



- (1) Reportable Yes/No
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: C575/2021

In the matter between:

MAKGOSI LETIMEIL

Applicant

and

**THE CAPE TOWN INTERNATIONAL
CONVENTION CENTRE COMPANY SOC LTD**

Respondent

Heard: 7 January 2026

Delivered: 9 January 2026

JUDGMENT

NAIDOO, AJ

Introduction

[1] The applicant Ms Makgosi Letimile (Letimile), has referred an unfair discrimination claim in terms of section 6 (4) read with section 6 (1) of the Employment Equity Act¹ (EEA) as well as two separate disputes under the Labour Relations Act² (LRA). The respondent, the Cape Town International Convention Centre Company SOC Ltd (CTICC) has duly opposed all three

¹ Act 55 of 1998.

² Act 66 of 1995, as amended.

claims.

- [2] In her opening address Ms Fourie, on behalf of Letimile stated that as part of Letimile's unfair discrimination claim, evidence will be led that the CTICC failed in its duty to reasonably accommodate Letimile's disability.
- [3] Letimile's last witness, Dr Engelbrecht testified exclusively on what reasonable accommodation means within the context of an unfair discrimination claim and went through various items in the Code of Good Practice on Employment of Persons with Disabilities (the Code), in an attempt to advance the proposition that CTICC failed in its duties in this regard.
- [4] Pursuant to Letimile closing her case, the Court issued a directive to the parties requesting them to address whether or not Letimile's unfair discrimination claim was in effect a claim under Chapter III of the EEA which would oust this Court's jurisdiction and whether a claim for unfair discrimination, brought in terms of chapter II of the EEA can, in law, be sustained on the alleged non-compliance with a designated employer's obligations recorded in chapter III of the EEA.
- [5] The directive included additional questions ancillary to the aforementioned queries yet these issues need not be canvassed herein.
- [6] The Court's queries were premised on a reading of the Labour Appeal Court (LAC) judgment in *Dudley v City of Cape Town and another*³ wherein the LAC held that this Court does not have jurisdiction to hear a claim for unfair discrimination on the basis of an alleged non-compliance to affirmative action measures set out in chapter III of the EEA intrinsic to which, an employer's failure to abide by its obligations under chapter III, does not amount to unfair discrimination.
- [7] It is correct that as a general rule, a court cannot '*stray into determination of issues which have not been pleaded by the parties*',⁴ however the exception is

³ (2008) 29 ILJ 2685 (LAC).

⁴ See: *Cape Peninsula University of Technology v Kabengele and Others* [2024] 6 BLLR 553 (LAC) at para 12.

when parties proceed on the incorrect perception of the law⁵ or under circumstances where it is necessary to do so in order to dispose of an argument⁶. Under any of these circumstances a court is entitled to *mero motu* raise this with the parties. Additionally, a court is duty bound to *mero motu* raise any issue relating to its jurisdiction.⁷

- [8] As both queries in the Directive spoke to this Court's jurisdiction as well as whether an argument raised and relied upon by Letimile was sound in law; this Court was therefore entitled to issue the aforementioned Directive.
- [9] In addressing the first question raised, Mr Bruinders on behalf of Letimile, submitted that Letimile's unfair discrimination claim was not a claim relating to the application of chapter III of the EEA and rather her claim was and remains, a claim founded in Chapter II of the EEA. Mr Stelzner, on behalf of CTICC, accepted this point.
- [10] Having considered Letimile's statement of claim, I am satisfied that Letimile has based her claim solely within the confines of chapter II of the EEA and not chapter III. Thus, it is accepted that Letimile unfair discrimination claim and in respect of reasonable accommodation, is based in terms of chapter II of the EEA and not chapter III, following which this Court has jurisdiction to hear Letimile's claim in respect of reasonable accommodation.
- [11] Having found this Court has jurisdiction to hear this specific claim, it is not strictly necessary to address the second query. With that being said, both parties, for different reasons, referred the Court to the judgment in *Damons v City of Cape Town*⁸ which does appear to answer the second query in the affirmative.
- [12] I did not understand Mr Stelzner, on behalf of CITCC, to take issue with this position. Rather his argument was that the evidence led on behalf of Letimile, in partiaur the testimony of Dr Engelbrecht as well as other evidence relating

⁵ *Commercial Workers Union of SA v Tao Ying Metal Industries and others* 2009 (2) SA 204 (CC) at para 66.

⁶ *Booi v Amathole District Municipality and others* (2022) 43 ILJ 91 (CC) at para 35.

⁷ See: *CUSA* (Id fn 5) at 68.

⁸ (2022) 43 ILJ 1549 (CC).

to CITCC allegedly failing to reasonable accommodate Letimile; were irrelevant to Letimile's unfair discrimination claim. To this end and within the confines of his interpretation of the Court's Directive, Mr Stelzner sought a ruling on the relevance of such evidence.

[13] The second query raised in the Court's Directive did not, nor was it intended to address the relevance of Letimile's evidence in support of her claim relating to reasonable accommodation. Rather it was intended to address whether Letimile's argument was sound in law. That question has been adequately answered in *Damons*.

[14] Whether Letimile's reasonable accommodation claim succeeds or falls on the evidence presented, is a question best left for closing arguments once all evidence has been led. Moreover, to request Letimile's representatives to submit written submissions on the relevance of her evidence at this stage, would unduly delay the finalisation of this matter which commenced in December 2024 and which is set to reconvene on 13 January 2026.

[15] Mr Stelzner's argument relating to relevance may be raised and addressed at the end of the trial.

[16] The need for the parties to address the above issues were at the instance of the Court and hence the issue of costs ought not arise, nor did either party raise any argument in respect of costs.

[17] In the premise the following order is made:

Order

1. This Court has jurisdiction to hear the applicant's claim for unfair discrimination based on reasonable accommodation.
2. There is no order as to costs.

M. Naidoo

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant : Mr T Bruinders SC with Ms N Fourie.

Instructed by : Malcolm Lyons & Brivik Inc.

For the Respondent : Mr R Stelzner SC, with Mr DM Robertson.

Instructed by : STBB.

LABOUR COURT