IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

[redacted]

SIGNATURE DATE: 24 February 2026

Case No. 22545/2018

In the matter between:

DIMENSION DATA MIDDLE EAST AND AFRICA (PTY) LTD	Applicant
and	
ANDILE ABNER NGCABA	Respondent

JUDGMENT

<u>WILSON J:</u>

1 The respondent, Mr. Ngcaba, sues the applicant, Dimension Data, for damages in the sum of just over R117 million. The primary claim is for breach of contract. In the alternative, Mr. Ngcaba says that the damages due flow from Dimension Data's breach of its statutory duty not to discriminate against him in each of the particular senses conveyed in section 7 (b) and 7 (c) of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

(PEPUDA). Section 7 (b) of PEPUDA outlaws "engagement in any activity which is intended to promote, or has the effect of promoting, exclusivity, based on race". Section 7 (c) forbids "the exclusion of persons of a particular race group under any rule or practice that appears to be legitimate but which is actually aimed at maintaining exclusive control by a particular race group".

2 Mr. Ngcaba was, until mid-2017, the executive chairman of Dimension Data. In that capacity he was party to a service agreement, in respect of which he received a salary and was entitled to a bonus. Mr. Ngcaba says that the service agreement also entitled him to participate in Dimension Data's long-term incentive plan, an aspect of which was a share appreciation rights scheme. Mr. Ngcaba says that, in breach of his service agreement, and in breach of its statutory duty not to unfairly discriminate against him based on his race, Dimension Data failed to procure his participation in both the incentive scheme and the share rights scheme. He says that eligible White executives were allowed to participate in those schemes, and that he was excluded from them because he is Black. He says that if he had participated in those schemes, as he was entitled to do, he would have been paid just over R117 million which he did not in fact receive. These, he says, are his damages.

3 Mr. Ngcaba's action was instituted in June 2018. Since then, both parties have amended their pleadings more than once, and there have, by my count, been four interlocutory skirmishes resulting in full opposed argument and written judgments by four other Judges of this court. Almost eight years later, I have been asked to decide the fifth such skirmish. It is an opposed application to separate three special pleas Dimension Data raises from the remaining issues

in the action. The first special plea is that this court lacks the necessary jurisdiction to adjudicate Mr. Ngcaba's claims, both of which, Dimension Data says, concern its duty as an employer not to discriminate against one of its employees. Claims of that type, it is alleged, lie properly within the jurisdiction of the Labour Court. The second special plea is that Mr. Ngcaba's claim based on PEPUDA has prescribed. The third special plea is that Mr. Ngcaba's contractual claim – if that is indeed what it is rather than in substance a claim under statutory labour law – must be arbitrated rather than decided in this court.

4 Much of the argument before me concerned the merit of the special pleas themselves, but, as both counsel conceded, the merit of the special pleas is but one factor to be weighed when considering whether they should be separated from the other issues in the action. The primary question is not where the prospects of success lie on the issues sought to be treated separately, but whether it is convenient, in the relevant legal sense, that those issues be determined separately.

5 To be capable of convenient separation, the issues to be separated must be conceptually distinct. They must also generally be capable of determination without hearing evidence that will later have to be repeated in relation to other triable issues. It is also desirable that a repetition of witnesses is avoided, especially if credibility findings will have to be made in relation to particular witnesses who may have to testify more than once in respect of different issues.

6 Once a court is satisfied that the issues sought to be isolated for separate determination are conceptually distinct from those arising in the rest of the action, and that there will be little or no overlapping evidence required to hear them, the question is whether there is some advantage to be had in ordering a separation which is not outweighed by any obvious or foreseeable disadvantage. If the advantages outweigh the disadvantages, the court will generally order the separation (see *S v Malinde* 1990 (1) SA 57 (A) at 68C–E).

7 In this case, the first leg of the test is clearly satisfied. The issues offered up for separate determination are conceptually distinct, both from each other, and from the other issues arising in the main action. I need not concern myself with the repetition of evidence, or with contradictory or embarrassing credibility findings, since the separated issues can all be decided as points of law arising on the pleadings alone.

8 It is at the second stage of the test that the separation application runs into trouble. In balancing the putative advantages of a separation against its foreseeable disadvantages, I am required to give "careful thought . . . to the anticipated course of the litigation as a whole" (*Denel (Pty) Ltd v Vorster* 2004 (4) SA 481 (SCA) at paragraph 3). Here, I cannot say that the parties have provided much assistance. Dimension Data asks that I consider the principal advantage it says a separation will bring: the avoidance of a very long and costly trial on a multitude of issues (there are a further two special pleas requiring evidence that will not be separated, and, of course, the defences to the main claims). Yet Dimension Data does not tell me how long it expects

that trial to be, how many days it will take, how many witnesses will be called and, accordingly, how much time, money and trouble will be saved if I grant the separation it seeks (on the necessity of such information see, for example, *CC v CM* 2014 (2) SA 430 (GJ) at paragraph 27).

9 Mr. Ngcukaitobi, who appeared together with Mr. Sisilana for Mr. Ngcaba, argued that the failure to adduce this information meant that Dimension Data had failed to discharge an onus to show that the separation would be convenient. Ms. Cane, who appeared with Mr. Michael and Mr. Mabuda for Dimension Data, argued that there is no such onus. But, wherever the overall onus lies, without facts that would allow me to estimate the length of the trial, I cannot assess with any precision the time that would be saved by ordering a separation.

10 I will nevertheless assume, in Dimension Data's favour, that the trial will take at least three weeks, which places it toward the lengthy end of the civil trials that are routinely heard in this court. I do not think that I was offered a estimate of how long the special pleas would take to argue, but I was given a foretaste of what would be argued. Based on that preview, I think two days would be a sensible estimate. It follows that, conservatively, thirteen days of court time might be saved by separating the issues in the way Dimension Data suggests. I do not know whether a trial of that length falls comfortably within the stamina and resources of both parties, but since neither party said it did not, and since both parties have litigated fairly lavishly until now, I think I am bound to assume that it does.

11 Against that potential saving, I must weigh the prospect of a piecemeal appeal. Trial courts are fairly regularly criticised for ordering separations which turn out not to commend themselves to courts of appeal. These criticisms are usually made when the court of appeal is forced to deal with a "piecemeal" appeal against a trial court's rulings on the separated issues. Where successful, these appeals waste the time a separation of issues is often meant to save (see, for example, *Firm-O-Seal CC v Wynand Prinsloo & Van Eeden Inc* 2024 (6) SA 52 (SCA), paragraphs 2 and 10 and *Theron and Another NNO v Loubser NO* 2014 (3) SA 323 (SCA), paragraph 18). I think that much of this criticism is too demanding (see *Biologicals and Vaccines Institute of Southern Africa (Pty) Ltd v Guardrisk Insurance Company Limited* [2025] ZAGPJHC 1184 (21 November 2025) at paragraph 12). It is, however, beyond question that a trial court ought to bear in mind the possibility of an arguable piecemeal appeal on a separated issue being pursued.

12 Still, a separated issue may conceivably turn on the credibility of one or two witnesses, the assessment of which is unlikely to be realistically challenged on appeal. It may also be that one party's case on a separated issue is so strong that it hardly seems worth putting anyone to the expense of a lengthy trial. In those situations, the prospect of an arguable piecemeal appeal against a judgment on the separated issue will be remote.

13 But neither of these situations applies here. There is no evidence to be led in respect of the special pleas, so the credibility of witnesses need not be assessed. More importantly, the issues raised in the special pleas are all questions of law, and they are of at least moderate complexity.

14 The jurisdiction question is not without difficulty. Dimension Data says that, because Mr. Ngcaba's claim relates to discrimination against him as an employee, the Labour Court has jurisdiction, under the applicable provisions of the Employment Equity Act 55 of 1998 (EEA). Mr. Ngcaba's retort is that the discrimination he alleges has more to do with his status as a shareholder and investor in Dimension Data. In any event, Mr. Ngcaba points out, the primary claim is for a straightforward breach of contract. There is no pleaded reliance on PEPUDA or the EEA to advance that claim. It is well-established that an employment dispute pleaded exclusively in contract may be entertained in this court (see *Baloyi v Public Protector* 2022 (3) SA 321 (CC) at paragraph 41). But the proper characterisation of Mr. Ngcaba's claim is not a straightforward question. Certainly, I cannot say that Dimension Data has overwhelming prospects of showing that Mr. Ngcaba's claim is not a matter that engages this court's common law jurisdiction.

15 The same goes for the special plea of prescription. Dimension Data says that the claim based on PEPUDA is effectively a delictual claim for damages. That being so, the damages asked for are a "debt" within the meaning of section 11 (d) of the Prescription Act 68 of 1969. Dimension Data also says that debt prescribed in 2019, some five years before the PEPUDA claim was introduced by way of amendment in 2024. By contrast, Mr. Ngcaba says that the PEPUDA claim is not a claim for a "debt" under the Prescription Act but for statutory damages under PEPUDA itself.

16 Mr. Ngcaba's position is not without support. In the context of administrative law, the Supreme Court of Appeal has held that claims for compensation

created by statute and based on the breach of a public law duty are not "debts" for the purposes of the Prescription Act (see *Petersen v SASSA* 2025 (3) SA 153 (SCA) at paragraph 21). Both the Constitutional Court and this court have only reluctantly assumed that they do constitute such debts (see *Njongi v MEC, Department of Welfare, Eastern Cape* 2008 (4) SA 237 (CC) at paragraph 42 and *SABC v Motsoeneng* 2025 (2) SA 571 (GJ) at paragraph 14). In light of these authorities, it seems to me that whether a claim for damages under PEPUDA constitutes a "debt" under the Prescription Act remains very much an open question.

17 The fate of the arbitration special plea is also far from a forgone conclusion. Mr. Ngcaba says that there is good cause to release him from the arbitration clause, because only this court, sitting as an Equality Court, can determine the PEPUDA claim, and because he challenges the constitutional validity of clause 21.4 of the service agreement. Mr. Ngcaba says that clause 21.4 purports to exclude his reliance on PEPUDA.

18 During argument, Ms. Cane informed me that Dimension Data now accepts that clause 21.4 does not preclude Mr. Ngcaba's reliance on PEPUDA. But even if I were to assume that this renders that point moot, the question remains whether Mr. Ngcaba should be required to go to arbitration on his contractual claim while pursuing his PEPUDA claim in this court. Those questions are entangled with the question of whether Mr. Ngcaba's primary claim really is contractual in nature at all, and with the question of whether the PEPUDA claim has prescribed. If it turns out that this court can entertain the primary claim and the PEPUDA claim, and that the PEPUDA claim has not prescribed,

there may well be much to recommend the view that both should be decided in this court, sitting simultaneously as a High Court and an Equality Court. I cannot yet say either way. But the answer is unlikely to be so clear cut as to preclude the possibility of a piecemeal appeal if the question is separated out from the main action.

19 Accordingly, the disposal of each of the special pleas is likely to involve a judgment which is appealable in principle. I can think of no reason to discount in advance the reasonable possibility that such an appeal would be both pursued and arguable. If any such appeal takes place before the remainder of the issues in the action are tried, then the time I might save by separating it out will be wasted if the appeal is upheld and the matter is returned to this court for the remainder of the trial to proceed. In these circumstances, though I am prepared to accept that each of the special pleas has genuine prospects of success, I do not accept that they are so meritorious as to justify attempting to short-circuit the rest of the trial.

20 Dimension Data offered no other basis on which the separation it proposes would be convenient in the required sense. Indeed, it seems to me that, given the elapse of time since these proceedings were instituted, the most convenient course of action for everyone involved is to press on with the trial as soon as reasonably possible.

21 The separation application is dismissed, with costs to be costs in the main action.

[redacted]

S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 24 February 2026.

HEARD ON:	10 February 2026
DECIDED ON:	24 February 2026
For the Applicant:	J A Cane SC A Michael T Mabuda Instructed by Cliffe Dekker Hofmeyr Inc
For the Respondent:	T N Ngcukaitobi SC L Sisilana SC (Heads of argument drawn by T N Ngcukaitobi SC, L Sisilana SC and Y Peer) Instructed by Edward Nathan Sonnenbergs