

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

- (1)

REPORTABLE: NO
- (2)

OF INTEREST TO OTHER JUDGES: NO
- (3)

REVISED: NO

Case No: 2024-055209

05 September 2025

DATE

SIGNATURE

In the matter between:

MJAJU JOSEPH MATHE

Applicant

and

HOYA LENS SOUTH AFRICA

Respondent

JUDGMENT

READ A.J

INTRODUCTION

1. Before this Court is an application in which the applicant seeks compensation in the amount of R140,874.12, representing 12 months' salary for loss of income, and a declaration that the termination of his employment was unlawful.
2. The respondent has raised several points *in limine*, namely *lis pendens*, urgency, and material disputes of fact. The urgency point has already been disposed of, with the matter having been struck from the roll on 4 June 2024 for lack of urgency.

POINTS IN LIMINE

First Point *in limine*: *Lis Pendens*

3. The respondent contends that this application should be dismissed on the basis of *lis pendens*, arguing that the same dispute is pending before the Labour Court in a review application arising from CCMA proceedings.
4. The requirements for a valid plea of *lis alibi pendens* are well-established. In *Williams v Shub*¹, the court held that the requisites are that the actions must be between the same parties, on the same cause of action, and in respect of the same subject matter.
5. However, the Supreme Court of Appeal in *Makhanya v University of Zululand*² established the important principle that an employee may pursue

¹ 1976 4 All SA 449 (C)

² 2009 ZASCA 69

both an unfair dismissal claim under the LRA and a separate contractual claim for breach of contract. The court stated:

*"[I]t is true that a litigant who has a single claim that is enforceable in two courts that have concurrent jurisdiction must necessarily make an election as to which court to use... But it is altogether different when a litigant has two distinct claims, one of which may only be enforced in one court, and the other of which may be enforced in another court."*³

6. This principle was further developed in *Archer v Public School*⁴ where the Labour Appeal Court confirmed that contractual claims arising from employment termination are distinct from unfair dismissal claims under the LRA. Section 195 of the LRA explicitly provides that compensation awards under the LRA are *"in addition to, and not a substitute for, any other amount which the employee is entitled to in terms of any law, collective agreement or contract of employment."*
7. The *lis pendens* point lacks merit. The applicant's contractual claim for breach of contract is legally distinct from his unfair dismissal claim in the CCMA/Labour Court. Different causes of action are involved, even though arising from the same factual matrix.

Second Point in Limine: Material Disputes of Fact

8. The respondent argues that material disputes of fact exist that cannot be resolved on the papers, requiring the matter to be referred to trial.

³ 2009 ZASCA 69, para 61

⁴ 2020 41 ILJ 610 LAC.

9. The applicable legal principles are well-settled in *Plascon-Evans Paint Ltd v Van Riebeck Paints (Pty) Ltd*⁵, where the court established that in motion proceedings, a final order can only be granted if the facts averred in the applicant's affidavits, together with admitted facts and the respondent's version, justify such an order.

10. From the papers, several material factual disputes emerge:

10.1 Inconsistent versions by the applicant: In the CCMA proceedings, the applicant indicated that the dismissal was procedurally and substantively fair but claimed discrimination. In this application, he alleges the dismissal was unlawful.

10.2 Alleged verbal contract: The applicant alleges a verbal contract was concluded on 1 February 2021, which is denied by the respondent. However, the applicant fails to plead essential terms such as the place where the agreement was concluded, the parties to the agreement, and the specific terms.

10.3 Circumstances of termination: Conflicting versions exist regarding the manner and reason for termination.

11. The case of *Greyling v George Randell High School*⁶ provides guidance on when material disputes should be referred for oral evidence. The court noted that an application for oral evidence should generally be made *in limine*, and not when it becomes clear that the applicant is failing on the papers.

⁵ 1984 ZASCA 52.

⁶ 2023 44 ILJ 1254 LC.

12. Material disputes of fact exist that cannot be satisfactorily resolved on the papers. However, the application fails for other reasons addressed below.

THE MERITS

Breach of Contract Claim

13. For a successful breach of contract claim, the applicant must prove:

- 13.1 The existence of a valid contract
- 13.2 Breach of that contract
- 13.3 Damages suffered
- 13.4 Causal link between breach and damages

14. Contract: It is common cause that an employment contract existed between the parties.

15. Breach: The applicant makes "sweeping statements" that changes were made to the employment contract constituting breach, but fails to particularize the specific breaches alleged.

16. Damages: The applicant claims R140,874.12 but provides no explanation or evidence of how this amount was quantified or his entitlement thereto. There is no explanation why the claim is not brought by way of action rather than application.

17. Causation: The applicant has failed to establish any causal link between the alleged breach and the damages claimed.

18. An applicant is required to set out all of the facts upon which it relies to support a cause of action in its founding affidavit.

PROCEDURAL CONSIDERATIONS

Forum Shopping and Abuse of Process

19. The conduct of the applicant raises concerns about potential forum shopping and abuse of process. In *Painter v Strauss*⁷, the court held:

"To bring two actions in one Court in regard to the same matter is prima facie vexatious, and the same could be said where the actions are brought in different Courts."

20. While the causes of action may be technically distinct, the applicant's approach of pursuing multiple proceedings simultaneously without proper disclosure suggests an attempt to "bypass all available avenues" and "fast track his alleged unfair dismissal."

Threatening Language

21. Concerning is the applicant's statement in his replying affidavit that if he does not obtain relief, "he will lose his faith in the Constitution and is very likely to

⁷ 1951 (3) SA 307 (O).

commit atrocities against humanity and hate crimes." Such threatening language is inappropriate and reflects poorly on the applicant's *bona fides*.

CONCLUSION

22. The application is dismissed for the following reasons:

22.1 Material disputes of fact exist that cannot be resolved on the papers, particularly regarding the alleged verbal contract, the circumstances of termination, and the applicant's changing versions of events.

22.2 Failure to make out a case for breach of contract: The applicant has failed to properly plead and prove the essential elements of his contractual claim, particularly regarding specific breaches, quantification of damages, and causation.

22.3 Defective application: The applicant's claim is inadequately set out in the founding affidavit and ought to have been brought by way of action, particularly regarding the alleged verbal contract and specific breaches of the written contract.

23. Costs must follow the event. The general rule that the unsuccessful party bears the costs applies, particularly given the deficiencies in the application and the approach adopted by the applicant.

IT IS ORDERED THAT:

1. The application is dismissed.
2. The applicant is to pay the respondent's costs of suit and on a scale B.


READ C

**ACTING JUDGE OF THE HIGH COURT,
JOHANNESBURG GAUTENG**

DATE OF HEARING:	11 June 2025
DATE OF JUDGMENT:	05 September 2025
FOR THE APPLICANT:	Self-represented
FOR THE RESPONDENT:	Adv JH Lerm instructed by De Beer Makoele Attorneys