



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS 488/24

In the matter between:

MKANYISWA ZOLANI ENOCK AND 83 OTHERS

Applicants

and

EMFULENI LOCAL MUNICIPALITY

Respondent

Decided: In Chambers

Delivered: 7 May 2025 (This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing-down is deemed to be 10h00 on 7 May 2025.)

JUDGMENT

PHEHANE, J

[1] This is a default judgment application in which the applicants seek an order that the respondent pays over to them their outstanding overtime money.

[2] The applicants aver that since 2014, they have worked 12-hour shifts on Sundays but were only remunerated at a rate of 0.5 of their hourly rate instead of a rate of 1.5 of their hourly rate as contemplated in section 16(1) of the Basic Conditions of Employment Act¹ (BCEA).

[3] The applicants accordingly filed a statement of claim dated 27 August 2024 to claim their outstanding overtime in terms of the provisions of section 77 of the BCEA.

[4] In the affidavit in support of the default judgment application, the deponent to the affidavit, Mr Nxumalo, who states that he is instructed by the applicants to pursue their matter, avers that the applicants have not been paid for their overtime worked on Sundays for a period of more than eight years.² In a letter by Mr Nxumalo to the respondent annexed to the statement of claim dated 20 June 2024, Mr Nxumalo records that since 2009, the applicants have not been paid overtime worked on Sundays.³

[5] As averred by the applicants, their claim dates back several years. It appears from the statement of claim that in some instances, the applicants admit that a portion of their claim has prescribed, and they only claim outstanding overtime from 2021.

[6] None of the applicants have deposed to confirmatory affidavits setting out the requirements as stipulated in Rule 21(2)⁴, particularly, confirming:

¹ Act 75 of 1997. See: pleadings, statement of claim at para 11 on p 23.

² Pleadings, affidavit in support of default judgment at para 23 on p 104.

³ Pleadings, annexure A3 to the statement of claim at pp 33 to 34.

⁴ Rules regulating the Conduct of the Proceedings of the Labour Court published under GN 4775a in GG 5/06/08 of 3 May 2024. Rule 21(2) reads thus:

'The [default judgment] application must be accompanied by an affidavit deposed to by the plaintiff in which the plaintiff:

- (a) confirms the correctness of the facts averred in the statement of claim and the relief sought;
- (b) confirms that service of the statement of claim has been effected in terms of the provisions of the rules and attaches the service affidavit;
- (c) if the claim is one of compensation, records the plaintiff's remuneration at the time that the claim arose and any details of employment subsequent to that date; and

1. the correctness of the facts averred in the statement of claim and the relief sought;
2. the individual remuneration at the time the claim arose and any details of employment subsequent to that date; and
3. any other facts that the plaintiff considers relevant.

[7] The applicants, 84 in number and legally represented, have not taken this Court into confidence by placing evidence before this Court in the form of affidavits to prove their employment and remuneration to support their claim.

[8] The default judgment application is therefore not in compliance with the provisions of Rule 21 and, therefore, cannot succeed.

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

Order

1. The default judgment application is dismissed.

M. T. M. Pehane
Judge of the Labour Court of South Africa