

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: **010346/2022**

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS/JUDGES: NO
(3) REVISED

91/10/25

In the matter between:

QUENTIN PEDLAR

Applicant / Defendant

And

SANTAM LIMITED

Respondent/Plaintiff

*This matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and is handed down electronically by circulation to the parties' legal representatives by email and uploading it to the electronic file of this matter on Caseline. The date for hand-down is deemed to be the **01st October 2025***

JUDGEMENT

Introduction

- [1] By way of the notice dated the 17th September 2024 and in terms of Rule 28 of the Uniform Rules (the Rules), the applicant is praying for the amendment of its plea in accordance with the notice of intention to amend dated the 15th August 2024.
- [2] The plea was delivered following the court order dated the 20th April 2023 uplifting the bar
- [3] The intention to amend notice dated the 15th August 2024 is silent about conditional condonation application. Paragraph 2 of application for leave to amend states that as far as condonation is required in respect of prayer 1, such condonation be granted. Save for repeating what is stated in paragraph 2 of the application for leave to amend as stated in paragraph 1.5.2 of the founding affidavit, the founding affidavit say nothing additional about the basis of condonation application.
- [4] The essence of the application is to delete and replace the entire plea, in particular the first, second and third special pleas.
- [5] The founding affidavit to support the amendment application and the replying affidavit to the answering affidavits were deposed to by the applicant's attorney.

It indicates that on the instruction of The Whistleblower House, the applicant's attorneys were appointed on the 24th July 2024 and that until then, the applicant appeared in person. The applicant's previous attorneys withdrew per notice dated the 28th September 2022 from which period the applicant acted in person. This means that the applicant appeared in person between the 28th September 2022 and the 24th July 2024.

- [6] The founding affidavit states that counsel appointed to represent the applicant appeared the next day of appointment on the 25th July 2024 when the exception application delivered on behalf of the respondent was heard. It says the judgment was reserved until it was delivered on the 31st July 2024, upholding the exception.
- [7] The amendment notice follows the exception order granted against the applicant's plea, which was upheld on the 31st July 2024.
- [8] The exception order gave the applicant ten days to deliver an amended plea, failing which the first special plea was dismissed. The second and third special pleas were dismissed with immediate effect from the 31st July 2024
- [9] The founding affidavit says that on the 28th August 2024 the respondent delivered objection to amendment.
- [10] The founding affidavit attached as annexures CLR 5 and 6 correspondences between the parties regarding their respective interpretation of judgment order relating to special pleas. They differed whether the dismissal of the special pleas

meant that the applicant could not amend them.

[11] The parties having differed about the interpretation of the orders, the respondent proceeded to deliver the objection notice.

[12] The objection notice was followed by the answer to proposed amendment plea delivered on the 9th October 2024. The objection notice make contention to the effect that ::

(a) The proposed amendment to be effected by the insertion of a counterclaim failed to comply with Rule 24(1), would be exipiable and is an irregular step

(b) The proposed amendment to be effected by the insertion of special pleas would be excipiable on the basis that they are vague and embarrassing and they lack averments which are necessary to sustain defence.

[13] The applicant delivered the replying affidavit dated the 23rd October 20024.

[14] The applicant further prays for the counterclaim. The respondent pleads that because this counterclaim was not delivered with the plea, it contravenes Rule 24(1) of the Rules, which requires the applicant to obtain the respondent's agreement or leave of the court before pleading counterclaim.

Respondent's answering affidavit.

- [15] The respondent's answering affidavit states that the main action between the parties came about as a result of the contractual claim resulting from the alleged breach of a settlement agreement which brought an end to the employment relationship between the parties.
- [16] It says the respondent excepted to the three pleas delivered by the applicant. The basis of the exception was that they were vague and embarrassing, alternatively lacked the necessary averments to establish a defence.
- [17] The exception hearing application set down for the 24th July 2024 was adjourned to the following day to enable the applicant's new attorneys to be placed on record and the counsel to be read to appear on behalf of the applicant.
- [18] The applicant's new attorneys came on record and the briefed counsel appeared for the applicant on the 25th July 2024.
- [19] The exception to the first special plea was upheld, with the applicant afforded ten days from the date of the order to deliver an amended first special plea, failing which the special plea would be dismissed. The applicant had until the 15th August 2024 to amend the first special plea, failing which it would be dismissed.
- [20] The exception to the second and third special pleas were upheld. The pleas were dismissed.
- [21] Instead of amending the special pleas, the applicant delivered a notice of intention to amend his plea by way of the notice dated the 15th August 2024, to

replace the plea in its entirety and introduced a counterclaim for the first time.

[22] Following the exchange of correspondence per annexures CLR 5 and 6 and when the applicant rejected the suggestion to withdraw the amendment notice, the respondent delivered the objection notice.

[23] The applicant's former attorneys of record filed his notice of intention to defend on the 17th August 2022. They withdrew as the applicant's attorneys on the 28th September 2022 from which date the applicant acted in person

[24] Acting in person, the applicant pleaded twice. The first plea was delivered on the 25th October 2022. It was set aside as an irregular step on the 20th April 2023.

[25] The second plea was delivered on the 14th November 2025. The respondent excepted to this plea. The applicant is seeking to amend this plea.

Analysis

[26] In the main matter, the respondent relies on the settlement agreement entered into when the parties were still in the employment relationship.

[27] In the main, the parties agreed that the applicant would take voluntarily early retirement effective from the 31st January 2022 with charges against the applicant being withdrawn.

[28] The respondent contends that the applicant undertook not to make any written

or oral statements injurious to, or of a disparaging nature about the respondent, any company in the respondent's group and or any of the respondent's directors, employees and or business associates.

[29] The respondent contends that the applicant breached the terms of the agreement, hence the main action to claim damages.

[30] The applicant contends that the agreement was entered under duress and denies that the respondent is entitled to damages claim.

[31] Having delivered his pleas, the applicant is seeking to amend them.

[32] The ten days period to deliver the amended first special plea lapsed on the 14th August 2024

[33] The notice to amend is dated the 15th August 2024.

[34] The primary objective of amendment is to obtain a proper ventilation of the dispute between the parties, to determine the real issues between the parties, so that justice may be done. Amendment should not be refused where this will frustrate the determination of the true dispute between the parties.¹

¹ Singh & Another v Ebrahim (2010) ZASCA 145 - par 141

[35] The practical rule adopted seems to be that amendment will always be allowed unless the application to amend is mala-fide or unless such amendment would cause an injustice to the other side which cannot be compensated by costs, or in other words unless the parties cannot be put back for the purpose of justice in the same position as they were when the pleadings which it is sought to amend was filed.²

[36] The amendment of the pleadings is allowed even if it means amendments to the cause of action, provided they are to be read in the alternative, there is no prescription as long as the aspect of prejudice is addressed.³

[37] A court hearing amendment application has a discretion whether or not to grant it, which discretion must be exercised judicially. The primary object of allowing an amendment is to obtain a proper ventilation of the disputes between the parties, so that justice can be done. The practical rule is that an amendment will not be allowed if the application to amend is made mala fide or if the amendment will cause the other party such prejudice or injustice as cannot be cured by an order of costs and, where appropriate, a postponement.⁴

² Affordable Medicine Trust v Minister of Health 2006(3) SA 247(CC) – par 19

³ De Kock v Middlehoven (2017) ZAGPPHC 1189; 2018(3) SA 180(GP)

⁴ Macteel Tube and Pipe , a division of Macsteel Service Centers SA (Pty) Ltd v Vowles Properties (Pty) Ltd (2021) ZASCA 178- par 24

[38] The onus is on the party seeking an amendment to establish that the other party will not be prejudiced by the amendment.⁵

[39] The pleas sought to be amended was delivered during the period the applicant was acting in person.

[40] The exception order gave the applicant ten days to deliver an amended plea, failing which the first special plea is dismissed. The second and third special pleas were dismissed with immediate effect from the 31st July 2024. This means that while the second and third special pleas were dismissed with immediate effect, the applicant was given ten days to amend the first special plea, which period has since lapsed.

[41] The parties also differ whether the orders dismissing the three special pleas meant that they cannot be amended.

[42] The respondent contend that the court order granted the applicant ten days within which to amend the first special plea and that the ten days lapsed around the 14th August 2024, beyond which date this plea could not be amended.

[43] The applicant contends that the ten days' period is the period during which the

⁵ *Krischke v Road Accident Fund 2004(4) SA 358(W)* at 363 B; *Free State Wheels (Pty)Ltd v WRC Rentals (Pty) Ltd & Others* (2024) ZAFSHC 87 par 19

amendment process must started with the delivery of the notice of intention to amend.

[44] The judgment deliberately distinguished the first special plea on the one hand and the second and third special pleas on the other hand.

[45] With regard to the first special plea, having noted that this was an attempt by a lay man to plead relatively complicated legal issues, the court stated that the applicant should be afforded the opportunity to amend the first special plea.⁶ The court then gave the applicant ten days to deliver the amended first special plea, if so advised.

[46] The applicant incorrectly contends that the judgment required it to deliver notice of intention to amend the first special plea within ten days of the court order.⁷

[47] Order 48.2 expressly states that the applicant was afforded ten days from the date of the order to **deliver an amended special plea**, failing which the first special plea is dismissed. Rule 1 of the Uniform Rule defines deliver as meaning to serve copies on the parties and file the original with the registrar.

[48] Notifying the parties of intention to amend and furnishing particulars of the amendment referred to in Rule 28(1) of the Uniform Rules is different from effecting an amendment within ten days after court authorisation referred to in Rule 28(6) of the Uniform Rules. In terms of 28(7) of the Uniform Rules a party

⁶ Paragraph 30 of the judgment.

⁷ Paragraph 10.3 of the founding affidavit.

entitled to amend is required to effect the amendment by delivering each relevant page in its amended form. The court order did not intend to curb the period of delivering notice of intention to amend, but the period of the amended special plea as envisaged in Rule 28(6) read with Rule 28(7) of the Uniform Rules.

[49] The applicant did not comply with order 48.2 , with the result the first special plea si dismissed.

[50] With regard to the second and third special pleas, the court stated that there was no indication that they could be amended or that the applicant intended to try such route. It then stated that it was unnecessary to grant the applicant the opportunity to amend them and that both had to be dismissed.⁸ The court then dismissed both of them.

[51] The applicant's intention to amend states the intention to delete and replace all the special pleas.

[52] The respondent correctly contends that once dismissed, special pleas could not be deleted to be replaced. They became nonexistence once dismissed and could not subsequently be deleted.

[53] The applicant's contention that the amendments deal with different causes of action does not assist its case. Different causes of action would not need deletion and replacement of the second and third special pleas to be introduced as new causes of action. New causes of action can stand on their own without being

⁸ Paragraph 43 of the judgement.

related to the deletion of the second and third pleas.

[54] The judgment and order of the 31st July 2024 is the judgment referred to in section 165(5) of the Constitution. In terms of section 165(5) of the Constitution, an order or decision binds all persons to whom it applies, whether correctly or incorrectly granted and must be obeyed unless it is properly set aside.⁹

[55] The applicant further prays for the counterclaim. The parties differ whether the counterclaim constitute an irregular step. The respondent pleads that because this counterclaim was not delivered together with the plea, Rule 24(1) of the Rules requires the applicant to obtain the respondent's agreement or leave of the court before pleading counterclaim. It contends that absent agreement or court order, and having regard to the provisions of Rule 18(4) the counterclaim constitute irregular step, lacks the averment necessary to sustain the cause of action and is vague and embarrassing

[56] I understand the applicant's reply to be that the counterclaim was introduced with the plea by the applicant while he was still acting in person. It contends that being the layperson person, the applicant cannot be expected to introduce the counterclaim with the plea strictly in compliance with Rule 24(1) of the Rules. On behalf of the applicant, it is contended that the applicant always had an intention to deliver the counterclaim with the plea. It is also contended that this objection was mentioned in their correspondences contained in annexures CLR 5 and 6 and that in the event of the finding that there was a need for the respondent's agreement, the applicant submits that this court should use its discretion to

⁹ Secretary of Commission of Inquiry into Allegation of State Capture Corruption and Fraud in the Public Service including Organs of State v **Zuma** (2021) ZACC 18;2021 (5) SA 327(CC); 2021(9) - par 59-62 and -87

include the counterclaim as part of the applicants pleadings.

[57] The parties refer to paragraph 41 of the judgment of the 31st July 2024. The applicant contends that the judgment recognised the counterclaim and advised that it should be introduced by way of a claim in reconvention. The respondent points out that the judgment made it plain that the counterclaim should be introduced after compliance with Rule 24(1)

[58] The applicant further contends that in the event of the finding that the counterclaim needs to be inserted by way of new and separate application, that could result in the separate process with the delay and unnecessary costs.

[59] I agree with the applicant's contention the intention to counterclaim was always there and that this was indicated in the applicant's plea. I also agreed that in the event I am wrong to find that as lay person, the applicant has always indicated the intention to include the counterclaim and did in fact include it, the counterclaim should be included at the discretion of this court. The amendment to insert the counterclaim is granted.

[60] The respondent does not allege any prejudice with the inclusion of the counterclaim. I could not find any.

[61] With regard to condonation, apart from what is stated in paragraph 3 of his judgment, nothing further is said.

[62] Rule 28(10) authorises the court to grant leave to amend at any stage before the

judgment is granted. Understandably the application itself must be done within the reason period.

[63] Condonation applicant is required to furnish a reasonable explanation for the delay and that the applicant seeking condonation for non-compliance with set out time frames must give complete account for each period of delay.¹⁰

[64] No basis has been provided to deal with this condonation application.

[65] Both parties have achieved substantial success in this application for one party to bear the costs of the other party.

Order

[66] Leave to amend is granted, save the amendment of the first, second and third special pleas.

[67] The amendment to insert the counterclaim is granted.

[68] The applicant is granted leave to amend its particulars of claim in accordance with paragraph 66 and 67 above;

[69] The applicant is authorized to serve and file the amended pages of plea within ten days of the date of this order;

¹⁰ NUMSA & Another v Hillside Aluminium (2005) 6 BLLR 601(LC); Nehawu obo Netshivubgulu par 8, Makhubela v S (2017) ZACC 36; 2017(S) SACR 665(CC); 2017(12) BCLR 1510- par 21

[70] The respondent may serve and file consequential adjustment referred to in Rule 28(8) of the Uniform Rule, if any

[71] There is no order as to costs.



LEDWABA LGP

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION: PRETORIA

Date of hearing: 31 July 2025

Date of judgment: 01 October 2025

APPEARANCES:

For applicant: Adv LD Isparta

Attorneys for the applicant: Tintingers Inc Attorneys

Counsels for respondents: Adv J Berger

Attorneys for the respondent: Werksmans