



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable
Case No: J420/21

In the matter between:

EMMANUEL MAKALELA MASHILE

Applicant

And

COMMISSION FOR CONCILIATION MEDIATION

& ARBITRATION

First Respondent

ASHA SEWPERSAD N.O.

Second Respondent

CAPITEC BANK LIMITED

Third Respondent

Heard: 13 November 2025

Delivered: 21 November 2025

JUDGMENT

RAMJI, AJ

- [1] The applicant (Mr Mashile) was employed by the third respondent (Capitec). He was dismissed for misconduct on 6 March 2019.

- [2] After his dismissal, he referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). He was unsuccessful at arbitration and took the award on review. The award was reviewed and set aside on 25 February 2021. The Labour Court did not grant reinstatement but ordered Capitec to pay him 12 months' compensation.
- [3] During April 2021, Mr Mashile then brought an action alleging breach of his contract of employment. This judgment relates to his action for breach of contract.
- [4] He seeks, among other things:
- 4.1 an order for retrospective reinstatement; alternatively
 - 4.2 an order for compensation '*from [the] date of [his] dismissal to [his] retirement date while adhering to the interest rates.*'
- [5] The matter was set down for trial.
- [6] Before the commencement of the trial, Capitec pursued two points in limine which it had raised in its statement of response. This judgment addresses Capitec's points in limine.

First point in limine: misjoinder

- [7] Mr Mashile cited the CCMA and a CCMA commissioner (in her official capacity) as parties to these proceedings. They are the first and second respondents. Mr Mashile's pleadings state that they '*are joined in this application on the basis of the interest which they "may" have in the outcome of the application.*'
- [8] Capitec raised a point of misjoinder.
- [9] The it is not apparent from the pleadings that the first and second respondents have any interest in Mr Mashile's claim against his former employer for breach of contract.
- [10] The first point in limine is upheld.

Second point in limine: pleadings fail to disclose a cause of action

Disciplinary chairperson and person issuing dismissal notice not authorised by contract of employment

[11] This Court in *Mbanjwa v Minister of the National Department of Public Works and Others*¹ has set out the requirements for a plaintiff claiming breach of contract to meet in the Labour Court:

‘A contract of employment being a contract, in a claim in terms of s 77(3) a party must plead in accordance with rule 18(6) of the Uniform Rules.’

[12] Uniform Rule 18(6) provides:

‘A party who in his or her pleading relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded, and if the contract is written a true copy thereof or of the part relied on in the pleading shall be annexed to the pleading.’

[13] Mr Mashile has complied with the basic requirements of Uniform Rule 18(6).

[14] He is further required to allege how his contract was breached. This entails stating the term of the contract relied upon and the alleged breach of that contract by the employer.² Put differently, ‘[t]he applicant is required to prove the existence of the contract as well as its terms allegedly breached by the first respondent.’³ While the failure to allege a breach of any particular clause is not fatal as a rule,⁴ there must be some indication on the papers that the termination of the contract of employment was ‘*contrary to the terms of that contract*’.⁵

[15] Mr Mashile pleads that Capitec breached his contract of employment by allowing a regional manager, who had not signed his contract of employment,

¹ (2021) 42 ILJ 2244 (LC) at para 15.

² See: *Phahlane v SA Police Service and Others* (2021) 42 ILJ 569 (LC) at para 9.

³ *Mbanjwa supra* at para 37. See also: *Phahlane* (Ibid) at para 9.

⁴ *Passenger Rail Agency of South Africa and Others v Ngoye and Others* 2025 (2) SA 556 (LAC) at para 42.

⁵ Ibid at para 43.

to chair his disciplinary hearing and to impose the sanction of dismissal on him. The relevant pleadings are the following:

- 15.1 He relies on section 77 of the Basic Conditions of Employment Act⁶ (BCEA).
- 15.2 *'At all material times [Mr Mashile] was appointed by Capitec's Human Resource and/or the Employee Relations department and/or Operations department...'*
- 15.3 *'An authorised person to appoint [Mr Mashile] on behalf of Capitec is an Operational Manager, who by the time of the appointment of [Mr Mashile] was Keith Lennox.'*
- 15.4 Mr Mashile was called to the Capitec regional office in Johannesburg Central to attend a disciplinary hearing, which *'was chaired by a person called Naushenah Cassim Karodia... who is a regional manager for Capitec's Western Rand area.'*
- 15.5 Ms Karodia *'made a decision' to dismiss Mr Mashile, 'which ultimately meant that she terminated my contract of employment with Capitec, thus exactly on this point it is where a cause of action has emerged.'*
- 15.6 Later, he repeats his point, while acknowledging that Capitec is a juristic person and pleaded that Mr Lennox *'is the one authorised to act on behalf of Capitec. There is nowhere in this contract of employment where Karodia is implicated. In actual fact, [Mr Mashile] is finding it very difficult to recognise Karodia in the contract of employment between him and Capitec. Only Keith Lennox is recognisable in the contract of employment and there is no evidence put before this court that Keith Lennox is no longer part of Capitec either because of resignation, dismissal, death transfer etc.'*
- 15.7 Mr Mashile further referred to the confidentiality clause in his contract of employment and pleaded that *'the agreements in the contract of employment are of confidential matters that only concern [Mr Mashile] as well as Keith Lennox on behalf of Capitec and once Capitec brings a*

⁶ Act 75 of 1997.

third party by the name of Karodia, it... infringed the [confidentiality] clause.'

15.8 He repeats his argument slightly differently pleading that *'Karodia was not my employer, she was my fellow employee in the same umbrella which is the Operations Department of Capitec. So Karodia had no rights and powers to terminate my contract of employment with Capitec... Karodia was supposed to only give recommendations after chairing the particular internal hearing and not the termination of my contract of employment. Keith Lennox was the one who was supposed to engage on the implementations on behalf of Capitec after studying those recommendations.'*

15.9 Mr Mashile refers to his contract of employment, the notice of a disciplinary enquiry and the dismissal notice.

[16] It is the case that Ms Karodia conducted Mrs Mashile's disciplinary hearing and issued the sanction of dismissal, dismissing him for misconduct. This is the only breach of contract by Capitec which Mr Mashile alleges.

[17] Mr Mashile, despite preparing a comprehensive statement of claim and alleging breach, has not provided a link between the alleged breach and his contract of employment or other implied terms. There is simply no contractual right to not be dismissed by Ms Karodia (or anyone other than Mr Lennox) evident from the pleadings.

[18] The pleadings do not disclose what aspect of the contract of employment Capitec breached when Ms Karodia presided over his disciplinary hearing and decided to dismiss him. Mr Mashile's own pleading is in fact that he does not know the policy in terms of which Ms Karodia could effect his dismissal after conducting a disciplinary hearing. It appears that, without the benefit of sound legal advice, Mr Mashile was not advised that he bears the onus to prove breach⁷ – which was not his experience when pursuing his unfair dismissal claim under the Labour Relations Act⁸ (LRA). Finally, there is nothing inherent

⁷ *Pilanesburg Platinum Mines (Pty) Ltd v Ramabulana (Ramabulana)* 2021 JDR 0012 (LAC) at para 31.

⁸ Act 66 of 1995, as amended.

in the contractual arrangement that he had with Capitec that would allow him to claim that Ms Karodia could not determine, on behalf of Capitec, whether or not he should be dismissed - the fact that someone else signed his contract on behalf of Capitec does not assist Mr Mashile.

[19] Therefore, Mr Mashile's pleadings do not lay a basis for him to lead evidence that his contract was breached.

[20] Finally, in respect of his claim for compensation (or damages), Mr Mashile's has not pleaded any facts relating to the calculation of the amount of damages that he would be entitled to. Instead, he followed an approach established by the Labour Appeal Court (LAC) to be misconceived – he '*simply demand[ed] damages in the amount that [he] would earn until [his] retirement.*'⁹ In a contractual claim, the applicant (plaintiff) bears the burden of proving the damages that he suffered. He has not even pleaded (though he explained to the Court in submissions on costs) that he remains unemployed since his dismissal, which would go directly to calculating damages. He has therefore not laid a basis for anything to be led in evidence.

Res judicata

[21] Snyman AJ, in the matter of *Motloun v Department of Health: Free State*¹⁰, a case where an employee pursued a claim for breach of contract after referring an unfair dismissal dispute, held that it is '*critical to properly consider the applicant's claim as it is pleaded in his statement of claim, in order to ascertain if it is indeed a claim for breach of contract.*'

[22] At numerous points in his pleadings, Mr Mashile invoked section 186 of LRA. Although this point was not raised by Capitec in its statement of response, it is a matter of law affecting this Court's jurisdiction and I raised it *mero motu*.

[23] Mr Mashile used the section to support his claim that he was dismissed. His invocations of section 188 of the LRA, allegations that fall within the realm of

⁹ *Ramabulana* (Id fn 8) at para 32.

¹⁰ (JS 309 / 21) [2022] ZALCJHB 343 (5 December 2022) at para 7.

unfairness are also misplaced, together with the substantial legal argument made in the statement of claim.

- [24] These do not speak to contractual breach. They are causes of action falling under the unfair dismissal protections of the LRA and are subject to a dispute resolution process starting in the CCMA. In any event, Mr Mashile referred an unfair dismissal dispute. It was ultimately adjudicated in his favour. These aspects of his statement of claim are *res judicata*.

Relief

- [25] Mr Ledwaba for Capitec argued that there would be no point in giving Mr Mashile an opportunity to amend his pleadings to cure their defects. The question is whether the interests of justice militate against affording Mr Mashile an opportunity to rectify his pleadings.
- [26] I have considered that this is effectively the third set of pleadings that Mr Mashile has filed since the start of this case in 2021. In all three pleadings, he has been unable to point to the part/s of his employment contract that Capitec breached despite Capitec having raised this issue. The interests of justice, particularly the expeditious resolution of labour disputes, would not be served by giving Mr Mashile a further opportunity to amend his pleadings.¹¹
- [27] The amended statement of claim, dated 30 November 2022, which replaced the original statement of claim, should therefore be struck out.

Costs

- [28] Capitec seeks its costs. This is a contractual claim, but this Court retains a discretion to depart from the principle that costs generally follow the result.
- [29] The LAC in *Ball v Bambalela Bolts (Pty) Ltd and Another*,¹² a contractual dispute (concerning a restraint of trade) held:

‘In the Labour Court, specifically, the law and fairness are prime considerations when considering costs. The normal rule that costs follow the

¹¹ See: *Volschenk v Pragma Africa (Pty) Ltd* (2015) 36 ILJ 494 (LC) at para 32.

¹² (2013) 34 ILJ 2821 (LAC) at para 29.

result is not automatically applicable in Labour Court proceedings. The court is required to consider factors like the financial state of the parties, their bona fides and their continuing relationship, in coming to a decision whether to order the unsuccessful party to pay costs. Litigants are not to be deterred from defending or prosecuting bona fide actions for fear of adverse costs orders.’¹³

- [30] There is no continuing relationship between the parties.
- [31] Mr Ledwaba for Capitec argued that costs are appropriate because Mr Mashile has already received relief after referring an unfair dismissal dispute, then reviewing the decision against him. He received 12 months’ compensation. The relief sought in this case indicated that he was forum-shopping and trying to obtain the reinstatement that he was not granted in his unfair dismissal case through other means. It is correct that Mr Mashile has sought ‘*reinstatement with backpay*’, and ‘*compensation*’ without laying a basis for claiming either form of contractual remedy.
- [32] Mr Ledwaba also argued that Mrs Mashile has put Capitec through an application process first (he incorrectly brought this case on notice of motion and not as an action), and has now put it through action proceedings, and at no stage, sought to rectify the defects in his pleadings that Capitec pointed out to him.
- [33] Mr Mashile unrepresented. It is not apparent that he brought this case in bad faith or contrary to legal advice. In fact, he received bad legal advice and relied on it. He is also unemployed, and one would imagine that if he had any funds, he would have employed a lawyer at least at some stage in these proceedings.
- [34] The fact that Mr Mashile is unemployed and his consequent financial situation is sufficient reason not to order costs against him. The fact that he, as a layperson, unrepresented, has pleaded a case badly is different from acting in bad faith.

¹³ See also: *TIBMS (Pty) Ltd t/a Halo Underground Lighting Systems v Knight and Another* (2017) 38 ILJ 2721 (LAC) at paras 31 – 33.

[35] The following order is made:

Order

1. The first point *in limine* is upheld.
2. The first and second respondents are removed as parties to this matter.
3. The second point *in limine* is upheld.
4. The statement of claim dated 30 November 2022, as amended, is struck out.
5. There is no order as to costs.

B. Ramji

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr EM Mashile (Self-represented)

For the Respondent: Mr M Ledwaba of Cliffe Dekker Hofmeyr

LABOUR COURT