



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case No: C375/2024

In the matter between:

THABANG MOTJAMELA

Applicant

and

GARDEN ROUTE DISTRICT MUNICIPALITY

Respondent

Heard: 24 June 2025

Delivered: 27 November 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court website and release to SAFLII. The date and time for handing down judgment is deemed to be 10h00 on 27 November 2025.

JUDGMENT

MELAPI, AJ

Nature of the application

- [1] Applicant brought a claim under the Employment Equity Act in a form of an application, which the Respondent objected by Irregular Step Application.

Factual background

- [2] Applicant, Thabang Motjamela (Motjamela), brought an application in terms of Rule 6(3) of the Labour Court Rules seeking relief for unfair discrimination. Immediately after the application, Motjamela filed an application for default judgment.
- [3] Two days after filing the default application, the Municipality filed a Notice of Irregular Proceedings highlighting three issues as follows:
- 3.1 That the discrimination application served on them did not have a case number,
 - 3.2 The discrimination application was not served to the Municipality Manager, and further,
 - 3.3 That no service affidavit was filed.

Legal Framework

- [4] Section 6 of the Employment Equity Act deals with the prohibition of unfair discrimination, and provides that:

- (1) No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or on any other arbitrary ground.

- [5] Section 6(4) states that a difference in terms of conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in subsection (1), is unfair discrimination.
- [6] The Municipality brought Irregular step application (Rule 57) concerning a case number not inserted in the application, Rule 7(1)(c) service of documents on the Municipality, Rule 9(1)(b)(iv) and service affidavit for the effected services, Rule 9(2) of the Labour Court Rules.
- [7] Rule 7(1)(a) states that:
- '(1) Any party initiating any proceedings must have the document commencing the proceedings ("initiating document") issued by the registrar in the following manner.
 - ...
 - (c) The case number must be inserted on the initiating document before it is served and filed.'
- [8] Rule 9(1)(b)(vi) provides that a document that must be served on any party may be served in any one of the following:
- (vi) if the party is the State or an organ of state defined in terms of section 239 of the Constitution, or any department of national or provincial government (collectively referred to as an "organ of State"), by serving a copy both on a responsible employee in the office of the state attorney situated in the area or province in which the process is initiated, and the responsible office of the organ of State against which the claim is brought.'
- [9] Rule 9(2) provides that service is proved in court in any of the following ways:
- '(a) by an affidavit deposed to by the person who effected service;
 - (b) if service was effected by email, an affidavit of the person who effected service. The deponent must provide proof of the correct email address,

confirm that the whole of the email was sent, and confirm that a named person telephonically acknowledged receipt of the whole service of the email.

- (c) if the person on whom the document has been served is already on record as a party, by a signed acknowledgement of receipt by the person on whom the document was served, or
- (d) by return of the sheriff.'

Analysis

- [10] Before we deal with the discrimination application, we must first deal with the Irregular Application brought by the Municipality, which is threefold:
- [11] The Municipality argued that the unfair discrimination application brought by Motjamela on 5 September 2025 was served with an unsigned affidavit, without a case number, on a number of employees of the Municipality, including a Human Resources Officer, Calvyn Schepper. Further that there was no service affidavit filed by Motjamela to court, confirming service.
- [12] Motjamela argued that when he emailed the application to the Municipality, it did not have a case number.
- [13] It is clear from the court file that Motjamela did make an application for the case number on 5 September 2025, and a case number was allocated on 6 September 2024.
- [14] It is argued by the Municipality that when they received the unfair discrimination application, they brought Rule 57 (1) Irregular Proceedings Notice on 14 November 2024, which was followed by the Irregular Proceedings Application filed on 4 December 2024. Motjamela, instead of rectifying the issues raised in the Rule 57 (1) application, he brought a subpoena, which, according to the Municipality, had nothing to do with the Rule 57 (1) Application. The court issued directives which Motjamela did not comply with.

- [15] Instead of filing opposing papers to the Irregular Applicant, Motjamela filed a Notice of Irregular Proceedings, which alleges that Municipality attorneys were not properly on record.
- [16] I agree with the Municipality that, should the founding affidavit have been properly commissioned, served in accordance with Rule 9(1)(b)(iv), the Municipality would have served notice of acting, Rule 51(1) and filed answering affidavit..
- [17] Motjamela has failed to comply with Rules 7(1)(c), 9(1)(iv) and 9(2) and Rule 57 is upheld. The Respondent is entitled to the relief claimed.

Costs

- [18] This brings us to the issue of costs.
- [19] The Respondent sought a costs order against the Applicant on a punitive scale.
- [20] It is disconcerting that the Applicant did not comply with the Court Rules, firstly by serving the Respondent with an unsigned affidavit and unissued papers, with no case number, secondly by serving the papers to random employees of the Respondent and thirdly by not filing a service affidavit.
- [21] To make matters worse, the Applicant did not serve papers to the Respondent after he received the Rule 57(1) Notice. It is not clear how the court must accept these papers without a service affidavit.
- [22] The non-compliance with the Court Rules undermines the integrity of the legal process.
- [23] As much as the Applicant is not legally represented, he is familiar with the Rules of this Court. He brought a number of cases before this Court.
- [24] In the premises, I make the following order:

Order

1. The Applicant is ordered to serve the issued Notice of Motion dated 5 September 2024 on the Respondent within 10 days of this order, in compliance with Rule 9(1)(b)(iv) of the Labour Court Rules.
2. Applicant is directed to file a service affidavit with the court in compliance with Rule 9(2).
3. Applicant is liable for costs on the party and party scale.


P. Melapi

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Mr T. Motjamela

For the Respondent:

Advocate N. Ristic

Instructed by:

Brand & van Der Bergh Attorneys

LABOUR COURT