



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

2025-07-15

DATE

SIGNATURE

Case Number: 84098/2019

In the matter between:

ILLANA MARAIS

Plaintiff

and

RENAULT SOUTH AFRICA (PTY) LTD

Defendant

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 15 July 2025.

JUDGMENT

POTTERILL J

Introduction

[1] The plaintiff [Ms Marais] was on 1 July 2016 permanently appointed as a call centre agent by the defendant, Renault South Africa Pty Ltd [Renault]. On 3 May 2019 Ms Marais' employment was terminated pursuant to a disciplinary hearing. She is seeking a globular amount of R10 million in damages from Renault based on two claims. There is no differentiation as to what amount is claimed for each claim.

[2] The first claim is based on the Protected Disclosures Act 26 of 2000 [the PDA] in that she had made two protected disclosures. The first was in September 2017 to Renault's HR Manager and to the office of the Managing Director. This disclosure entailed the alleged impropriety in the workplace of an "illicit affair" between Ms Marais' manager, Mr Paul Patjie, and another sales consultant. The affair led to Mr Patjie allocating sales commission incorrectly and prejudicing other members of the sales staff but, in particular Mr Marais. The particulars of claim averred that due to this disclosure Ms Marais was subjected to discriminatory treatment that could be ascertained from Renault's refusal to support her in the purchase of a company car and being threatened with dismissal if she did not return to work when she took sick leave in October 2017. She was refused a company car and a study subsidy. Furthermore, she was accused of misconduct, suspended without being afforded an opportunity to provide reasons why she should not be suspended and was subjected to a biased disciplinary proceeding and issued with a final warning. Moreover she was subjected to unlawful commission deductions.

[3] The second averred protected disclosure was made verbally on 12 December 2018 to the HR Manager in which she raised concerns of racial utterances by her new manager, Mr Phonnies Cilliers. In an email to Renault's MD, Mr Oosthuizen, she alleged that Mr Cilliers made racial utterances to her to the effect that "she is a coloured woman, and therefore committed theft like the previous employee..." This previous employee was also coloured.

[4] These disclosures were made in good faith, substantially in accordance with the grievance procedures prescribed and in conformity with Renault's whistleblowing

policy. But, Renault placed her on suspension and instituted disciplinary proceedings against her in March 2019 and such acts constituted occupational detriments as contemplated in the PDA in contravention of 3 of the PDA. It is averred that the consequences thereof is that Ms Marais' employment contract was unlawfully terminated on 3 May 2019.

[5] The second claim is based on delict and seemingly specifically on the action injuria. Ms Marais alleged that the derogatory and insulting utterances made by Mr Cilliers on 18 September 2018 had the intention of demeaning her dignity, insulting her, causing her damage and injuring her feelings. The utterances were that she as "a coloured woman" had committed theft "like the previous employee Shoneeze van Rooyen." Mr Cilliers was acting in the course and scope of his employment with Renault and therefore Renault is vicariously liable for the damage suffered by the plaintiff. This utterance impaired her person and dignity as well as her loss of occupational reputation, tarnished her record which has led to a loss of employment opportunities.

[6] Ms Marais testified and had instructed her pro bona attorneys to proceed without calling any witnesses. Renault closed its case without calling witnesses. The merits and quantum were not separated in terms of the Uniform Rules of Court.

[7] Initially Ms Marais acted for herself that understandably led to the particulars of claim undergoing several amendments in response to exceptions being noted by Renault. However, before the trial commenced her attorneys were on record. The judgment of Kuny J in the second exception proceeding expressed the current law, clearly delineating the permissible scope of the first claim, i.e. the unlawful termination. My Brother correctly found that:

"It emerged during the course of argument that the plaintiff had prosecuted a claim based on her dismissal in the CCMA and subsequently before the Labour Court. She was unsuccessful in this regard. In my view, she is attempting before this court to revitalise an unsuccessful claim pursued under the Labour Relations Act. However, on established principles, she is not permitted to do so."

The result was that this cause of action based was struck out.

Decision on claim 1.

The first disclosure

[8] The plaintiff must on a preponderance of probabilities prove her cause of action on the necessary *facta probanda* [facts that need to be proved] founded in the correct substantive law. Immotive pleas for justice by calling on the Constitution in general does not sustain a cause of action. In fact, in terms of normative subsidiarity specific legal norms must be prioritized over broad constitutional principles, especially when the specific norms effectively address the issue at hand. Courts must resolve a dispute through existing legal frameworks, in this instance the DPA, before directly applying constitutional norms or principles.

[9] As much as I could observe that Ms Marais was genuine in her subjective belief that Renault had harmed her, the Constitutional Court has found that a Court's "[j]urisdiction is determined on the basis of the pleadings . . . and not the substantive merits of the case" and that "[a]n issue does not become a constitutional matter merely because an applicant calls it one".¹

[10] Even taking into account the fact that Ms Marais had issued the proceedings on her own, she was in Court initially represented by Senior Counsel. Senior Counsel had led Ms Marais' evidence in chief in less than 40 minutes and sat down for cross-examination to ensue. Counsel for Renault sought an adjournment to obtain instructions presumably as on the evidence presented no cross-examination was required. I interlude to state that in the opening address it seemed that Senior Counsel would only cover the second claim, the delictual claim, but then also resorted to presenting some evidence pertaining to the first claim.

[11] When I returned to Court Counsel requested that the evidence in chief be reopened and that a junior colleague would need 10 minutes to lead Ms Marais further. Counsel for Renault objected, but I ruled that further evidence could be led but that I would decide at the end of the trial if the evidence would be admitted. The 10 minutes

¹ *Gcaba v Minister of Safety and Security and Others* [2009] ZACC 26; 2010 (1) SA 238 (CC); 2010 (1) BCLR 35 (CC). *Chirwa v Transnet Limited and Others* (CCT78/06) [2007] ZACC 23; 2008 (4) SA 367 (CC); 2008 (3) BCLR (CC) at para [169]

turned into hours of evidence of Ms Marais led by this legal representative, Senior Counsel's brief being ended.

[12] Despite admitting this evidence Ms Marais has not proven claim 1. This Court has no jurisdiction to entertain an "unlawful" termination, no finding is made thereon and no damages can be claimed on unlawful termination. The submission that unlawful termination is to be distinguished from an unfair dismissal is simply bad in law. The evidence pertaining to the lawfulness or fairness in the workplace and disciplinary proceedings are irrelevant as this Court cannot entertain these issues falling within the exclusive domain of the Labour Court. The judgment on the exception confirmed this trite principle. Ms Marais had ventilated these issues before the CCMA and placed it before the Labour Court.

[13] In support of alleged contraventions of the PDA the first disclosure to Renault was the illicit affair between her manager and another sales consultant. She testified she made this disclosure verbally and in an email she wrote to the MD of Renault supporting it with photographs showing the affair. At the trial no photographs were handed in as evidence and she agreed that the photographs only showed her manager and the sales consultant standing next to each other at a workplace function. She had no other details of the affair and in cross-examination expressed that the affair was not the problem, but that her manager was giving her commission away to someone else. The problem with this concession is that the whole basis for giving away her commission to this other employee was due to the affair and this underlying motive had not been proven. This is just one of many instances where the credibility of Ms Marais' evidence was tested and she failed to pass this test.

[14] Furthermore, the alleged written disclosure of this issue to the MD was not proven at all. Besides the handwritten annotation on the document produced in the discovery bundle, referencing it as the first disclosure, there is no indication that it was in fact sent, on what date, to the MD. When confronted with this in cross-examination she then informed that she had not penned or sent the email but the disclosure was given through the personal assistant of the MD. What makes matters worse is that there is no reference in this document to any affair resulting in the unfair allocation of commission. This further renders her version unreliable.

[15] The plaintiff testified that she would arrive at work very early to log onto the system and see all the leads generated since the end of the previous day and start allocating those leads to dealerships. In doing so she maximised her number of potential sales for purposes of earning a commission. By the time the other agents started working thus many of the new leads were already allocated by her. It is common cause that her manager had implemented a rule that if no follow-ups occur on an allocated lead within 5 days the lead will become available for reassignment to another agent. Only after this rule was implemented did the disclosure of Mr Patjie's affair and commission complaint surface. There is no doubt that Ms Marais worked hard and that this rule could after 5 days impact her commission earned, but she had not put this forward as the reason for unfair allocation of commission. In any event, although not for this Court to decide, it does not seem to be an unfair implemented practice.

[16] Ms Marais led absolutely no evidence as to which commission, on what dates, for what amounts, constituted unfair allocation of commission and this is simply not proven.

[17] Due to her lack of credibility and proof of these averments I need not even address whether this could be a "protected" disclosure in terms of the PDA.

[18] In the particulars of claim it was averred that as result of this "disclosure" she did not receive support from her manager to purchase a company car. Once again, no evidence at all was led on this issue and Ms Marais had not proven this. It is correct that Ms Marais' application for a study subsidy was declined. However, it is common cause that this was declined in August 2016, one year prior to the this first "disclosure." The chronology of this refusal and the "disclosure" does not corroborate the version of Ms Marais, rendering her evidence uncreditworthy and mala fide.

[19] Ms Marais testified she had to undergo a hysterectomy. Mr Cilliers of Renault instructed her to be back after 10 days despite being booked off for 6 weeks. In cross-examination it was established that she only had 10 days sick leave left and after a call from Mr Cilliers then put in, from her annual leave, 5 working days further leave. Once again Mr Marais was striving to put Renault in the worst possible light, but as she had no more sick leave she had to put in annual leave.

[20] Not only does Ms Marais' credibility on the factual basis for her claim render her claim to be dismissed, but also on a legal basis her claim must be dismissed. Ms Marais must prove that in terms of the PDA she made a disclosure and a protected disclosure at that.

[21] The term "disclosure" is defined in section 1 of the PDA as follows:

"[A]ny disclosure of information regarding any conduct of an employer, or of an employee or of a worker of that employer, made by any employee or worker who has reason to believe that the information concerned shows or tends to show one or more of the following:

- (a) that a criminal offence has been committed, is being committed or is likely to be committed;
- (b) that the person has failed, is failing, or is likely to fail to comply with any legal obligation to which that person is subject;
- (c) that a miscarriage of justice has occurred, is occurring, or is likely to occur;
- (d) that the health or safety of an individual has been, is being, or is likely to be endangered;
- (e) that the environment has been, is being or is likely to be damaged;
- (f) unfair discrimination as contemplated in Chapter II of the Employment Equity Act, 1998 (Act 55 of 1998) or the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000); or
- (g) that any matter referred to in paragraphs (a) to (f) has been, is being, or is likely to be deliberately concealed."

[22] The information disclosed can be based on inferences and suspicion, but the belief must be reasonable and the core requirement is good faith. The requirement of good faith has received the attention of the Courts. It was found as follows:

“There is further, in my view, an overlap when determining whether the employee making the disclosure was acting in good faith and further whether he had the requisite reason to believe when making a disclosure that improprieties had been committed or were continuing. Honesty plays a pivotal role in both situations. Whilst good faith and honesty may conceivably amount to the same thing, I am of the view that a case by case approach is the proper one for a court considering these issues. Factors such as reckless abandon, malice or the presence of an ulterior motive aimed at self advancement or revenge, for instance, would lead to a conclusion of lack of good faith. A clear indicator of lack of good faith is also where disingenuity is demonstrated by reliance on fabricated information or information known by the employee to be false. The absence of these elements on the other hand is a strong indicator that the employee honestly made the disclosure wishing for action to be taken to investigate it.”²

And:

“Whilst it may be important to consider the motives of the employee in making the disclose, it is not necessary for the motives of the employee in making the disclosure to be as pure as the driven snow. The fact that an employee may have some ulterior motives cannot of its own scupper good faith. I venture to say that where ulterior motives or personal aspirations of the employee form the driving force behind making the disclosure, and are coupled with elements like dishonesty, corruption, false statements, and retribution, that good faith will fall by the wayside.”³

[23] The bona fides must be evaluated at the stage the disclosures were made. Good faith must be assessed contextually on a case-by-case basis, taking into account various factors at play in the specific case.⁴ Good faith is thus a finding of fact and the court must consider all the evidence cumulatively to decide whether there

² *Radebe and Another v Premier, Free State and Others* (JA61/09) [2012] ZALAC 15; 2012 (5) SA 100 (LAC); [2012] 12 BLLR 1246 (LAC); (2012) 33 ILJ 2353 (LAC) (1 June 2012)

³ *Smyth v Anglorand Securities Ltd* (JS751/18) [2022] ZALCJHB 72 (28 March 2022)

⁴ *Baxter v Minister of Justice and Correctional Services and Others* (DA1/2019) [2020] ZALAC 27; [2020] 10 BLLR 968 (LAC); (2020) 41 ILJ 2553 (LAC) (18 May 2020) at para [67]

is good faith or an ulterior motive, or, if there are mixed motives, what the dominant motive is.⁵

[24] Except for referencing a photograph of the two individuals standing next to each other at a function, there were no other facts placed before me as to what supported her suspicion about the affair. On this fact alone she purported to make a causal connection that she was being prejudiced by her commission now being awarded to that employee. Once again she had no factual basis for this. She did not personally report this commission issue to the MD, or seek information to verify this, present evidence to expose this, or even mention the affair, which was the causal link to the unfair allocation, in the averred written disclosure. The averment that her study subsidy was refused due to her disclosure is mala fide as it was a year prior to her disclosure. The averment that she was prejudiced in that her application for a vehicle subsidy was denied is rejected as she did not testify to this at all or present any evidence pertaining thereto. These facts sustain that this disclosure was not made in good faith.

[25] The motive of an employee is always an important consideration when deciding the issue of good faith. To this Court it is clear that Ms Marais felt aggrieved about the car- and study- help denied by Renault. Also, the new rule about commission after 5 days [although this is not part of her claim or disclosure it is a common cause fact] and that all these factors motivated Ms Marais to make disclosures in bad faith. She attempted to bolster her case, but failed to testify to the vehicle subsidy or present the photograph and did not have a reasonable sincere belief that the disclosures had a measure of truth. Pertaining to her sick leave she was painting Renault in the worst possible light whereas her sick leave was insufficient and she would have had to take annual leave as well. This can on no interpretation be seen as bona fide. In addition the disclosure was made to the personal assistant to the MD. This was not substantially in compliance with either the Motus Code of Ethics – Whistle blower policy or the grievance policy. Although the PDA must be interpreted generously the facts in this matter support the conclusion that the PDA provisions were abused and Ms Marais did not make disclosures that deserve protection.

⁵ *Ramsammy v Wholesale and Retail Sector Education and Training Authority* (2009) 30 ILJ 1927 para [53]

[26] I am astounded that the legal representative of Ms Marais relied on the fact that Renault called no witnesses and therefor Ms Marais' claims should be granted. Such argument is simply bad in law; Ms Marais must prove her case before it is necessary for Renault to rebut same. Ms Marais simply did not do so.

The second disclosure

[27] This relates to a serious allegation that Mr. Celliers in September 2018 had told her that because she was coloured she was also committing fraud like the previous coloured employee. It is common cause that she did not raise this with anybody at Renault at that time. It is also common cause that this discrimination issue is raised for the first time on the 13th of December 2018 by referring a discrimination and victimization dispute to the CCMA, a day before a meeting called by Renault, to address her complaint regarding unfair deductions from her commission. At the same time, between 8 and 10 December 2018, HR was looking into a complaint from the distribution team relating to the conduct of Ms Marais towards Mr Celliers that they found "jawdropping" and upsetting and requested that if she conducted herself in this way she must be not be allowed into the distribution department, but stay in her own department.

[28] In the meeting of 14 December 2018 she was advised that upon investigation the audit revealed her commission reports contained errors over the last three months. The rule that applied to all call centre agents that commission will not be paid if corrected commission sheets are not received in good time for payroll submission had been applied. She was offered training to assist with completing her commission sheets correctly. Ms Marais was also issued with an ultimatum to desist from making malicious allegations against her managers and abstain from showing her clear disrespect for her manager in front of other personnel employed at Renault or disciplinary steps will be taken. A written warning was issued.

[29] It is common cause that within an hour after the meeting ending Ms Marais sent an email to Jaco Oosthuizen complaining that she was victimised and discriminated against. Herein she advances that the incident occurred on 9 October 2018, contrary to September 2018, as in the CCMA referral form initiating a dispute regarding unfair

discrimination. She never in this email set out that she was discriminated against because she was a coloured person. This date of 9 October 2018 is the date that Mr Celliers emailed the plaintiff asking her to check VIN numbers and dates of sales on her commission sheet. In cross-examination she then said he had made the same remark pertaining to her colour on the 18th of September 2018 and 9 October 2018; this was not pleaded or testified to in evidence in chief.

[30] The plaintiff's allegation that no deductions were made from the commission of other call centre agents despite them having similar errors on their commission sheets is disproved by the documentary evidence. On 28 December 2018, Mr Cilliers advised Ms Lindiwe Mdululi that there will be two sales deducted from her December payment.

[31] Ms Marais was an unreliable witness. The record is rife with her interrupting counsel, being argumentative and simply not answering the questions, only answering when instructed by the Court. She refused answering questions as to the CCMA proceedings when these questions were exposing her version as unreliable and proffered irrelevance as the reason for her refusal to answer. She would not make reasonable concessions, or make concessions after much cross-examination boxed her into a corner for instance conceding that she thought the first disciplinary hearing was Renault victimizing her. She tried to bolster her case by adding that there were two occasions of blatant discrimination utterances when there clearly was not. She again tried to bolster it by testifying, contrary to her pleadings, that there was in fact three disclosures made. In her own mind, but not in reality. the fact that her manager was asking her to check her commission sheets could only be due to the colour of her skin. Furthermore, the chronology of the events evidences that the "disclosure" was raised in retaliation against Mr Celliers querying the errors on her commission sheets. It is simply contrary to human nature for Ms Marais to not after the averred racial slur act thereon, but wait for 3 months. This probability is fortified by her evidence that she as a coloured person was always discriminated against; this was her opportunity to act thereon and she did not. Ms Marais' version is rejected as unreliable and mala fide.

[32] The chronology of the further events support this finding. Ms Marais lodged a grievance against Mr Cilliers on 19 February 2019 in which she also sought the dismissal of Mr Cilliers. She did this while her CCMA dispute was still to be decided.

The day before the conciliation discrimination dispute in the CCMA she posted widely serious accusations of racism against Renault on social media.

[33] Renault convened a grievance hearing during which the plaintiff had ventilated her complaints against Mr Cilliers. The finding on the discriminatory issue was as follows:

“ It appears *in casu* that the employee. [indistinct] abused the company internal grievance procedure to pursue a personal vendetta against a manager and to exact the maximum damage possible to his career and person, suspiciously very long after the alleged racism and victimisation took place and quite tellingly only after the company took disciplinary steps against her, *inter alia*, grossly disrespectful behaviour. What exacerbates the abuse of the grievance process and makes its considerably more egregious is the use of the sensitive issue of race and unfounded allegation of racism against the subject of the employees alleged grievance.”

[34] A notice of suspension followed and a disciplinary hearing was conducted.

[35] Ms Marais' evidence made it clear that she subjectively always feels discriminated against. This has resulted in her actions of attack. When confronted with checking her commission sheets, which she acknowledged did have mistakes on it, she automatically retaliates. She acknowledged that she made serious allegations of impropriety against Renault's legal team and reported them to their professional bodies. She reported court officials of the Department of Justice to the Department of Justice. Ms Marais' evidence was tainted by this and was unreliable and uncreditworthy and accordingly stands to be rejected. Not on facts or law did Ms Marais prove that her “disclosures” were in good faith and deserving of protection.

[36] She also did not prove that Renault caused her an occupational detriment. The quantum of the occupational detriment was not proved. The argument raised by the legal representative that this court can determine the quantum is staggering. In the particulars of claim a global thumb suck amount of R10 million is claimed. Not in this pleading, or in evidence, is there any explanation as to what amount of the R10 million is claimed for averred occupational detriment. No evidence is led in evidence in chief pertaining to the quantum of occupational damages, yet the legal representative

persists, despite this lacuna and omission, this Court can, with no evidence led, or even a suggestion as to what amount would be reasonable, itself determine the quantum of the damages. This attitude and argument is frowned upon. For loss of income, as a general rule, to be proved expert evidence is required. At the very least a basis must be laid, there was absolutely none, not even a salary slip to prove her income at the time. In argument relying on a matter where that Court accepted an expert testifying on another's expert report as the best available evidence is nonsensical in this matter. In that matter there was expert evidence, here there is no evidence, let alone expert evidence.

Decision on claim 2

[37] Claim 2 is a claim for damages founded in delict. To be successful in this claim Ms Marais must prove the conduct of Renault was wrongful and intentionally infringed her dignity, reputation or person. The quantum of the damages must also be proved.

[38] Having found Ms Marais' evidence unreliable this claim needs no further addressing as she has not proven the discriminatory utterances, i.e, the harm. However, I do venture to address one issue.

[39] Once again the quantum was not proven. There is no expert report confirming that Ms Marais suffers from post-traumatic stress. There is no evidence what her reputation was in the industry before she was dismissed. No evidence that her reputation was in fact tarnished. No evidence of where she applied for jobs and because of her dismissal she did not obtain employment.

[40] Resorting to rely on ubuntu as a basis for determining quantum is the flagrant abuse of this unique constitutional value. Ubuntu encompasses inter alia the principle of dignity, relevant to this matter, but most certainly does not sustain a basis for determining quantum, as set out in the heads of argument.

[41] A Court can exercise a discretion and adjust an amount claimed, but in this matter no amount claimed for the averred iniuria is even proposed. No court will resort to a robust approach based on no facts and resort to a complete thumb suck.

[42] I do not resort to address the legal principles and case-law argued on behalf of Ms Marais, but that does not imply that I did not consider it. A Court will not entertain incorrect submissions that Renault breached international labour standards when a Convention has not been ratified by South Africa. Relying on irrelevant foreign law as comparative examples is not helpful to a Court and should be refrained from. On behalf of Ms Marais much reliance was placed on the matter of *Chowan v Associated Motor Holdings (Pty) Ltd and Others* 2018 (4) SA 145 (GJ) as being a “robust precedent” for the legal proposition that marginalisation and humiliation are occupational detriments under the PDA. This submission is incorrect because the Court in the Chowan-matter did not read-in into the definition of an “occupational detriment” marginalisation under the PDA, but the humiliation in that matter was considered for purposes of her delictual claim and not her Aquilian claim premised on being subjected to occupational detriments under the PDA.

Decision on costs

[43] On behalf of Ms Marais it was argued that this matter was a labour matter and costs do not follow a successful claim. If Ms Marais' claims were to be dismissed then each party should pay their own costs. This is so because she was represented pro bono and the matter related to protecting whistleblowers.

[44] On behalf of Renault it was argued that Ms Marais should be mulched with punitive costs. The principle advanced by Ms Marais that this was a labour-related dispute was ill-conceived. Reliance was placed on *Zungu v Premier of the Province of KwaZulu-Natal* (2018) 39 ILJ 523 (CC) at para [22] where the Constitutional Court found that the principle that costs do not follow the result in labour matters is based on s162 of the LRA. The matter before me is not based on the LRA as this Court's jurisdiction is ousted.

[45] Punitive costs should be granted because the action was brought vexatious and constitutes an abuse of process. Renault ought not to bear the expenses and

costs.⁶ Furthermore, the cause of action was obviously unsustainable.⁷ Despite having no sound factual basis to claim occupational detriments and having no evidence in support of the delictual claim she proceeded with the matter.

[46] Ms Marais made allegations of unprofessional conduct, unethical business practices, even alluding to corruption against the legal representatives of Renault and court officials. It was submitted that it could not be countenanced that litigants and their representatives be harassed in litigation in this manner.

[47] When the legal team came aboard the matter was still handled unprofessionally. At a round table proposed by Renault's representatives to understand why the matter was set down for 10 court days when no experts were to be called by Ms Marais, that the subpoenas of the nine witnesses were unlawful and why she was persisting with a claim falling within the exclusive domain of the Labour Court. Despite the representatives of Ms Marais undertaking to provide heads of argument to address these issues, it was never done. They further persisted that the subpoenas stood only to on the eve of the trial confirm that Ms Marais would be the only witness. By then the legal team of Renault were reserved for the full 10 days. The trial only took 2 days.

[48] Despite also having agreed that quantum and merits would not be separated at the trial, Renault was ambushed with separation of issues at the commencement of the trial. To make matters worse, initially examination-in-chief of Ms Marais took approximately 30 minutes, Renault consulted with its representatives on the recommended way forward, only to then be subjected to a re-opening of Ms Marais' evidence in chief. Renault therefore prays for costs on the attorney and own client scale, including the costs of counsel on Scale C.

Decision on costs

⁶ *Phase Electric Co (Pty) Ltd v Zinman's Electrical Sales (Pty)B Ltd* 1973 (3) SA 914 (W) at 918H-919B. See also *Hyperchemicals International (Pty) Ltd and Another v Maybaker Agrichem (Pty) Ltd and Another* 1992 (1) SA 89 (W) at 101G-102D

⁷ *Golden International Navigations SA v Zeba Maritime Co Ltd; Zeba Maritime Co Ltd v MV Visvliet* 2008 (3) SA 10 (C) at para [9]. *African Farms and Townships Ltd v Cape Town Municipality* 1963 (2) SA 555 (A) at 565D-E

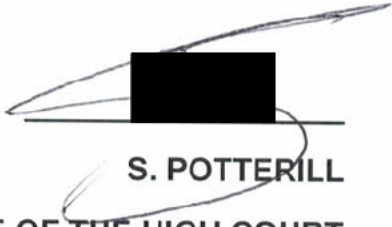
[49] As this is not a matter falling under the LRA the costs can follow the result. I am satisfied that in these circumstances this would be reasonable order to make.

[50] The manner in which this matter was conducted in Court is frowned upon and Courts should be careful to sanction such conduct. I had bent backwards to assist Ms Marais by allowing the re-opening of the matter after I had remarked that I could not believe that the plaintiff was closing its case with the evidence that had been led. A true whistleblower should never be sanctioned with costs, but recklessly pursuing a claim that was ruled out by Kuny J is vexatious litigation. Persisting that 9 witnesses will testify leading to representatives being reserved for 10 days, only to on the eve of the trial inform your opposition that only the plaintiff will testify is vexatious litigation. To proceed with a trial full well knowing that in evidence in chief no evidence will be presented or led pertaining to quantum is reckless. Being represented *pro bono* does not entitle the litigant or representative to discard procedures of a trial, ignore the onus and evidentiary proof and go for a shotgun approach although having no bullets.

[51] The plaintiff is to carry the costs on a punitive scale with costs of counsel on scale C.

I make the following order:

The plaintiff's claim is dismissed. She is to carry the costs on attorney and client scale. Costs of Counsel on scale C.



S. POTTERILL
JUDGE OF THE HIGH COURT

CASE NO: 84098/2019

HEARD ON: 14 and 15 April 2025

FOR THE PLAINTIFF: ADV. K. MAPONYA

INSTRUCTED BY: Norton Rose Fulbright South Africa Inc.

FOR THE DEFENDANT: ADV. P. MAHARAJ-PILLAY

INSTRUCTED BY: Thomson Wilks Incorporated

DATE OF JUDGMENT: 15 July 2025