



**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: 30 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 that 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.**

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**JUDGMENT**

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**KRUGER, AJ**

### Variation in terms of Rule 46 (1)(a)(ii)

[1] On 20 June 2025, the Respondent asked the Court to correct certain patent errors in the judgment under case no: JS 198 / 24.

[2] The errors were as follows:

2.1 In paragraph 1, the Court referred to her disability, when it should be his disability.

2.2 In paragraph 4, the Court referred to Judge Kent instead of Acting Judge Kent.

2.3 At page six, the Court had to correct the instructing attorneys for the Respondent.

[3] In terms of Rule 46 (1)(a)(ii) of the Labour Court Rules<sup>1</sup>, the court may, in addition to any other powers it may have:

‘(a) of its own motion or on application of any party affected, rescind or vary any order or judgement:

(ii) in which there is an ambiguity or a patent error or omission, but only to the extent of such ambiguity, error or omission.’

[4] It is clear that the errors mentioned above were patent errors, and for that reason, the judgment is corrected to the extent of the errors mentioned above. The rest of the judgment is the same as set out hereunder.

### Introduction

[5] 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 (1)(f) of the Labour Relations Act<sup>2</sup> (LRA), in that the Respondent allegedly discriminated against the Applicant based on his disability.

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<sup>1</sup> GN 4775 of May 2024: Rules Regulating the Conduct of the Proceedings of the Labour Court.

<sup>2</sup> Act 66 of 1995, as amended.

[6] The Applicant did not refer a dispute in terms of the Employment Equity Act<sup>3</sup> (EEA), and the only dispute that was properly dealt with at the CCMA was the dispute in terms of section 187(1)(f) of the LRA.

[7] 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:

7.1 An automatically unfair dismissal in breach of section 187(1)(f) of the LRA.

7.2 Contravention of sections 7 and 8 of the EEA.

[8] The Applicant asked for the following relief –

8.1 Declaring the Respondent to be in breach of the provisions of sections 7 and 8 of the EEA.

8.2 Declaring the Respondent to be in breach of the provisions of section 187 (1)(d) and 187 (1)(f) of the LRA.

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

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

[10] On 6 February 2025, the Honourable Acting 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.’

[11] 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.

[12] 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

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<sup>3</sup> Act 55 of 1998.

his statement of case. This application was opposed, and this is the matter before this Court.

[13] The crux of the objection was that:

13.1 In terms of paragraph 80.4.2.2, the Applicant still asked for relief in terms of the EEA.

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

13.3 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

[14] In terms of Section 10 (1) of the EEA, 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).

[15] In *Makgeledise v DSV Solutions (Pty) Ltd*,<sup>4</sup> the court held that a dispute in terms of the EEA 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 EEA.

#### Analysis

[16] The real dispute between the parties is in terms of section 187 (1)(f) of the LRA. The Applicant is not entitled to ask for any relief in terms of EEA. 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 such relief. This

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<sup>4</sup> (JS227/2023) [2024] ZALCJHB 20 (29 January 2024) at para 23.

would therefore only mean that the Respondent would be justified in filing yet another notice of exception.

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

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

### Costs

[19] 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.

[20] 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.

[21] 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 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: M Sadike

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| Instructed by:      | ODBB Attorneys       |
| For the Respondent: | Adv C Gibson         |
| Instructed by:      | Gottschalk Attorneys |

LABOUR COURT