



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: J1046/23

In the matter between:

EVA ADEWALE

Applicant/Plaintiff

and

**DEPARTMENT OF SOCIAL DEVELOPMENT
GAUTENG PROVINCE**

Respondent/Defendant

Decided: In Chambers

Delivered: 20 May 2025 January 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 maximum damages for unfair discrimination.

[2] The plaintiff has not made out a case of unfair discrimination on the pleadings.¹

[3] In her pleadings, the plaintiff states that she has been subjected to harassment. However, she does not set out on which one of the prohibited grounds of discrimination the harassment she complains about is related to. She has also not demonstrated that the harassment she complains about was a result of an arbitrary ground which has impaired her dignity as a human being or affects her in a comparable serious manner.²

[4] The plaintiff has not placed any facts before this Court that demonstrate that she is diagnosed with a mental illness, is treated differently because of that mental illness, and such different treatment has impaired her dignity. Further, the plaintiff does not plead the quantum of damages she seeks.

[5] The distress that the plaintiff avers is not minimised. She has alternative remedies she may pursue in the form of an unfair labour practice or a delictual claim for damages, where she is able to quantify her damages.³

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

Order:

¹ Section 6(1) of the Employment Equity Act 55 of 1988 (EEA) prohibits discrimination on the specified grounds listed in that subsection, or any arbitrary ground. The Constitutional Court in *Harksen v Lane* NO 1998 (1) SA 300 (CC) at para 48 sets out a two-legged test to establish discrimination. The first leg of the test is to answer objectively, whether there is discrimination on a specified or unspecified ground. If answered in the affirmative, the second leg of the test is to answer whether the discrimination is unfair. Fairness is presumed if discrimination on a listed ground is established; unfairness must be established if discrimination is on an unspecified or arbitrary ground. The plaintiff has not passed the first leg of this test.

² Items 4.1 read with 4.8 of the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace published in GN R1890 in GG 46056 of 18 March 2022 defines harassment as unwanted conduct which impairs the dignity of an employee and creates a hostile or intimidating work environment and is related to one of the prohibited grounds of discrimination set out in the EEA.

³ See: *Tshazibane v Montego Pet Nutrition* (2022) 43 ILJ 2610 (LC).

1. The default judgment application is dismissed.

M. T. M. Phehane

Judge of the Labour Court of South Africa

LABOUR COURT