



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2022-039818

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVIEWED: <u>YES</u> / NO
 SIGNATURE	
3 April 2025 DATE	

In the matter between:-

BALOYI MIHLOTI MAVIS	Applicant
And	
UNITED NATIONAL TRANSPORT UNION	Respondent

JUDGMENT

Raubenheimer AJ:

Order

[1] In this matter I make the following order:

1. The application is dismissed with costs on scale B.

[2] The reasons for the order follow below.

Introduction

- [3] The applicant issued out a summons against the respondent on 28 October 2022 to which the respondent filed a notice to remove various causes of complaint in terms of Rule 23(1) and Rule 30(2)(b) on 15 December 2022.
- [4] The applicant did not respond to the notice and the respondent delivered its exception to the particulars of claim on 23 January 2023. This was met by a notice to oppose the exception on 14 February 2023 as well as a notice in terms of Rule 30 and 30A on 20 February 2023. This notice was not followed by a formal application to strike out in terms of Rule 30(2)(c) and Rule 30A(2).
- [5] The basis, contended for by the applicant, for the Rule 30 and 30A application was that the notice to remove the cause of complaint was filed on the last day of term in December 2022 which is when *dies non* commenced. Accordingly, the days within which the applicant was afforded to respond to the Notice to remove complaint would only be calculated from 15 January 2023 being the last day of *dies non*. As the exception was filed on 25 January 2023 it was an irregular step due to the days afforded for the removal of the cause of complaint and the amendment of her particulars of claim not having expired.
- [6] Whilst this Rule 30 and 30A application by the applicant was still pending the applicant filed a notice of intention to amend on 12 June 2023 and the respondents objected to the amendment on 29 June 2023.
- [7] The respondent raised two grounds of objection to the proposed amendment namely:

- 7.1 The applicant avers that she is a member of the respondent and that she had requested it to represent her in a dismissal dispute with the employer. She alleges that the respondent did not fulfil its

obligations to her as a member in representing her in review proceedings in the Labour Court. Her claim is for contractual damages due to the respondent's breach of its duties as the applicant's trade union in the conduct of review proceedings before the Labour Court due to her dismissal from Transnet in 2016.

- 7.2 The claim is for loss of earnings. This claim is divided into three different subheadings namely past loss of earnings for the period since the applicant was dismissed from her employment for a period of 75 months. The applicant furthermore claims for psychological and emotional stress and lastly, she claims for future loss of earnings until retirement. Neither of the claims contains factual averments sustaining the claim. Should the amendment be granted the particulars will be rendered vague and embarrassing or fail to disclose a cause of action or constitutes an irregular step in terms of Rule 18(12).

The issues to be determined

- [8] There are two issues to be determined namely firstly whether *dies non* is applicable to notices in terms of Rule 23(1) and Rule 30(2)(b) and secondly whether the applicant is entitled to effect the proposed amendments.

Discussion

- [9] The starting point is that Rule 23 and Rule 30 are not applications but notices.¹ The recipient of such a notice can either ignore the notice or do what the notice requires her to do. Should the recipient elect not to do what the notice requires it to do then the next step is activated namely the filing of an exception. The exception can be either opposed or the particulars of claim can be amended. If it is opposed and the court finds in favour of the excipient

¹ Van Loggerenberg, D, Dicker, L and Malan, J (2006) Taking exception in the High Court *De Rebus* October 2006 33

the court orders the amendment to be effected.²

- [10] The notice to remove a cause of complaint is not an application. The rules in respect of applications are consequently not applicable to such notice. The applicant contends that the rules in respect of applications as contained in Rule 6 is applicable to notices and because Rule 6 contains reference to *dies non* such days is applicable to notices. This is clearly wrong.³
- [11] As the respondent did not receive a response to its notice it was entitled to proceed to the next step namely the delivery of its exception. This the respondent duly did. The correct procedure for the applicant would have been to either remove the cause of complaint or oppose the exception and let the court rule on it. If the exception were upheld the applicant would have had 5 days to amend her particulars of claim. In the event of the exception being dismissed, the applicant need not amend her particulars of claim.⁴
- [12] The applicant elected not to remove the cause of complaint and instead filed a Rule 30 and 30A application. The purpose of these applications is for the exception to be held as an irregular step. This is clearly wrong as all that is required for an exception to be raised is notice to remove the cause of complaint.⁵ The applicant furthermore did not allege that the respondent in its notice of exception did not comply with the provisions of Rule 18.⁶
- [13] The exception was not heard, neither was the Rule 30 and 30A applications heard.
- [14] The plaintiff belatedly gave notice of her intention to amend her particulars

² Living Hands (Pty) Ltd v Ditz 2013 (2) SA 368 (GSJ). Uniform Rules of Court Rule 23

³ TSS Oil CC v Voltex (Pty) Ltd t/a Electric Centre Tzaneen (2003) JOL 11290 (T). Leon JJ Van Rensburg Attorneys v Matlotlo Trading (Pty) Ltd and Others (04956/2020) {2022} ZAGPJHC 536 (15 July 2022)

⁴ Rule 23. Van Loggerenberg (n 1 above)

⁵ Pretorius v Transport Pension Fund 2019 (2) SA 37 (CC). Brocsand (Pty) Ltd v Tip Trans Resources 2021 (5) SA 457 (SCA). Gartner v University of Cape Town [2021] 4 All SA 143 WCC

⁶ Nasionale Aartapel Koöperasie Bpk v Price Waterhouse Coopers Ing en Andere 2001 (2) SA 790 (T)

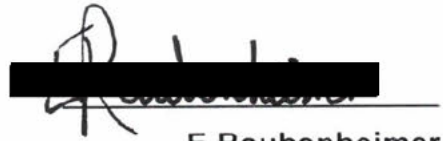
of claim.

[15] The respondent contends that the amendment will import a new cause of action and will cause the particulars of claim to be excipiable as it will be vague and embarrassing as mentioned above.⁷ This would occasion a further exception.

[16] I agree that the proposed amendment will cause the particulars of claim to be vague and embarrassing and will import a new cause of action.

Conclusion

[17] For the reasons mentioned above I make the order as stated in paragraph 1.



E Raubenheimer
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **03 April 2025**

COUNSEL FOR THE APPLICANT:

Adv Bester

⁷ Makgae v SentraBoer (Koooperatief) Bpk 1981 (4) SA 239 (T). Pretorius v Transport Pension Fund (n 3 above). Brocsand (Pty) Ltd v Tip Trans Resources (n 3 above).

INSTRUCTED BY:

Fluxmans Attorneys

COUNSEL FOR THE RESPONDENT:

Adv Mahafha

INSTRUCTED BY:

Mulisa Mahafha Attorneys

DATE OF ARGUMENT: 30 January 2025

DATE OF JUDGMENT: 3 April 2025