



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS 198 / 24

In the matter between:

NYASHA DENNIS PARADZA

Applicant

and

KATHU SOLAR PARK (RF) (PTY) LTD

Respondent

Heard: 29 May 2025

Delivered: 18 June 2025

Summary: The applicant applied to amend his statement of case. In the amendments he asked for relief in terms of the Employment Equality Act. Held the court cannot adjudicate a dispute in terms of the Employment Equity Act if that dispute was not conciliated at the CCMA. Section 10(5) and 10(6) are mandatory. Application dismissed with costs.

JUDGMENT

KRUGER, AJ

Introduction

[1] The Applicant referred an unfair dismissal dispute to the CCMA. After the Commissioner considered the facts and the submissions made by the parties, the Commissioner found that it was an automatically unfair dismissal dispute in terms of section 187(f) in that the Respondent allegedly discriminated against the Applicant based on her disability.

[2] The Applicant did not refer a dispute in terms of the Employment Equity Act¹ and the only dispute that was properly dealt with at the CCMA was the dispute in terms of section 187(f) of the Labour Relations Act².

[3] The Applicant then filed a statement of case on 10 July 2024. In the statement of case, the Applicant alleges that the cause of action was:

1.1 An automatic unfair dismissal in breach of section 187(1)f of the Labour Relations Act; and

1.2 Contravention of sections 7 and 8 of the Employment Equity Act;

[2] The Applicant asked for the following relief –

2.1 Declaring the Respondent to be in breach of the provisions of sections 7 and 8 of the Employment Equality Act;

4.2 Declaring the Respondent to be in breach of the provisions of section 187 (1)(d) and 187 (1)(f) of the Labour Relations Act;

4.3 Compensation, alternatively, retrospective reinstatement for the automatically unfair dismissal perpetrated against the Applicant.

[3] On 20 August 2024, the Respondent filed a notice of exception in terms of rule 14(2) read with 18(4) and 23 of the Uniform Rules of Court.

[4] On 6 February 2025, the Honourable Judge Kent made the following order:

‘(1) The exception is upheld

(2) The Applicant is granted leave to amend his statement of claim within fifteen (15) days, failing which his claim will be regarded as dismissed.’

¹ Act 55 of 1998.

² Act 66 of 1995, as amended.

[5] On 18 February 2025, the Applicant filed a notice to amend his statement of claim, and the Respondent objected to it on 5 March 2025.

[6] On 7 March 2025, the Applicant brought a notice of motion in terms of rule 20 (4) in which the Applicant requested the court to grant the Applicant leave to amend his statement of case. This application was opposed, and this is the matter before this court.

[7] The crux of the objection was that:

7.1 In terms of paragraph 80.4.2.2, the Applicant still asked for relief in terms of the Employment Equity Act.

7.2 The Court did not have jurisdiction to adjudicate a claim in terms of the Employment Equity Act because the Applicant had failed to refer an unfair discrimination dispute in terms of the Employment Equity Act to the CCMA for conciliation.

7.3 The Applicant's main claim is about a claim for dismissal based on his disability. The Applicant failed to plead a nexus linking the dismissal for misconduct to his disability.

Applicable Legal Principles

[8] In terms of Section 10 (1) of the Employment Equality Act, the word *dispute* excludes a dispute about dismissal. In terms of Section 10(5), the CCMA must first attempt to conciliate the dispute then it can be referred to the Labour Court in terms of Section 10(6).

[9] In *Makgeledise v DSV Solutions*,³ the court held that a dispute in terms of the Employment Equity Act must be conciliated at the CCMA before it can be referred to the Labour Court. If the Applicant failed to refer the matter to the CCMA for conciliation, the Labour Court did not have the jurisdiction to adjudicate the Applicant's claim in terms of the Employment Equity Act.

³ (JS227/2023) [2024] ZALCJHB 20 (29 January 2024).

Analysis

[10] The real dispute between the parties is in terms of section 187(f) of the Labour Relations Act. The Applicant is not entitled to ask for any relief in terms of the Employment Equality Act. For that reason alone, if the application to amend the statement of case is granted, it would mean that the Applicant is allowed to proceed with this matter and claim for relief in circumstances where the Court did not have jurisdiction to grant the relief. This would therefore only mean that the Respondent would be justified in filing yet another notice of exception.

[11] The Applicant must limit his claim to an unfair dismissal dispute in terms of section 187 of the Labour Relations Act, and he must make the necessary averments to support his claim.

[12] For these reasons the application to grant leave to amend the statement of case must be refused.

Costs

[13] Costs should be considered against the requirements of the law and fairness. The requirement of law has been interpreted to mean that the costs would follow the result.

[14] I am taking into consideration that this is the second time that the Respondent was forced to go to court because the Applicant's pleadings are defective.

[15] In the premises, the following order is made:

Order

1. The application for leave to amend the Applicant's statement of case is refused.
2. The Applicant is granted another fifteen (15) days to amend his statement of case; failure to do so, the claim will be regarded as dismissed.

3. The Applicant must pay the Respondent's costs on a party and party scale.

W. Kruger

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Mike Sadike

Instructed by:

ODBB Attorneys

For the Respondent:

Christopher Gibson

Instructed by:

Crown Harper Madikzela Attorneys