



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case no: J07/2022

In the matter between:

ABDURAGIEM STOFBERG

Plaintiff

and

TOWERPLAN AFRICA (PTY) LTD

Defendant

Heard: 21 August 2025

Delivered: 22 August 2025

Summary: Application for relief under the Basic Conditions of Employment Act No. 75 of 1997. Application struck from the roll.

JUDGMENT

DANIELS J

Introduction

[1] The plaintiff alleges that the defendant breached his employment contract and further breached his subsequent retrenchment agreement. He seeks relief under section 77(3) of the Basic Conditions of Employment Act 75 of 1997. The defendant raised a 'point in limine' that the court lacks jurisdiction to hear the dispute. This 'point in limine' would have more properly been termed an exception, but that is putting form over substance. This judgment concerns only the in limine issue.

Material facts

[2] The plaintiff was employed by the defendant between 2015 and 2021. The terms of the employment contract were not recorded in writing. The plaintiff alleges that there was a tacit term to the contract that the plaintiff would work and be paid for overtime when this was necessary.

[3] During 2021, the parties concluded a retrenchment agreement in full and final settlement of all claims the plaintiff may have against the defendant. Clause 5 of the agreement provides as follows:

"5. The employer undertakes to pay any and all overtime worked on the specific instructions of management. The employee is required to submit a claim for the hours worked, management will reconcile and affect payment soonest, it is therefore agreed to effect payment on or before 31 May 2021 or latest 30 June 2021."

(own emphasis)

[4] The plaintiff submitted a claim for the overtime he had worked. The defendant refused to pay the monies on the basis that it had not specifically instructed the plaintiff to work any overtime.

[5] On the pleadings, it is common cause that the plaintiff did not receive specific instructions or authorisation to work overtime.

Legal analysis

[6] The plaintiff directed the court's attention to the authorities. The authorities suggest that section 77(3) of the BCEA should not be narrowly construed. In *University of the North v Franks and others*¹ the LAC held that the jurisdiction of the Labour Court, in terms of section 77(3) of the BCEA, encompasses the "... termination of an employment contract and the terms and conditions upon which this is to occur". Similarly, in *Rand Water v Stoop & another*² the LAC held that this court's jurisdiction, in terms of section 77(3), is not confined strictly to the employment contract. More recently, in *Van Vuuren v Heaven Sent Gold SA (Pty) Ltd and another*³ the LAC stated: "A dispute that "relates to, is linked to, or connected with an employment contract" falls within the ambit of section 77(3), as does an agreement terminating the employment contract."

[7] It is clear from the authorities that a claim under section 77(3) of the BCEA may well extend to the enforcement of a mutual separation agreement, or a retrenchment agreement. However, here, this is not the issue. What is at issue is whether the statement of claim sets out facts sufficient to sustain a cause of action.

[8] Rule 14(1) of the Rules of this Court states as follows: "...a statement of claim ... lacks averments which are necessary to sustain an action or defence ...". It is clear therefore that a statement of claim must contain the factual and legal averments necessary to sustain the action.

[9] In *Trope v South African Reserve Bank*⁴ the Appellate Division explained a similar requirement in the Uniform Rules of Court as follows:

"It is trite that a party has to plead - with sufficient clarity and particularity - the material facts upon which he relied for the conclusion of law he wishes the Court to draw from those facts (*Mabaso v Felix* 1981 (3) SA 865 (A) at 875A-H; Rule 18(4)). It is not sufficient, therefore, to plead a conclusion of law without pleading the

¹ [2002] 8 BLLR 701 (LAC) at para [30]

² (2013) 34 ILJ 576 (LAC)

³ (JA 75/23; JA 76/23) [2025] ZALAC 21 (17 March 2025) at para [12]

⁴ 1993(3) SA 264 (A)

material facts giving rise to it. (Radebe and Others v Eastern Transvaal Development Board 1988 (2) SA 785 (A) at 792J-793G.)”
(own emphasis)

[10] It is trite that jurisdiction must be determined by the pleadings, and should not be confused with the merits.⁵

[11] In this matter, it is common cause that the retrenchment agreement was concluded in full and final settlement of all claims between the parties. It is also common cause that the defendant did not issue specific instructions to the plaintiff to work overtime. Accordingly, on the pleadings of this matter, the plaintiff cannot be successful regardless of the evidence presented at trial.

Order

1. The matter is struck from the roll for lack of jurisdiction.

R Daniels
Judge of the Labour Court of South Africa

Appearances:

For the Plaintiff:

Adv Bobison-Opoku

Instructed by: AJ Venter Inc

For the Defendant:

Adv R Carratu

Instructed by: ()

⁵ *Gcaba v Minister for Safety and Security and others* 2010 (1) SA 238 (CC) at para [75]