



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-057140

In the matter between:

DENEL SOC LTD

Applicant

and

ELIAS SELLO NTSIHLE

Respondent

Heard: 12 September 2025

Delivered: 03 October 2025

JUDGMENT

BHIMA, AJ

Introduction

[1] In this application, the applicant (Denel) seeks the dismissal of the respondent's application against it under the above case number (the main application) on the basis that it constitutes an irregular proceeding as envisaged under Rule 57 of the Labour Court Rules.

[2] In the alternative, the applicant seeks to have the notice of motion and founding affidavit set aside.

- [3] In the main application, the respondent seeks, *inter alia*, declaratory relief under the Employment Equity Act, No. 55 of 1998 (the EEA), compensation, reconsideration and other corrective measures.
- [4] Denel contends that it is impermissible to institute such a claim by way of application, rendering such application irregular and liable to dismissal or setting aside.

The issue

- [5] The crisp legal issue that I am called upon to decide is whether or not Denel's contention is correct. If the respondent was not lawfully entitled to institute his claim by way of application, then the relief sought by Denel is fitting. If, however, there was no specific bar to the respondent instituting his claim on motion, then Denel's application must be dismissed.
- [6] Put differently, the matter concerns the appropriateness of motion proceedings.
- [7] As the issue is purely a legal one, I do not deem it necessary to set out a full synopsis of the factual dispute between the parties.

Irregular proceedings

- [8] Rule 57 allows a party to *set aside* an irregular step. Rule 57 does not define an irregular step. Rule 57 is, however, inimical to Uniform Rule 30 in the High Court.
- [9] In *SA Metropolitan Lewensversekeringsmaatskappy Bpk v Louw NO*¹ Flemming J said:

'I have no doubt that Rule 30(1) was intended as a procedure whereby a hindrance to the future conducting of the litigation, whether it is created by a non-observance of what the Rules of Court intended or otherwise, is removed.'

¹ 1981 (4) SA 329 (O) at 333G-H.

- [10] In *Jowell v Bramwell-Jones and others*² the Court defined an irregular step as one which advances the proceedings one stage nearer completion and which, objectively viewed, manifest an intention to pursue the cause despite the irregularity.
- [11] In *BMW Financial Services South Africa (Pty) Ltd v Doola*³, Le Grange AJ concluded that “an ‘irregular step’, as contemplated in rule 30(1), must be a procedural step which is taken in disregard of the rules, advances the process closer to completion and prejudicially affects the innocent party’s rights in the future conduct of their litigation”.

Discussion

- [12] The issue is whether the main application is an irregular step or a proceeding.
- [13] To my mind, the first question is thus whether there is any authority for the proposition advanced by Denel, to wit that the respondent is precluded from prosecuting his claim by way of application. Otherwise, it would be difficult to see how the main application constitutes an irregular step.
- [14] I duly posed this question to Mr Naidoo, who appeared on behalf of Denel. He first referred me to the judgment that he had referred to in his heads of argument: *Gibbs v Nedcor Limited*⁴ (*Gibbs*).
- [15] Gibbs was concerned with whether or not proceedings to determine an unfair dismissal were to be brought in the form of a review or a new hearing (after having already been arbitrated at the CCMA). The question related to what the process was to be followed under section 193 of the Labour Relations Act, No. 66 of 1995 (the LRA) and what was meant by adjudication under section 191 thereof.
- [16] This Court in Gibbs held that the adjudication process envisaged under the LRA did not mean review and that a party seeking adjudication was entitled to a rehearing (in the context of the matter).

² 1998 (1) SA 836 (W) at 904B-H.

³ [2025] 2 All SA 107 (GP) at para 18.

⁴ [1997] 12 BLLR 1580 (LC).

[17] Gibbs is, however, not authority for the proposition that adjudication equals action proceedings to the exclusion of motion proceedings.

[18] Mr Naidoo also referred me to the judgment in *O'Connor v Lexisnexis (Pty) Ltd*⁵, and for his contention that a proceeding under section 10 of the EEA was to be brought on action, relied on paragraph 48 thereof, where Meyerowitz AJ said:

'While a claim under section 6 of the EEA will normally proceed by way of trial under Rule 6, I see no reason why a litigant cannot approach this court on an urgent basis if the circumstances justify an urgent order. A good example is an urgent order setting in place restrictions on an employer so as to prevent an employee from being sexually harassed pending a trial for full and better compensation in due course.'

[19] This passage does not assist Denel; in fact, it fortifies the contrary position. The Court in *O'Connor* effectively found that claims could be prosecuted by way of application if the need arose.

[20] No other authority for this proposition was advanced by Denel, nor could I find such authority. This is probably because the proposition is alien to our law.

[21] To my mind, adjudication simply means the action or process of adjudicating a dispute. It does not prescribe a method of litigation.

[22] It must be remembered that one of the primary objectives of the LRA is the *effective* resolution of disputes.⁶ This entails, *inter alia*, that they must be resolved as quickly as possible in the circumstances. As such, I cannot see why a dispute cannot be adjudicated on motion if that is the quickest and most cost-effective procedure.

[23] In *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd*⁷, Murray AJP (writing on behalf of a unanimous full bench) said the following:

⁵ (2024) 45 ILJ 1287 (LC).

⁶ *Nhlapo v Sambo N.O. and Others* (JR1451/2018) [2023] ZALCJHB 169 (18 May 2023) at para 1.

⁷ 1949 (3) SA 1155 (T) at 1161.

'I propose to set out, first, as I understand it, the general position in regard to the permissibility of motion proceedings as opposed to trial actions. Two types of proceedings may be mentioned, as falling outside the scope of this enquiry. (1) There are certain types of proceeding (e.g., in connection with insolvency) in which by Statute motion proceedings are specially authorised or directed: in these the matter must be decided upon affidavit and Rule 9 may be invoked, as shown in *Mohamed v Malk* (1930 TPD 615), to permit *viva voce* evidence to be led in order to counteract any balance of probability appearing from affidavits. (2) There are on the other hand certain classes of case (the instances given by DOWLING, J., are matrimonial causes and illiquid claims for damages) in which motion proceedings are not permissible at all. But between these two extremes there is an area in which (as I see the position) according to recognised practice a choice between motion proceedings and trial action is given according to whether there is or is not an absence of a real dispute between the parties on any material question of fact.' (own emphasis)

- [24] On this score, Denel contended that the main application was also irregular, as there would be numerous factual disputes that would arise.
- [25] Even if this is true, this does not cause any prejudice to Denel as it would either result in a dismissal of the application or a referral to oral evidence or even to trial. More importantly, this does not render the proceeding 'irregular'.
- [26] Denel can raise any dispute it has with the main application in an answering affidavit thereto. I do not think it appropriate for me to decide what may happen with regard to the main application. In fact, this application smacks of a tactic to avoid answering the merits of the main application (for whatever reason).
- [27] In the premise, I make the following order:

Order

1. The application is dismissed.
2. There is no order as to costs.

R Bhima

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant: S Naidoo

Instructed by: Cliffe Dekker Hofmeyr

For the Respondent: In person