

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 39321/2020

(1)	REPORTABLE: <u>YES</u> / NO
(2)	OF INTEREST TO OTHER JUDGES: <u>YES</u> / NO
(3)	REVISED.
	<u>28/10/2025</u> DATE
	<u>[Signature]</u> SIGNATURE

In the matter between:

CHANTEL SHARLENE PILLAY

PLAINTIFF

And

SAMANCOR CHROME LTD

FIRST DEFENDANT

SANELE MSANI

SECOND DEFENDANT

PIETER BRITS

THIRD DEFENDANT

J U D G M E N T

MABESELE J:

Introduction

[1] The plaintiff, Ms Chantel Pillay, is suing the first defendant; Samancor Chrome Limited, second defendant; Mr. Sanele Msani, third defendant; Mr. Pieter Brits. She sues Samancor for subjecting her to occupational detriment as defined in the Protected Disclosures Act¹. She alleges that Messers Msani and Brits who were at all material times employed by Samancor and acting within their scope of employment, in breach of Protected Disclosure Act, intentionally subjected her to disciplinary action under the false pretenses that she breached Samancor's policies relating to confidentiality. Ms. Pillay is also suing the three defendants for payment of damages under *actio injuriarum* as a result of the injuries to her good name, reputation and dignity. She sues Samancor for special damages for subjecting her to occupational detriment which caused mental and psychological impairment to her. In the alternative, she sues Samancor for breach of employment contract. In further alternative to claims 1 and 2, Ms. Pillay is instituting a statutory claim against Samancor in terms of the Protected Disclosures Act. Mr. Sanele Msani was employed by Samancor as Finance and Administration Manager. He occupied the same position in the company called Phabema Enterprise, in 2018. This company features in this judgement. Mr. Brits was employed as a Human Resources Manager at Samancor.

Special Plea

¹ 26 of 2000

[2] At the commencement of the trial both counsel argued special plea which was filed by Samancor. The plea related to the jurisdiction of this Court to entertain claims 1 and 2. During closing arguments Mr. Roux conceded that this court has jurisdiction. Therefore, the special plea should be dismissed with costs.

Background

[3] Ms. Pillay graduated in BCom. (hons) degree (accounting). She was a member of the South African Institute of Professional Accountants (SAIPA). She worked in different companies such as Morar Incorporated, Rhino Cash and Carry, Price Waterhouse, Eskom. In all these companies, Ms. Pillay was attached to the departments of accounting and auditing.

[4] On or about 5 December 2014 Ms. Pillay and Samancor concluded a written employment agreement. The parties agreed that, Ms. Pillay would commence employment on 5 January 2015, as a Finance and Administration Superintendent. Her duties included finance of the company, payroll, monthly management accounts, addressing internal and external audit. Her total monthly package was R 829 472 Mr. Msani was his supervisor. After Ms. Pillay had resumed employment, Samancor became impressed with her dedication to her work. Three years later, on 15 August 2018 and, on recommendation by Mr. Msani, Ms. Pillay received an award from Samancor in recognition of her dedication to her work and contribution which she had made to the business of Samancor.

[5] While executing her duties, Ms. Pillay raised queries with certain officials with regard to payments which were to be made to certain entities and employees. The queries were raised in the emails. She refers to these emails as "protected disclosure".

[6] The first email, dated 26 June 2018, was sent to Mr Msani with a query relating to the payment to be made in favour of a company called Phabema whereas the invoice, reflected the name of the company known as Tsimishi pictures which had rendered service to Samancor. This company demanded payment in an amount of R39 000.00. Phabema added a handling fee in an amount R3 900.00. The total amount due was R48 906.00 It was pointed out in the email that payments to Phabema causes deviation from the company's policies and procedures, and such deviation will result in audit findings. Ms. Pillay requested Mr. Msani to address the matter with management and give feedback. On the same date Mr. Msani addressed an email to the officials involved and inform them to stop approving payments in favour of Phabema for the work not done by it. The officials were reminded in the email that such payments were against the Samancor's policies and if such irregularities were identified by the internal audit, the author (Mr. Msani) would get fired. The officials were told not to share the email with anyone.

[7] The second email, dated 1 August 2018, was again addressed to Mr. Msani. The query related to a production disparity. Ms. Pillay had discovered that there were 2769 tons of stock which was reflected on the SAP system. This system

is used to track and record, *inter alia*, stock movement of Samancor's operations. Ms. Pillay noticed that there were no tons of stock reflected on the surveys reconciliation (physical measuring) for the same stock product. Ms Pillay requested Mr. Msani to address the issue with the Met Manager as the internal controls were a concern. She requested Mr. Msani to ask Ms Tayob to reverse, manually, the goods receipt to ensure that the tons do not appear in the closing stock. Mr Msani responded to the email as follows: 'I will do.' Ms. Pillay never received any feedback from Mr. Msani with regard to the emails dated 26 June and 1 August 2018.

[8] On 28 August 2018, Mr. Msani preferred charges against Ms. Pillay on the basis that Ms. Pillay disclosed the company's confidential information to junior staff, thereby breached the company's policies.

[9] In the particulars of claim Ms. Pillay pleaded that the real reason for the disciplinary action against her was to dismiss her pursuant to her protected disclosures. Ms. Pillay specifically pleaded that she had committed no misconduct and there was no factual basis to the allegations of divulgence of confidential information. She pleaded that she gave feedback to her subordinate (Anna-Marie de Kock) in the departmental meeting about Mr. Msani's decision not to consider Mr. Thabo Mphogo (a community member and former employee of ECM) for employment. She pleaded that relaying that decision to an authorized subordinate did not constitute breach of Samancor's policies and procedures.

Evidence

[10] Ms. Pillay testified that she was victimized by Mr. Msani for exposing irregularities within Samancor through the emails dated 26 June and 1 August 2018. On page 539 of the record, Ms. Pillay stated the following:

“Well, according to me he victimized me by charging me in the same month, on the 28 August “

[11] On 27 July 2018 Ms. Pillay and other officials attended a management meeting which was arranged by Mr. Msani. The meeting was about the financial status of the company. During the course of the meeting Ms. Pillay raised an issue which was unrelated to the topic of the meeting. She made a proposal that a certain Mr. Thabo Mphogo who was previously in the employ of the company, be considered for the position which would become vacant in her department on retirement of one of her staff members. A proposal was rejected for the reasons advanced by Mr. Msani who informed them that Thabo was part of the group which made threats to the company. Ms. Pillay said that she never heard Mr. Msani warning them that what he said to them about Thabo was confidential. After the meeting had adjourned Ms. Pillay arranged a departmental meeting. At the meeting Mrs. Anna-Marie De Kock asked for the feedback from the management meeting with regards to her recommendation that Thabo should be considered as her replacement on her retirement. Ms. Pillay responded that management took the decision not to appoint Thabo and gave her the reasons.

[12] On 28 August 2018 Ms. Pillay received a charge-sheet from Mr. Msani. Mr. Msani was a complainant. The charge against her was framed as follows:

“It is alleged that between the period of 27 July 2018 and 17 August 2018 you have divulged certain sensitive and confidential information which was shared with other specified employees in the admin department on or about 27 July 2018, namely, that ECM will not consider Mr. Thabo for any employment opportunities at ECM; to unauthorized individual (s), thereby contravening company rules and policies as well as compromising the safety and security of the Finance and Administration Manager as is evidenced by the threatening emails he has received on 15 August 2018 in this regard”

[13] Ms. Pillay testified that Samancor, at the instance of Messrs Msani and Brits, subjected her to a disciplinary action under the false pretenses that she had breached Samancor’s policies relating to confidentiality. She testified that her dismissal from employment adversely affected her career, ethics and integrity. She now suffers from stress and anxiety. She feels humiliated and her self esteem is very low. No employer will employ her due to her dismissal from employment for breach of confidentiality. Since dismissal from employment she has been receiving medical and psychological treatment from the experts.

[14] After Ms. Pillay had left employment she rented rooms to the tenants, on the property owned by her partner. She collected money from the tenants on a monthly basis. She received an income from investment, and, R47 000.00 monthly, from housing rentals. The only challenge that she experienced in this business was management of the business account. The reason being that the tenants defaulted on payment and she had to make follow up on them. She resigned from SAIPA in December 2020 because she was unable to pay yearly fees in an amount of R 6000.00.

[15] In response to Ms. Pillay's evidence concerning the email dated 26 June 2018, Mr. Msani testified that after he had received such email from Ms. Pillay, he sent an email to Mr. Murendeni and asked him to stop sending claims to Ms. Pillay for payment in favour of Phabema. The reason being that Mr. Murendeni and them were exploiting the system. He appreciated the emails from Ms. Pillay because they helped him to improve on control. This version, in my understanding, suggests that Mr. Msani accepted the *bona fides* of the emails and that, they were made in good faith. He testified that, having received approval from his general manager, Mrs. Brits, on 28 February 2018, he instructed Ms. Pillay to make payment in favour of Phabema. Regard should be had, though, that whether approval was given, making payment to Phabema for services not rendered by it, contravened Samancor's policies and procedure. Mr. Msani said that he preferred charges against Ms. Pillay for disclosing to her subordinates confidential issues which were discussed in the management meeting. The query which was raised in the email, dated 1 August 2018, was addressed by Mrs. Lafita Tayob, a Business System

Superintendent at Samancor. Mrs. Tayob testified that upon investigation of the query she discovered that the discrepancy raised in the email was caused by a system error. She testified that such errors do occur from time to time. Messers Mbongeleni Manganyi and Wessels Erasmus testified, *inter-alia*, about the whistle blowing policy of Samancor. They said that the policy document was uploaded into the document control system for the attention of all the employees, and, that, Ms. Pillay should have followed the whistle blowing policy to disclose the information to the employer. In contrast, Mr. Mpho Makoro, also testifying on behalf of Samancor, said that the whistle blowing policy document of Samancor is not the only policy document that should be followed for disclosing information. He said that the procedure followed by Ms. Pillay for disclosing information was appropriate.

[16] Messrs Heinrich Mans and Van Niekerk are auditors in the company known as KPMG. They were called as witnesses in Ms. Pillay's case. The evidence of each of them does not assist Ms. Pillay because it is based on audit that was not completed.

[17] Mrs. Ruth Ancer is a qualified clinical psychologist. She made an assessment on Ms. Pillay at the request of the attorneys of Ms. Pillay. She was requested to evaluate Ms. Pillay's psychological state and to assess the impact that the events at her workplace had on her emotional and psychological function and to determine the need (if any) for psychological treatment, with reference to cost and duration.

[18] Mrs. Ancer testified that Ms. Pillay informed her that, since her employment and subsequent dismissal from her employment she has changed significantly. She was highly confident and motivated prior to her dismissal from employment. She demonstrated independence, success, and ambition. Her strong work ethic was reflected in her commitment, dedication, and hard work. She was punctual and reliable. She was rarely absent from work. She was meticulous in her approach, and strived for perfection in the task that she undertook. She was well organized and set goals to achieve. She was passionate about her work. She felt fearless when it came to challenges and believes that she approached challenges with confidence and determination. She held strong values and honesty, high ethics and integrity. She maintained positive working relationships. She believes she was able to turn adversely into opportunities. She carried herself with dignity and professionalism in her interactions. She aimed to pave the way for pursuing MBA degree and eventually attain an executive management position at Samancor. From the time of her employment, she consistently achieved a KPI (Key Performance Indicators) score of over 80% indicating her high standards of performance. Following her dismissal from work she experienced insomnia and severe chest pains. The doctor prescribed Trepiline (anti-depressant medication) and pain medication. She feels paranoid and lives in fear as she regards herself as a whistleblower who is at risk. She had observed cars and motorcycles parked outside her home and feels that her movements are being monitored.

[19] Mrs. Ancer Administered a Beck Depression Inventory on Ms. Pillay. This, is a self-report instrument used to measure the presence of severity of

depressive symptoms. In the process, Mrs. Ancer found that Ms. Pillay scored 48 points which is indicative of severe depression symptoms. The scores between 14 and 19 points indicate a mild depression and a score under 13 points is considered minimum depression. Mrs. Ancer also used a Hamilton Anxiety Rating Scale (HAM-A) to measure the severity of anxiety symptoms. In the process, she found that Ms. Pillay scored 36 points which indicated severe symptoms of anxiety. The symptoms as assessed on the scale indicated anxious mood, including worries, anticipation of the worst, fearful anticipation and irritability, restlessness, inability to relax, general feelings of fear, difficulty in falling asleep, poor memory, pains and aches. Project test(A Sentence- Competition Test) was administered. The test required the respondents or participants to complete the sentence in ways that they are meaningful to them. The responses provide indication of feelings and attitudes. Mrs. Ancer said that, from the provided sentence completion projective tests, several themes emerged that provide insights into Ms. Pillay's thoughts, emotions, experiences and values.

[20] Mrs. Ancer testified that many sentences expressed a deep emotional distress, including feelings of hurt, sadness, worry, anger, frustration, worthlessness, hopelessness, shame and embarrassment, thus suggesting an individual who is grappling with intense emotions. Several sentences reflected regret and self-doubt, particularly regarding past decisions that led to her current circumstances. Ms. Pillay questioned her choices and wondered about alternative paths. The sentences revealed are references to a life partner who provides support and care, the absence of a best friend, and perceptions of

how others view her. Career failures, lost streams, and pain of losing a professional identity due to her actions as a whistleblower were mentioned. Mrs. Ancer said that Ms. Pillay has acknowledged her negative emotions and strives to become a better person, although she struggles with this process. Amidst the emotional turmoil, Ms. Pillay showed resilience and determination, her commitment to her personal growth, and her aspirations to reconnect with her former self.

[21] Mrs. Ancer said that many people with depression stigma, including Ms. Pillay, do not seek help, in most case. In this regard, she referred to an article title "*effects of psychological treatment for depression among people not seeking help: ameta-analysis*".(2023)

[22] After Mrs. Ancer had assessed Ms. Pillay, she came to a conclusion that:

22.1 Ms. Pillay meets the criteria for a severe Major Depressive Disorder (MDD) and a severe Generalized Anxiety Disorder (GAD) with panic attacks.

22.2 Ms. Pillay's psychological dysfunction stem from her conviction that her job termination was in retaliation for her reporting wrongdoing within the company. She is unable to come to terms with the severe repercussion she has faced as she strongly believes that her reporting was both ethical

and professional. She struggles to reconcile her commitment to integrity with what she perceives as subsequent unravelling of her career.

22.3 She has lost her job, financial security, endured assaults on her dignity and has experienced destruction of her sense of identity. She is overwhelmed by persistent fear, anxiety, and emotional distress. She grapples with the overwhelming concern that she may never be able to reclaim her previous life.

22.4 Her experience at Samancor and the termination of her employment which she considers wrongful, cruel, and dishonest has significantly adversely impacted Ms Pillay's mental, psychological, physical, and emotional well-being. Both self and collateral reports confirm that prior to her employment at Samancor Ms Pillay was functioning well and did not suffer from psychological dysfunction. The distress she has experienced appears to be directly related to her experience at Samancor, her attempts to disclose what she felt were unethical/ illegal activities, and the subsequent victimization, disciplinary hearing, and dismissal.

[23] Mrs Ancer recommend that Ms Pillay receives psychotherapy. Two years of weekly therapy sessions is also recommended. In addition, monthly follow up sessions as required should be available for a period of 5 years. The current rate for psychotherapy is estimated at R1400 per session. The cost of her psychotherapy at 2023 rates amounts to R229 600. Referral to a psychiatrist for ongoing treatment and monitoring is also recommended.

[24] When questioned by Mr. Roux about the criteria which she has used to justify major depressive disorder suffered by Ms. Pillay, Mrs. Ancer re-iterated her stance that five out of nine symptoms which she has indicated in her evidence qualifies Ms. Pillay for major depressive disorder. She was referred to the symptoms again and questioned about them. She repeated her version that Ms. Pillay suffered symptom such as (i) depressive mood (observable by others) nearly every day, (ii) diminished ability to think or concentrate, or indecisiveness, (observable by others) nearly every day, (iii) fatigue (slow thinking, tiredness, irritation) nearly every day, (iv) feeling of worthlessness, nearly every day, (v) retardation, (observable by others) nearly every day. Mrs Ancer was not able to respond, satisfactorily, to Mr. Roux's assertion that Ms Pillay has rented rooms to the tenants and her only challenge relates to tenants that default on payment and are to be followed from time to time. She was unable to respond, also, to the assertion that Ms. Pillay testified for a period of three days without showing fatigue, lack of concentration or ability to think, poor memory, inability to relax.

[25] Mr. Sampson who testified on behalf of Samancor argued that Ms. Pillay claims many more psychological symptoms than most patients do, thereby possibly exaggerating her symptoms in order to gain attention or service. He argued that Ms. Pillay's history and presentation were not consistent with someone suffering from a severe Major Depressive Disorder and severe Generalized Anxiety Disorder. He said that the symptoms do not meet the

criteria set out in the Diagnostic and Statistical Manual of Mental Disorders. He agreed with Mr. Maleka that his findings are pre-liminary.

[26] Although the findings of Mr. Sampson are pre-liminary, they are supported by the conduct displayed by Ms. Pillay in court when she testified. Ms. Pillay did not show fatigue, lack of concentration, irritability, restlessness, feeling of fear and poor memory. The energy, concentration and good memory that she displayed during her three day testimony and how she constantly assisted her counsel and court by referring us to the relevant pages of voluminous documents, are not only at variance with a severe Major Depressive Disorder but depict someone with no symptoms of depression. Regard should be had that at some stage of her testimony Ms. Pillay suddenly asked the court to pardon her if she refers to wrong documents due to the fact that she took medication. It was clear that she was exaggerating her symptoms as rightly argued by Mr. Sampson. Therefore, the evidence that Ms. Pillay suffers from severe Major Depressive Disorder and severe Generalized Anxiety Disorder is rejected. If anything, Ms. Pillay suffers from a mild depression which does not require extensive medical treatment.

[27] Mr. Pevett assessed Ms. Pillay on 25 July 2023 on referral by Ms. Pillay's attorneys. He is an industrial psychologist. The objective of the assessment was aimed at evaluating the work and earning potential of Ms. Pillay. Upon completion of the assessment Mr. Pavett compiled a report which he finalized on 23 August 2023. The sole objective of the evaluation was to conduct an impartial and objective assessment of Ms. Pillay's employability, labour market

access, and earning capacity subsequent to the incident, utilizing methodologies that adhere to current knowledge and practices, utilized in the determination of employability, accessibility to the labour market, job placement, and earnings potential.

[28] In his assessment Mr. Pevett used what he termed "Paterson job grading system". This system is subscribed to by major employers to assist job level in terms of formal training received, decision making complexity and responsibility, required in the job. Mr. Pevett placed Ms. Pillay on classical Paterson Du and Modern Paterson D4 and D5. To achieve this, Mr. Pevett used what he termed "Correlation of Major Job Evaluation Systems"

[29] Mr. Pevette quantified Ms. Pillay's loss of earnings with reference to Ms. Pillay's guaranteed income which amounted to R95 793.33 per month R 1 149 819 per annum, at Samancor, in 2018. This amount includes bonus payments that may have also accrued during the year. A guaranteed package of R1 149 819 is aligned to 50th percentile which amounted to R 1 368 957 in 2018, at D5. Ms. Pillay's job role is graded at the D-upper Paterson Band, and her earnings plateau at the age of 45 would probably have been indicated at the D5 Paterson level (i.e. R 1 368 957 per annum, 2018 terms, Guaranteed package, 50th percentile)

[30] Mr. Pevette considered the report of Mrs. Ancer and took the view that Ms. Pillay will probably continue to remain unemployed until the traumatic incident is resolved and at least for the next two years while she undergoes weekly

psychotherapy. Her future loss of earnings was estimated to denote that which is indicated for individuals with her level of education at the skilled level of functioning, that is, (Paterson C-Brand). Midpoint earnings at the C3 Paterson level (i.e. R473 048 per annum, 2018 terms, guaranteed package, 50th percentile), at the time of anticipated employment re-entry, post the age of 45, would be deemed probable for qualification.

[31] Although Mr. Moodie who testified on behalf of Samancor does not differ with the report of Mr. Pevette, he highlighted the fact that someone with a severe stress may not cope with challenges that are stressful at a new workplace. Since the report of Mr. Pevette was not challenged, it follows that it should be accepted. That said, the extent to which Mr. Pevette considered the report of Mrs. Ancer in so far as it relates to the Major Depressive Disorder purport to have been suffered by Ms. Pillay is not taken into consideration in view of the fact that Ms. Pillay was found not to be suffering from a severe Major Depressive Disorder.

Findings

[32] Ms. Pillay rightly raised a query with Mr. Msani concerning the irregularities which she had detected after claims were submitted to her for payment in favour of Phabema Enterprise for services not rendered by Phabema. If she had made payment to Phabema regardless the irregularities she had detected she would probably have demonstrated dereliction of duty, as an accounting officer. Mr. Msani knew about the request for payment to Phabema before the request was

made . He was aware that such request for payment was against Samancor's policies and procedures. He was also aware that the volume of such payment had increased. This is evident in the email dated 26 June 2018 which he addressed to the officials who submitted the claims for payment to Phabema. The email reads:

'Hi Pieter/Murendeni

Making payments via Phabema is a way of trying to help you, knowing that certain activities need to happen and cannot wait for 60 days. This is against SCR policies² and if this can be identified by the Internal Audit, I would get fired. Some of these activities we know about them months before they happen. The volume of these payments have increased .recently³. Much as we really want to help you, this has to stop. Risk is just to high'

[33] Mr. Msani was aware that the submission of claims for payment on behalf of Phabema contravened the same policies and procedures of Samancor which he relied on when he preferred charges against Ms. Pillay who constantly demonstrated her discomfort concerning payments made to Phabema contrary to Samancor's policies and procedures. On 28 February 2018, Ms. Pillay sent an email to Mr. Msani, stating the following:

² Emphasis added

³ Emphasis added

'We have noted that there are expenses for ECM which was paid by Phabema (see attached invoice). Please advise if this is acceptable practice for Phabema to pay expenses on behalf of ECM, must we proceed with payment'

[34] If Mr. Msani was sincere in protecting Samancor's policies and procedures he would have taken action against Pieter and Murendeni instead of pleading with them not to contravene Samancor's policies and procedures. Ms. Pillay was against this unlawful practice of contravening Samancor's policies and procedures.

[35] The submission of these several claims demonstrate, clearly, the intention to continuously contravene Samancor's policies and procedures for the sole benefit of Phabema whose director was Mrs. Emile Brits who gave approval to Mr. Msani to authorize payments to Phabema, and, Mr. Msani being a finance manager of Phabema, as stated in Ms. Pillay's particulars of claim. Therefore, it stands to reason that whoever attempts to correct this unlawful practice would be faced with serious challenges and/or become a victim. Ms. Pillay would not be an exception. The charges were preferred against her, few weeks after she had sent the emails, dated 28 February and 26 June 2018, to Mr. Msani where she raised queries concerning payments in favour of Phabema.

[36] The query which was raised in the email dated 1 August 2018 was addressed by Mrs. Lafita Tayob. She was a credible witness. Therefore, I am

unable to reject her evidence that the discrepancy which was identified by Ms. Pillay, was an error caused by the system.

[37] The question is whether the query raised by Ms. Pillay in the email dated 26 July 2018 constitutes “protected disclosure” as defined in the Protected Disclosure Act ⁴

[38] The objects of this Act include protection of an employee or worker, whether in the private or the public sector, from being subjected to an occupational detriment on account of having made a protected disclosure. “Protected disclosure” means a disclosure made to, *inter alia*, an employer in accordance with section 6. In terms of this section, any disclosure made in good faith and substantially in accordance with any procedure authorized by the employee’s or worker’s employer for reporting or otherwise remedying the impropriety concerned and the employee or worker has been made aware of the procedure as required in terms of subsection (2)(a)(ii) or to the employer of the employee or worker, where there is no procedure authorized by the employer for reporting, is a ‘protected disclosure.’ Employer means any person who employs or provides work for any other person and who remunerate or expressly or tacitly undertakes to remunerate that other person; or who permits any other person in any manner to assist in the carrying on or conducting of his or its business, including any person acting on behalf of or on the authority of such employer.

⁴ 26 of 2000

[39] In terms of the Act “disclosure “means any disclosure of information regarding any conduct of an employer, or of an employee or of a worker who has reason to believe that the information concerned show or tends to show *inter alia* that a person has failed, is failing or is likely to fail to comply with any legal obligation which that person is subject.

[40] Mr. Msani occupied a position of administration manager at Samancor. Since he was executing duties on behalf of Samancor, he qualified to be an employer in terms of the Protected Disclosure Act. Therefore Ms. Pillay, rightly, and, in good faith, disclosed information to him. Since Mr. Makoro testified that the procedure followed by Ms. Pillay for disclosing information was appropriate, it stands to reason that the disclosure made by Ms. Pillay is a “protected disclosure”. Additionally, if regard is had to the close reading of section 6(b) of the Act, the disclosure made by an employee who did not follow the procedure authorized by the employer, will still qualify as protected disclosure, otherwise, the object of the Act will be defeated. Ms. Pillay raised queries with Mr. Msani upon realizing that Mr. Msani, and Pieter and Murendeni were failing to comply with their contractual obligations to ensure that Samancor’s policies and procedures were followed. For all these reasons, it may safely be concluded that Ms. Pillay was subjected to an occupational detriment on account of having made “protected disclosure”, thereby caused her mental and psychological impairment, damage or injury to her dignity and reputation and loss of income. Mr. Maleka argued for an order in favour of Ms. Pillay for payment by Samancor for Ms. Pillay’s loss of income and future medical expenses in the sum of R20 010 036 and R 213 573, respectively Mr.

Maleka did not explain how he came to this amount of money. This amount of money still has to be proven, with reliance on the actuary.

Costs

[41] Since there is no evidence implicating Mr. Pieter Brits (third defendant), he is entitled to costs. Mr. Makoro testified that, only Mr. Msani could prefer charges against Ms. Pillay, as her supervisor. Ms. Pillay is entitled to costs, arising from the dismissal of the special plea raised by Samancor. Such costs should include costs of two counsel. Since the issues raised and argued in the special plea were not complex, costs on Scale B, seem to be fair to me. After the special plea was argued, Mr. Maleka's junior counsel did not attend court. Therefore, she will not be entitled to fees for the remainder of the trial.

Order

[42] In the result the following order is made:

42.1 The special plea is dismissed.

42.1.1 The first defendant is liable to pay the plaintiff's costs on Scale B, including costs of two counsel.

42.2 The first defendant is liable to pay the plaintiff for her proven Aquilian damages at interest rate of 7% per annum from date of summons to date of payment. The first defendant should pay the plaintiff's costs on Scale C, including costs of Senior Counsel.

42.3. The first and second defendants are liable to pay the plaintiff for her proven damages as a result of impairment of dignity and reputation at the interest rate of 7% per annum from the date of summons to date of payment. The first and second defendants, jointly and severally, the one paying the other to be absorbed, should pay the plaintiff's costs on Scale C, including costs of Senior Counsel.

42.4 The plaintiff should pay the third defendant's costs on Scale C, including costs of two counsel.



M.M MABESELE
(Judge of the High Court Gauteng Division)

Date of hearing : 12 August 2024-29 August 2024
: 17 March 2025- 27 March 2025
: 16 September 2025

Date of judgment :28 October 2025

Appearances

On behalf of the Applicant : Adv. Maleka SC
Instructed by : NJ Middleton Attorneys
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On behalf of the respondents : Adv. B. Roux SC,
Adv. R.Ramatsela
Instructed by : Cliffe Dekker Hofmeyer Inc.
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Sandton