not, on the facts currently pleaded and having regard to those disclosed in the proposed amendment, to have to defend these proceedings. The only reason proffered on the applicant's behalf for the proposed amendment relates to the second respondent's powers as a sole shareholder. The concern, as I understood it, was that it might decide to dispose of or otherwise disinvest in the first respondent, to the prejudice of the applicant. This submission does not enjoy any support in the papers before me, nor is the applicant's concern one that properly forms the basis of joinder. For these reasons, the respondent's objection to the proposed amendment sought to be introduced by paragraph 2 of the notice of intention to amend stands to be upheld.
- [5] In regard to the objection that relates to the applicant's averments that he made a disclosure that was protected in terms of the PDA, the essence of the objection is that the two communications relied upon by the applicant to constitute protected disclosures for the purposes of the Act. That may be so, but in my view this is a matter best determined by the trial court. The purpose of pleadings is to identify the issues in dispute. The amendment that the applicant seeks to introduce avers that he made a disclosure, that the disclosure was protected in terms of the Act, and that he was dismissed on this account. Given the requirements of rule 6 in relation to the content of a statement of case, in my view, this is sufficient. It is not for a party to prove its case in a statement of claim; the primary intention is to articulate a claim, in broad terms, and in sufficient detail for any respondent to

appreciate the case that it has to meet. In the circumstances, in my view, there is no basis for the objection to the proposed amendment

- [6] Finally, and by way of a general observation, it seems to me that the manner in which this litigation has been approached is not what is contemplated by the LRA or the rules of this court. The statement of case runs to some 60 pages, and the proposed amendments, as I have observed, run to some 28 pages. Rule 6 requires a concise statement of the facts on which a party relies and a concise statement of the legal issues that arise. A statement of claim is not the equivalent of a combined summons in the High Court, and deliberately so. Both parties are urged to convene a pre-trial conference as soon as possible and to seek to identify, as the relevant rule requires, the real issues in dispute and to state them with the degree of conciseness that the rules envisage. In the exercise of the broad discretion conferred on the court in terms of section 162, it seems to me that the requirements of the law and fairness dictate that there should be no order for costs in respect of the present application.

I make the following order:

1. The respondents' objection to the applicant's proposed amendment reflected in paragraph 2 of the applicant's notice of intention to amend is upheld.
2. The respondents' objection to the applicant's proposed amendments reflected in paragraphs 29, 30 and 31 of the applicant's notice of intention to amend is dismissed.

ANDRE VAN NIEKERK

JUDGE OF THE LABOUR COURT

APPEARANCES

For the applicant: Adv A Boswel, instructed by MC Van der Berg Inc

For the respondents: Adv A snider, instructed by Bowman Gilfillan.

Labour Court