



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: J970/22

In the matter between:

MUSONGEYA PHINEAS KHOSA

Applicant/Plaintiff

and

**RUSTENBURG PLATINUM MINES
(PTY) LTD**

Respondent/Defendant

Decided: In Chambers

Delivered: 20 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 20 May 2025.)

JUDGMENT

PHEHANE, J

[1] This is a default judgment application in which the plaintiff seeks to rectify a mutual separation agreement concluded between him and his erstwhile employer, the defendant.

[2] Several problems arise with this matter. Firstly, the matter was set down for 21 August 2024 for the hearing of a default judgment application. A notice of set down issued by this Court is dated 3 July 2024. It is unclear from the Court file what transpired on that date.

[3] The matter now serves before me for the determination of the default judgment application in chambers.

[4] The plaintiff has not filed a service affidavit demonstrating service of the default judgment application on the defendant. Rule 21(1) of the Rules of this Court¹ provide that the service of a default judgment application must be served on the defendant and filed with the Registrar.

[5] The plaintiff's case for rectification is based on an annexure described as annexure "B" to the mutual separation agreement.² This annexure is not attached to the statement of claim. The plaintiff is legally represented, and it is unclear why, when the pleadings were indexed and paginated, it was not realised that a document that forms the basis of the plaintiff's case is not attached to the pleadings.

[6] In the premises, the plaintiff is afforded the opportunity to place annexure "B" before this Court and is to file a service affidavit indicating service of annexure "B" to the mutual separation agreement on the defendant, as well as a service affidavit demonstrating service of the default judgment application on the defendant.

[7] In view of the afore-going, the following order is made:

Order:

¹ Rules Regulating the Conduct of the Proceedings of the Labour Court published under GN 4775a of GG 50608 of 3 May 2024.

² See: paragraphs 9.1 to 9.4 of the statement of claim on p 8.

1. The plaintiff is to file Annexure “B” of the mutual separation agreement within 5 days of this order.
2. The plaintiff is to file a service affidavit demonstrating service of Annexure “B” to the mutual separation agreement and service of the default judgment application on the defendant.
3. In the event that Annexure “B” to the mutual separation agreement is not filed as ordered in order 1 above, the statement of claim will be automatically struck out.

M. T. M. Phehane

Judge of the Labour Court of South Africa