



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: A279/2023

(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 29 JULY 2025

SIGNATURE

In the matter between:

MINISTER OF POLICE

First Appellant

CAPTAIN GLORIA SEGOPOTSO

Second Appellant

and

ITUMELENG LUCAS TLADI

Respondent

Summary: The Respondent claimed payment of some R15 million together with interest in respect of his previous employment in the South African Police Service. The employment contract lasted from September 2003 until May 2012 when it was terminated at the respondent's instance. The claim is for damages allegedly suffered by the respondent pursuant to an alleged breach of contract by the Police by not, inter alia, having provided the respondent with sufficient

training as a crime prevention officer. The appellants' defence to this claim was struck out by the court a quo due to alleged non-compliance with a compelling order obtained by the respondent to provide further and better discovery in terms of Rule 35(3). On appeal it was found that the appellants had substantially complied with the compelling order and that the striking-out order was, in the circumstances of the case, inappropriate.

ORDER

- 1 The appeal is upheld with costs, including the costs of two counsel.
- 2 The order in the court *a quo* whereby the appellants' defence in the main action was struck out, is set aside and the defence of the appellants is reinstated.
- 3 The respondent is ordered to pay the costs of the application for striking out the appellants' defence, including the costs of two counsel.

JUDGMENT

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to

the electronic file of the matter on Caselines. The date of the handing-down is deemed to be July 2025.

DAVIS, ADJP

Introduction

[1] On 24th January 2023 Shabalala AJ, sitting as a court of first instance, struck out the defence of the Minister of Police and a certain captain Gloria Segopolo to an action in which Mr. Tladi was the plaintiff (the main action). The aforementioned defendants now appeal that order with leave of the court *a quo*. Mr. Tladi is the respondent in the appeal.

[2] The basis upon which the court *a quo* had struck out the defence was the alleged non-compliance by the appellants with a previous order which compelled them to make further and better discovery as contemplated in Rule 35(3). The principal opposition to the striking-out application was that there had been substantive compliance with the compelling order.

The nature of the claim in the court a quo

[3] In his particulars of claim the respondent pleaded that he had entered into a contract of employment as a police officer on 19 September 2003. He further pleaded that he had expected to be employed as a crime prevention officer and that would be issued with a firearm. He further pleaded that the South African Police Service had failed to provide him with necessary mentorship, had failed to provide him with a firearm to execute his “contractual duties succinctly” and had failed to pay him a monthly salary. He had therefore been forced to terminate his contract during May 2012. As a consequence, the respondent claimed that he had suffered damages. These involved suffering emotional and associated

consequences and a loss of income. After a number of amendments to his pleadings, the total loss claimed amounted to over R 15 million.

[4] Apart from denying the breaches of contract in a series of amended pleas, the appellants *inter alia* raised the issue of jurisdiction. The respondent had pleaded that the alleged termination of the contract was as a result of an unfair labour practice which resulted in a constructive dismissal. The appellants pleaded that, in those circumstances, the claim fell within the jurisdiction of the Labour Court. This issue was not repeated in the latest amendment to the plea and need not be considered as a factor in this appeal, despite it having featured in the respondent's heads of argument.

[5] In respect of the merits, the appellants admitted that the respondent had applied for the position of a student constable at the SAPS training college in Pretoria during the second half of 2003. They further admitted that he was employed from 19 September 2003 and that a written contract of employment had been entered into.

[6] The appellants further pleaded that during the course and scope of the respondents employment, which he himself had terminated on 4 May 2012, he had not conducted himself with honesty, impartiality, respect and accountability in that: (1) he was charged with reckless and negligent driving during August 2006 under case number CAS45/08/20006 in respect of which he had paid an admission of guilt fine; (2) he contravened standing orders 21 and 48 as well as regulation 20D by intentionally or negligently damaging or causing loss to state property by shooting his firearm and was subsequently served with a final written warning in terms of regulation 11 of the South African Police Service Discipline Regulations 2006 and (3) that he had contravened Regulations 20F and 20J and was subsequently charged with misconduct on at least six occasions in respect of which details have been provided in the plea.

[7] The appellants' plea also went on to state that since the respondent had elected to terminate his employment, he was no longer entitled to claim the benefits deriving from the employment contract and insofar as he has claimed any non-patrimonial damages, those were unsubstantiated and accordingly denied.

The issue of further and better discovery

[8] After the parties had made discovery, the respondent served a notice in terms of Rule 35(3) on the appellants on 1 October 2018.

[9] The appellants made a supplementary discovery on 27 March 2019, but despite this, the respondent on 28 March 2019 obtained an order by Voster, AJ compelling the appellants to make such further and better discovery.

[10] On 25 April 2019, the appellants again made yet a further discovery by means of a supplementary discovery affidavit.

[11] The respondent thereafter and pursuant to a pre-trial conference, on 6 August 2019 served a list of inquiries on the appellants in which he inter alia requested them to produce certain specified documents listed in the notice in terms of Rule 35(3). As a consequence hereof the appellants made a further supplementary discovery by means of a discovery affidavit which was served on the respondent on 26 August 2019.

[12] Despite the above, the respondent proceeded to launch an application on 23 August 2019 to have the appellants' defence struck out. In their answering affidavit, the appellants indicated that they had on multiple occasions made further and better discovery and that they have discovered all the documents which they had in their possession.

The judgment in the court *a quo*

[13] After having succinctly dealt with the history of the matter as well as the terms of the compelling order, the learned Judge referred to Rule 35(7) and found as follows: “Rule 35(7) *applies only where there has been a failure to comply with sub rules 1 to 6 for it refers to failure to give discovery as aforesaid. This brings me to the question of when did failure to comply commence? In my view failure to comply started ten days calculated after service of the court order on the respondents. The court order was served on the respondents on 10 July 2019. The respondents had 10 days in which to comply with the court order until the date of the hearing of the matter on 29 January 2020. The respondents had not complied with Rule 35(3) as per the court order ordering them to do so. Rule 35(7) dictates this Court has a discretion whether to order compliance or to strike out. On the facts of the present matter, this Court has already ordered compliance and the respondent failed to comply. This leaves the Court with the discretion to strike out the respondents’ defence*”. This was the sum total of the Court's reasoning pursuant to which the defence was struck out.

Applicable principles

[14] Rule 35(3) Provides as follows: “*If any party believes that there are in addition to documents or tape recordings disclosed aforesaid, other documents, including copies thereof or tape recordings which may be relevant to any matter in question in possession of any party thereto, the former may give notice to the latter, requiring him to make the same available for inspection in accordance with sub-rule (6) or to state on oath within 10 days that such documents are not in his possession, in which event he shall state their whereabouts if known to him*”.

[15] Rule 35(7) then further provides as follows: “*If any party fails to give discovery as aforesaid or having been served with a notice under sub-rule (6) omits to give notice of a time for inspection as aforesaid or fails to give inspection*

as required by that sub-rule, the party desiring discovery or inspection may apply to court, which may order compliance with this rule and failing such compliance, may dismiss the claim or strike out the defence”.

[16] The Appellants argued that they have, in addition to their initial discovery, made supplementary discoveries on 27 March 2019, 25 April 2019 and 26 August 2019. They have further, on oath confirmed that they do not have any other documents than those requested in the Rule 35(3) notice in their possession. The appellants therefore pleaded that they have substantially complied with the compelling order and they expressly denied that they had recklessly disregarded any of their discovery obligations.

[17] Once the appellants have complied with the compelling order, then it follows that the respondent would not have been entitled to an order as contemplated in Rule 35(7). Insofar as the respondent might argue that the supplementary discoveries were not timeously made or that the documents discovered did not go as far as he wanted them to go, or that insufficient indications have been given where such other documents may be located, one has to weigh up the extent of such non-compliance against the prejudice to be suffered by the appellants should their defence be struck out.

[18] In *Wilson v Afrikaanse Pers Publikasies (Edms) Bpk*¹ the following was stated: *“The striking of the defendant’s defence is an extremely drastic step which has the consequences that the action goes forward for a trial as an undefended matter. In this case, if the orders were granted, it would mean that a trial court would eventually hear this action without reference to the justification which the defendant has pleaded and which it might conceivably be in a position to establish by evidence. I am accordingly of the view that this very grave step will be resorted*

¹ 1971 (3) SA 455 (T) at 426-2463

to only if the court considers that the defendant has deliberately and contemptuously disobeyed its order to furnish particulars”.

[19] It is further trite that, in considering an application to strike a defence, the court exercises a discretion which must be exercised judicially on a proper consideration of all relevant circumstances.

[20] One of the most relevant circumstances is the consequences of a striking-out order in that it deprives a litigant of an entrenched right to a fair trial and a Constitutionally guaranteed right of access to a court of law to have a dispute adjudicated.

[21] In considering an application for striking a defence, other relevant factors will include the reason and extent of the alleged non-compliance, whether the defaulting party has recklessly disregarded his or her obligations, whether the defaulting party’s case appears to be hopeless, whether the defaulting party does not seriously intend to proceed with the defence to trial and the prejudice to the respective parties².

[22] In the heads of argument delivered on behalf of the respondent in the appeal, various and extensive, extraneous issues were canvassed but nowhere was the argument advanced with any supporting evidence or conviction that the respondent would be unduly prejudiced if the defence is not struck out. In fact, all that will happen if the appeal succeeds, is that the respondent will have to

² *MEC, Department of Public Works and others v Ikama Architects and others* 2022(6) SA 276 (ECB) at paras [18] to [19]; *Helen Suzman Foundation v Judicial Service Commission* 2018(4) SA 1(CC) at para [79]; *SA Scottish Finance Corporation Ltd v Smith* 1966(3)SA 629(T) at 634; *Evander caterers (Pty)Ltd v Potgieter* 1970(3)SA 312(T) at 317; *Thornhill v Gerhardt* 1979(2)SA 1092(T) at 1096-7; *Smith NO v Brummer NO* 1954(3)SA 352(O) at 357 and *Putco Ltd v TV & Radio Guarantee Company (Pty)Ltd* 1984(1)SA 443(W).

prove both the merits of his case and the quantum of his alleged damages at a trial.

[23] It is clear both from the judgment in the court *a quo* and the judgment by which leave to appeal was subsequently granted, that the court *a quo* had insufficiently considered the relevant circumstances, nor has it weighed up the possible prejudice to the respective parties. The court *a quo* has therefore failed to exercise its discretion in a judicial manner and this court is now obliged to do so.

[24] Having weighed up all the relevant factors referred to above and the nature of the claim and the extensive quantum involved, as well as the clearly indicated serious intention of the appellants to contest the matter, we find that it was inappropriate for the court to have struck out the appellants' defence. Accordingly, the appeal should succeed.

[25] Regarding the issue of costs, it is trite that costs should follow the event unless there are exceptional circumstances. In this case, we do not find any such exceptional circumstances in fact, it appears to us that in both proceeding with the application for striking out and in opposing the appeal, the respondent was acting unreasonably. His attitude to these aspects of the litigation is also evinced by the reverting to language such as the following (quoting from paragraphs 3.13 and 3.14 of the heads of argument): *"This appeal is seriously very destructive, woeful, irrational, a waste of judicial resources, generally time-consuming, prejudicial to the respondent, and the appearance of dragging this matter using state resources (taxpayer's funds) at the expense of the public. In submission, it is respectfully submitted that the appellants' above mentioned repeated and unlawful conduct in violation of the Constitution coupled with their blatant disregard of an existing court order constitutes such conduct that this Honourable Court should display its displeasure by dismissing the appeal and ordering them*

to pay the costs of this appeal on the scale as between attorney and client". We shall not go as far as awarding costs on a punitive scale, but find that costs should include that of two counsel and should follow the success of the appeal and the ultimate success in the opposition to the striking-out application.

Order:

[26] In the premises. We make the following order:

- 1 The appeal is upheld with costs, including the costs of two counsel.
- 2 The order in the court *a quo* whereby the appellants' defence in the main action was struck out, is set aside and the defence of the appellants is reinstated.
- 3 The respondent is ordered to pay the costs of the application for striking out the appellants' defence, including the costs of two counsel.


N DAVIS
 Judge of the High Court
 Gauteng Division, Pretoria

I agree


N P MNGQIBISA-THUSI
 Judge of the High Court
 Gauteng Division, Pretoria

I agree and it is so ordered.



M NOKO
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 11 June 2025

Judgment delivered: 29 July 2025

APPEARANCES:

For the Appellants:

Adv T.W.G Bester SC with

Adv D.M Kekana

Attorney for the Appellants:

Moshoue Monyai Attorney, Pretoria

For the Respondent:

Adv T Moloi with Adv P Sinthumule

Attorney for the Respondent:

State Attorney, Pretoria