



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case no: 2025-149205

In the matter between:

IGNATIA NONKULULEKO NTOMBELA,

LINDA MEYER, PHUMLA CELE, HEIN

VAN DER WESTHUIZEN, MAVIS NTSHANGASE

Plaintiff/Applicant

and

SARS

Defendant/Respondent

Heard: 03 September 2025

Delivered: 26 January 2026

JUDGMENT

SEERY, AJ

- [1] The plaintiffs' Statement of Claim (SOC) was delivered out of time, and condonation for its late delivery was sought. The application was not opposed, and there is no reason for condonation not to be granted. There remains an exception to be dealt with.

- [2] The plaintiffs' claims pleaded in the SOC are based on what they allege to be unfair discrimination in that they (the plaintiffs) are being paid less than other fellow employees, whilst engaged in the same or substantially the same work or work of equal value.
- [3] The plaintiffs plead further that the defendant's conduct in maintaining the disparity in relation to grading and salary between them (the plaintiffs) and the comparator employees constitutes unfair discrimination on an arbitrary ground and impacts negatively on the dignity of the plaintiffs.
- [4] The defendant has excepted to the plaintiffs' SOC, alleging that it does not disclose a cause of action in that it does not identify any listed or unlisted ground of discrimination that forms the basis of the alleged discrimination, and that the plaintiffs have not identified the arbitrary ground that they rely on. The plaintiffs oppose the exception.

Analysis

- [5] On a reading of the SOC *in toto* the alleged arbitrary ground relied upon is not identified. In order for the defendant to be placed in a position to properly defend the action, what must be pleaded to support an allegation of discrimination is a ground of discrimination.
- [6] In *Naidoo and Others v Parliament of the Republic of South Africa*¹ the court found that to establish discrimination an arbitrary ground must be identified, and to merely allege arbitrariness is not enough.
- [7] In short, the plaintiffs are required to identify and plead a ground that is based on attributes and characteristics that have the potential to impair their dignity or affect them in a comparably serious manner, and that this ground must refer back to the specified grounds listed in section 6 (1) of the Employment Equity Act².
- [8] The plaintiffs have not done this, and therefore the exception must be upheld.

¹ (2020) 41 ILJ 1931 (LAC).

² Act 55 of 1998.

[9] There are no circumstances that support a departure from the practice in this court that costs do not follow the result.

[10] In the premises, the following order is made:

Order

1. The late delivery of the plaintiffs' Statement of Claim is condoned.
2. The defendant's exception is upheld.
3. The plaintiffs' pleading (Statement of Claim) is set aside.
4. The plaintiffs are given leave to deliver an amended pleading within 10 days of the granting of this order.
5. There is no order in respect of costs.

T. Seery

Acting Judge of the Labour Court of South Africa

Appearances:

For the plaintiffs : Adv A W Khumalo instructed by Pillay Cohen Attorneys Inc

For the respondent : Adv F Le Roux's instructed by Joubert Galpin & Searle Inc

LABOUR COURT