



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: J155/21

In the matter between:

DIRK WILLEM POTGIETER

Plaintiff

and

SAMANCOR CHROME LTD t/a TUBATSE FERROCHROME

Defendant

Heard: 25 July 2025

Reserved: 15 August 2025

Delivered: 12 September 2025

JUDGMENT

MAKHURA, J

- [1] At the end of oral arguments on 25 July 2025, this Court, encouraged by the discussions with the parties, and with their consent, postponed the matter to 15 August 2025 to allow the parties to explore possible settlement of the matter, and directed the defendant's attorneys to provide feedback on or before 15 August

2025. Further, the Court ordered that should there be no agreement, the judgment would be reserved from the date this is communicated to the Court. The parties have subsequently informed the Court that they were unable to settle the matter. Both parties filed what appears to be detailed information about their discussions. It is unnecessary for the Court to consider the details of the parties' discussions, which would have contained without prejudice discussions. For that reason, I decided to refrain from perusing the responses. In light thereof, I proceed to issue my judgment in the interlocutory proceedings below.

- [2] Following his dismissal by the defendant on 24 October 2006, the plaintiff referred an unfair dismissal dispute to the Metal and Engineering Industries Bargaining Council (MEIBC) for conciliation and later arbitration. On 25 June 2008, the commissioner issued an award in which the plaintiff's dismissal was declared unfair. The commissioner decided not to award reinstatement and ordered the defendant to pay the plaintiff compensation. Aggrieved, the plaintiff challenged the award on review insofar as it related to the relief. On 10 November 2011, this Court, per Louw AJ, dismissed the review application.¹
- [3] The applicant appealed the Labour Court judgment to the Labour Appeal Court (LAC). On 12 June 2014, the LAC upheld the appeal, substituted an award of compensation with an order of retrospective reinstatement. Paragraph 2.1(ii) of the LAC order reads as follows:
- 'The employee is re-instated retrospectively into his position and must be paid the salary he would have received had he not been unfairly dismissed.'
- [4] The application for leave to appeal the LAC judgment was dismissed by the Constitutional Court on 3 September 2014.
- [5] Following the above judgments and orders, the plaintiff was reinstated. Subsequently, the parties agreed to terminate the contract of employment with effect from 30 November 2015.

¹ *Potgieter v Tubatse Ferrochrome & others* [2012] 5 BLLR 509 (LC); (2012) 33 ILJ 953 (LC).

- [6] In July 2018, the plaintiff lodged an action in this Court claiming backpay from the date of dismissal to the date of the LAC order – that is, from 24 October 2006 to 12 June 2014. He quantified the amount as R5 152 359.41. This application was, for all intents and purposes, for a quantification of his remuneration from the date of his dismissal to the LAC order. The defendant raised a preliminary point that the plaintiff's remedy was in the enforcement process, either instituting contempt proceedings or proceeding by way of writ of execution.
- [7] On 3 June 2020, the parties reached an agreement which was made an order of Court by Van Niekerk J (as he then was). In terms of the agreed order, the plaintiff withdrew the action and the parties agreed to engage each other to formulate an agreed stated case about the defendant's payment liability for the period between the plaintiff's dismissal and the LAC judgment on 12 June 2014. The court order stated further that if no agreement is reached, the defendant could apply for a declaratory relief to resolve any issue that is not agreed upon.
- [8] The parties were unable to reach an agreement, which led to the application for declaratory relief. In that application, which came before Snyman AJ, the Court recorded that it was common cause that the plaintiff had received alternative income after his dismissal. The Court had to determine whether this alternative income was relevant when determining the amount payable to the plaintiff.² On 16 February 2021, Snyman AJ determined the application and ordered, *inter alia*, that:
- '2. It is declared that for the period from 26 June 2008... and 12 June 2014... the respondent is not entitled to be paid his full salary by the applicant, as if he was not dismissed, as such claim must still be determined and is subject to moderation and adjudgment depending on damages the respondent is able to prove and contractual defences raised by the applicant.

² *Samancor Chrome Limited t/a Tubatse Ferrochrome v Dirk Willem Potgieter*, unreported and unpublished judgment of Snyman AJ dated 16 February 2021, at para 4.

3. The respondent is given leave to institute a claim as contemplated by paragraph 2 of this order within 90 (ninety) days of date of this order.
4. The respondent is ordered to make/disclose to the applicant of any information and/or documents in the possession of or known to the applicant, of any alternative income the applicant (sic) may have earned in the period from 26 June 2008 to 12 June 2014, from any third party other than the applicant, within 90 (ninety) days of date of this order.’
(Own emphasis)

- [9] The reference to the respondent in the above judgment is the plaintiff in these proceedings. The plaintiff’s application for leave to appeal was dismissed on 21 April 2021. Between 17 June and 8 July 2021, the plaintiff sent the defendant his ITA34 notices from the South African Revenue Services (SARS) for the period 2008 to 2014. These ITA34 notices contain a summary of the plaintiff’s assessment for each tax year and reflect the summary of inter *alia* his income, expenses, rebates and pay as you earn (PAYE) during this period.
- [10] On 2 August 2021, the plaintiff lodged a claim for quantification of his remuneration, per the previous claim instituted in July 2018, which was withdrawn on 3 June 2020. The plaintiff claimed an amount of R8 997 198.82. This claim was met by a special plea of prescription raised by the defendant. On 13 June 2022, this Court upheld the defendant’s special plea.³ That judgment was set aside on appeal by the LAC on 10 March 2025 and substituted with an order dismissing the defendant’s special plea of prescription.⁴
- [11] Regrettably, nineteen years after the plaintiff’s dismissal and more than eleven years after the LAC judgment and order of reinstatement and payment of salary the plaintiff would have received had he not been unfairly dismissed, the parties are still locked in dispute regarding the amount of payment the plaintiff is entitled to.

³ *Potgieter v Samancor Chrome Limited t/a Tubatse Ferrochrome* [2022] ZALCJHB 146; (2022) 43 ILJ 2091 (LC).

⁴ *Potgieter v Samancor Chrome Ltd t/a Tubatse Ferrochrome* [2025] 5 BLLR 483 (LAC); (2025) 46 ILJ 1708 (LAC).

[12] In this latest instalment of the dispute, the defendant has brought an interlocutory application for an order in the following terms:

‘Dismissing the Applicant’s claim for failure to comply with the order delivered by Snyman AJ in respect of the disclosure of documents and information concerning income.’

[13] The defendant’s case is set out as follows:

‘20. The applicant, Mr Potgieter, has failed to comply with the above order, alternatively has failed to comply with the order. In this regard:

20.1. From 17 June 2021 until 8 July 2021, the respondent’s attorneys, Solomon Holmes received several emails from Mr Potgieter ostensibly in compliance with paragraph 4 of the order of court. I attach copies of these emails as annexures “B1”, “B2”, “B3”, “B4” and “B5”.

20.2. Attached to the emails are notices of assessment issued by the South African Revenue Service (SARS) under form ITA34.

20.3. I must point out that these ITA34 documents are generated by SARS, apparently from and in respect of information provided by Mr Potgieter. That information has not been disclosed. I add that an ITA34 is nothing more than an assessment made by SARS of a tax year on the basis of the substance of a tax return provided by an individual.

20.4. Mr Potgieter has not supplied any further documents or information in compliance with the order. There is no disclosure of any original evidence of his income in respect of the period 26 June 2008 to 12 June 2014. It is inconceivable that Mr Potgieter has no information and/or documents in his possession, or does not know of documents that relate to alternative income that he may have earned during the above period. Clearly, in order to provide SARS with the information so that the form ITA34 could

be generated by SARS, Mr Potgieter had to have underlying documentation or information. He has deliberately declined to provide this information.'

[14] The defendant then argued that the plaintiff is likely in possession of documents such as IRP5s generated by his employers during that period, IT3As issued by his employers, any tax directives issued in respect of the plaintiff and/or any entities he was directly or indirectly associated with, income and expenditure statements, his personal bank statements, bank statements and financial statements of any entities he had been directly or indirectly associated with and the supporting documentation upon which any tax return and subsequent assessment was made for the period.

[15] The plaintiff, in response, complained that the defendant had only launched these interlocutory proceedings more than four and a half months after he provided the information, as per paragraph 4 of Snyman AJ's order. The plaintiff sent the information in June and July 2021. The application was launched in November 2021. The defendant did not raise any issue with the plaintiff regarding its dissatisfaction with the information provided, but simply decided to bring these proceedings. The plaintiff contended that the court order did not require him to provide the documents under oath. He continued:

'The Respondent now seemingly ask for original documents for example IRP5 documents. The ITA34 documents supplied to the Respondent includes the remuneration stipulated in the IRP5 documents and therefore reflects all the relevant information...

The Applicant cannot recall ever receiving an IT3(a) document. From an internet search, it seems as if these documents indicate non-taxable income received by employees.

It is absurd that the Respondent now require the Applicant's personal bank accounts. This is personal information, was not required by paragraph 4 of the Order and will not assist the Respondent with salary earned elsewhere by the

Applicant which is not already included in the documents provided to the Respondent, in full compliance with paragraph 4 of the Order.

The IRP5 is provided by the employer, it indicates the salary earned, it is then used by SARS to indicate the salary earned on the ITA34 form, which the Respondent now have and it is therefore senseless to provide the IRP5 documents which the Applicant in any case do not have.

No tax directives had been issued to the Applicant during this period...'

- [16] The dismissal occurred in October 2006, the award was issued in June 2008, declaring the dismissal unfair and awarding the plaintiff compensation, the review application by the plaintiff failed on 10 November 2011, and his appeal to the LAC was upheld on 12 June 2014. The defendant's attempt to get a hearing from the Constitutional Court failed on 3 September 2014.
- [17] The current dispute is centred around the payment of the plaintiff's remuneration as ordered by the LAC on 12 June 2014. On 3 June 2020, this Court issued an order by agreement that sought to bring the matter to an end. Unfortunately, that did not happen, resulting in an application for a declaratory order. On 16 February 2021, Snyman AJ declared that the plaintiff is not entitled to payment from 26 June 2008 to 12 June 2014 and ordered the plaintiff to disclose information about his earnings for that period. The plaintiff was also granted leave to institute a fresh claim. The plaintiff's application for leave to appeal this judgment was refused on 21 April 2021. He instituted the claim on 2 August 2021.
- [18] The claim was met with a special plea of prescription. In November 2021, the defendant launched these interlocutory proceedings. On 13 June 2022, the special plea of prescription was upheld. The decision to uphold the special plea was overturned by the LAC on 10 March 2025. The interlocutory application was then enrolled for hearing, almost two decades after the plaintiff's dismissal. The quantification claim is still to be determined.

- [19] The defendant had opted to bring an application for the dismissal of the plaintiff's entire claim, instead of enforcing the court order, which it is entitled to in the event that it complains about non-compliance, or seeking discovery of certain information that it believes is relevant to its defence. Despite what I consider to be an express and unambiguous wording of the LAC order dated 12 June 2014, that the plaintiff "*must be paid the salary he would have received had he not been unfairly dismissed*", Snyman AJ declared that the plaintiff was not entitled to his full salary for the period 26 June 2008 to 12 June 2014 and ordered the plaintiff to disclose information and/or documents in his possession or known to the defendant of any alternative income he might have received between June 2008 and June 2014.
- [20] When the plaintiff reviewed and appealed an order of compensation, the defendant was presented with an opportunity to raise the issues of retrospectivity and backpay. Whatever the case, the defendant presented before the Labour Court and the LAC the fact is that the LAC made an order of reinstatement on 12 June 2014 and that the defendant must pay the plaintiff the salary he would have received if he had not been unfairly dismissed. There was no qualification or condition attached to the LAC order. Snyman AJ's order has, regrettably in my view, sought to extend the scope of the LAC order of 12 June 2014.
- [21] However, even if I am wrong in reading the LAC order, the plaintiff has complied with paragraph 4 of the order of Snyman AJ. He provided the ITA34 notices from SARS between 17 June and 8 July 2021. He has indicated that he does not have the IRP5. The plaintiff's personal bank account statements are not relevant. The defendant's suggestion that this information is necessary and relevant is absurd. There is no basis for the defendant to seek the plaintiff's personal bank account, and this request shows that the defendant is on a fishing expedition. If the defendant seeks further discovery, it is free to invoke remedies relating to the discovery of documents, not to seek the dismissal of the claim. This application is, in my view, an abuse of the court processes.

[22] The plaintiff, an unrepresented individual in these proceedings, has spent two decades seeking justice. He is up against a former employer who has clearly adopted the Goliath approach and is prepared to litigate on any issue, no matter its triviality, all in a quest to frustrate the plaintiff and deny him the fruits of the LAC order. This matter has, in my view, become extremely urgent and cannot be delayed any further. The plaintiff has complied with the order of Snyman AJ. This application stands to be dismissed, and the matter must be set down for trial.

[23] The plaintiff represented himself in these frivolous and hopeless proceedings. He has incurred disbursements in his opposition to this application and should not be out of pocket for opposing this unnecessary and misdirected application. The defendant must pay the plaintiff the disbursements incurred in opposing the application, including his travel expenses.

[24] In the premises, the following order is made:

Order

1. The defendant's interlocutory application is dismissed.
2. The parties are ordered to convene a pre-trial meeting, draft, finalise and file a duly signed pre-trial minute within 15 court days of this judgment and order.
3. Should the parties fail to file the pre-trial minute per paragraph 2 above, they are each required to file an affidavit within 5 days of expiry of the 15 days above explaining the reasons for the non-compliance.
4. The Registrar is directed to set the matter down for trial on an expedited basis, for 3 days.
5. The defendant is ordered to pay the plaintiff's disbursements incurred in opposing the application.

M. Makhura
Judge of the Labour Court of South Africa

Appearances:

For the Plaintiff: Self

For the Defendant: Mr A Redding SC

Instructed by: Solomon Holmes Inc.