



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

TDM 24/02/2026
Signature Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JS 83 / 2024

In the matter between:

SOUTH AFRICAN MUNICIPAL

WORKERS' UNION

First Plaintiff

ZESAZI MANGALISO

Second Plaintiff

PATRICK JACA

Third Plaintiff

FAITH LENGWATI

Fourth Plaintiff

AMON KGANYAGO

Fifth Plaintiff

TSHEPO CHOCHO

Sixth Plaintiff

ERIC SMITH

Seventh Plaintiff

ELLIOT NEBE

Eighth Plaintiff

MICHAEL SMITH

Nineth Plaintiff

and

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

Defendant

Heard: 16 February 2026

Delivered: 24 February 2026

This judgment was handed down electronically by consent of the parties' representatives by circulation to them via email. The date for hand-down is deemed to be 24 February 2026.

JUDGMENT

PRINSLOO, J

The pleadings and pre-trial minute

[1] Before I deal with the merits of the case and the evidence adduced, it is necessary to say something about the pleadings filed. It is trite law that the court and the parties are bound by the pleadings and the pre-trial agreement¹ and the issues they agreed to in the pre-trial minute². This Court cannot and should not go beyond the issues it is required to determine, with reference only to the pleadings and the pre-trial minute.

[2] Jacob and Goldrein³ aptly capture the position as follows:

‘As the parties are adversaries, it is left to each of them to formulate his case in his own way, subject to the basic rules of pleadings... For the sake of certainty and finality, each party is bound by his own pleading and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial.

The Court itself is as much bound by the pleadings of the parties as they are themselves. It is not part of the duty or function of the Court to enter upon any enquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by their

¹ *Chemical, Energy, Paper, Printing, Wood and Allied Workers Union and others v CTP Ltd and another* [2013] 4 BLLR 378 (LC).

² *Professional Transport and Allied Workers Union on behalf of Khoza and others v New Kleinfontein Gold Mine (Pty) Ltd* (2016) 37 ILJ 1728 (LC); *National Union of Metalworkers of SA and others v Driveline Technologies (Pty) Ltd and another* (2000) 21 ILJ 142 (LAC).

³ Jacob, Goldrein, *Pleading: Principles and Practice*, (Sweet & Maxwell) at pp 8 - 9.

pleadings. Indeed, the Court would be acting contrary to its own character and nature if it were to pronounce upon any claim or defence not made by the parties...

The Court does not provide its own terms of reference or conduct its own enquiry into the merits of the case but accepts and acts upon the terms of reference which the parties have chosen and specified in their pleadings. In the adversary system of litigation, therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to.'

[3] In *Candy and others v Coca Cola Fortune (Pty) Ltd*,⁴ the Court considered the purpose of a statement of claim and held that:

'In its simplest terms, the statement of case must at least inform the Respondent party what the pertinent facts are on which the Applicant will rely in the case, and further, what the cause of action is that the Applicant will pursue as founded on these facts. That must be done in sufficient particularity so as to enable the Respondent to provide a proper answer to these facts and the related cause of action. The statement of claim and the answering statement thereto are not just for the benefit of the parties. They also serve the court, in that the issues in dispute are properly determined and other possible alternative causes of action are eliminated from having to be considered by the court. A proper statement of claim and answering statement are imperative to the fundamental requirement of expeditious resolution of employment disputes in terms of the LRA. As the court said in *Harmse v City of Cape Town (Harmse)*:

"[6] The statement of claim serves a dual purpose. The one purpose is to bring a Respondent before the court to respond to the claims made of and against it and the second purpose of a statement of claim is to inform the Respondent of the material facts and the legal issues arising from those facts upon which Applicant will rely to succeed in its claims.

[7] The material facts and the legal issues must be sufficiently detailed to enable the Respondent to respond, that is, that the Respondent must

⁴ (2015) 36 ILJ 677 (LC) at para 38.

be informed of the nature or essence of the dispute with sufficient factual and legal particularity so that it knows what it is that the Applicant is relying upon to succeed in its claim.”

[4] In *SA Breweries (Pty) Ltd v Louw*⁵ (Louw), the Labour Appeal Court (LAC) was required to, *inter alia*, determine a complaint by the appellant that the court *a quo* decided the case on factual issues not properly put before it on the pleadings, nor as refined in the pre-trial conference minute. The LAC held that:⁶

[4] To state the obvious, litigation is complex. Among the duties of legal practitioners is to conduct cases in a manner that is coherent, free from ambiguity and free from prolixity. True enough, the holy grail of translating what is complex into simplicity is not always attainable, but the ground rules are irrefragible: say what you mean, mean what you say and never hide a part of the case by a resort to linguistic obscurities. The norm of a fair trial means each side being given unambiguous warning of the case they are to meet. Moreover, these requirements are not mere civilities as between adversaries; the court too, is dependent upon the fruits of clarity and certainty to know what question is to be decided and to be presented only with admissible evidence that is relevant to that question. Making up one's case as you go along is an anathema to orderly litigation and cannot be tolerated by a court. Counsel's duty of diligence demands an approach to litigation which best assists a court to decide questions and no compromise is appropriate.

[5] The critical complaint in this matter is that the court *a quo* decided the case on factual issues not properly put before it on the pleadings, nor as refined in the pretrial conference minute. The complaint had been raised during the hearing and in argument at the conclusion of the trial, considered by the court *a quo* and dismissed. In our view, the complaint is justified and the court *a quo* was in error.'

⁵ (2018) 39 ILJ 189 (LAC).

⁶ Ibid at paras 4 – 5.

[5] The LAC further held that:⁷

'The relationship between the pleadings and the pretrial conference minute has been the subject of several judicial pronouncements. In short, a minute of this sort is an agreement from which one cannot unilaterally resile. Also, a pleading binds the pleader, subject only to the allowing of an amendment, either by agreement with the adversary, or with the leave of the court. The case pleaded cannot be changed or expanded by the terms of a minute; if it does, it is necessary that that change go hand in hand with a necessary amendment. The chief objective of the pretrial conference is to agree on limiting the issues that go to trial. Properly applied, a typical minute – cum – agreement will shrink the scope of the issues to be advanced by the litigants. This means, axiomatically, that a litigant cannot fall back on the broader terms of the pleadings to evade the narrowing effect of the terms of a minute. A minute, quite properly, may contradict the pleadings, by, for example, the giving of an admission which replaces an earlier denial. When, such as in the typical retrenchment case, there are a potential plethora of facts, issues and sub-issues, by the time the pretrial conference is convened, counsel for the respective litigants have to make choices about the ground upon which they want to contest the case. There is no room for any sleight of hand, or clever nuanced or contorted interpretations of the terms of the minute or of the pleadings to sneak back in what has been excluded by the terms of a minute. The trimmed down issues alone may be legitimately advanced. Necessarily, therefore, the strategic choices made in a pretrial conference need to be carefully thought through, seriously made, and scrupulously adhered to. It is not open to a court to undo the laces of the straitjacket into which the litigants have confined themselves.'

[6] In summary, a statement of claim must inform the defendant of the material facts and the legal issues arising from those facts upon which the plaintiff will rely to succeed in its claims. Those must be sufficiently detailed to enable the defendant to respond and to be informed of the nature or essence of the dispute. Each side must be given an unambiguous warning of the case they are to meet.

⁷ Id fn 5 at para 8.

- [7] The issues raised by the Plaintiff must be considered against the backdrop that pleadings give the architecture and that the evidence at the trial provides the detail and texture. However, it is not for this Court to decide the case on factual issues not properly pleaded or refined in the pretrial conference minute.

The pleaded case

- [8] The Plaintiffs' pleaded case is that Ms Mokasi, the Defendant's director of operations, informed them on 26 March 2020 that due to the outbreak of Covid 19 and the declaration of the state of disaster, a joint operation centre (JOC) had been established, and they were instructed to report to the JOC. Ms Mokasi informed and instructed them that they would be required to work overtime, night shift, Sundays and public holidays.
- [9] They pleaded that the *'instructions and acceptance of the instructions resulted in the parties reaching an oral agreement'* that the Plaintiffs should work according to the new duty schedule and that they would be compensated for working overtime, night shift, Sundays and public holidays in accordance with the provisions of the Basic Conditions of Employment Act⁸ (the oral agreement).
- [10] The Plaintiffs submitted their timesheets in support of their claim for the payment of the hours worked as overtime and during night shift, Sundays and public holidays. The Defendant did not pay, and the Plaintiffs followed an internal grievance procedure to claim the monies, yet it did not resolve the issue. The matter was subsequently referred to the South African Local Government Bargaining Council (SALGBC) and the Commission for Conciliation, Mediation and Arbitration (CCMA), but was not resolved as the SALGBC and the CCMA lacked jurisdiction to adjudicate the dispute.
- [11] In the statement of claim, the Plaintiffs stated that they seek payment of overtime, night shift allowance and payment for working on Sundays and

⁸ Act 75 of 1997, as amended.

public holidays, which is to be calculated in accordance with the provisions of the BCEA. Their claim is for the period from 26 March until August 2020.

- [12] The legal issue as pleaded is whether the Plaintiffs are entitled to the payment of overtime, night shift allowance and for working on Sundays and public holidays, in terms of the oral agreement.
- [13] It is evident from the Plaintiffs' pleaded case that their claim is premised on the terms of an oral agreement.
- [14] It is evident from the pre-trial minute that it is common cause that Ms Mokasi informed the Plaintiffs that they would be required to work overtime, night shift, Sundays and public holidays. It is also common cause that the instruction to work overtime, night shift, Sundays and public holidays was given by the head of department (HOD) and was carried out by Ms Mokasi.
- [15] The Defendant submitted that there is a difference between an instruction to work overtime and an agreement or approval to pay overtime where an employee falls outside the applicable provisions of the BCEA, internal policies or collective agreements.
- [16] The issue in dispute is the existence of the oral agreement to pay the Plaintiffs for working overtime, a night shift allowance and for working on Sundays and public holidays. Put differently, the Defendant does not deny the existence of an instruction to work overtime, nights shifts, Sundays and public holiday, but it denies the existence of an agreement that the Plaintiffs would be paid for that.
- [17] In the alternative and if it is found that Ms Mokasi gave an oral undertaking that the Plaintiffs would be compensated for working overtime, night shift, Sundays and public holidays, such an undertaking was unauthorised and unlawful.
- [18] I have alluded to the importance of pleadings. The Court does not provide its own terms of reference or conduct its own enquiry into the merits of the case

but accepts and acts upon the terms of reference which the parties have chosen and specified in their pleadings and narrowed in the pre-trial minute.

- [19] The issue for this Court to decide is whether the Plaintiffs are entitled to the payment of overtime, night shift allowance and for working on Sundays and public holidays, in terms of the oral agreement. The existence of the said agreement is disputed.

The evidence adduced

The Plaintiff's case

- [20] In recording the Plaintiff's evidence, I will not repeat the facts that are common cause between the parties and already recorded *supra*, nor will I record the evidence that is not necessary for purposes of this judgment.
- [21] Mr Sibiya testified that the Plaintiffs want to be paid for the hours they worked during March to August 2020 as overtime, night shift, on Sundays and public holidays (collectively referred to as overtime), according to the instruction they received to work as aforesaid. The Plaintiffs' manager, Ms Mokasi, gave them instructions to work overtime, after she attended a meeting with the acting HOD, Mr Mazibuko and according to Mr Sibiya, the approval for the payment of overtime was by implication and the HOD knew that they had to be paid for working overtime.
- [22] In cross-examination Mr Sibiya agreed that the Plaintiffs were part of the Defendant's management structures and that they were governed by the employer's policies and collective agreements. Mr Sibiya was referred to the 'Divisional Conditions of Service Collective Agreement' (collective agreement) which was entered between the South African Local Government Association (SALGA) and the trade unions IMATU and SAMWU. The collective agreement was in operation from 1 July 2019 until 30 June 2024 and Mr Sibiya agreed that it applied to him.
- [23] The collective agreement provided for overtime in clause 7.3 thereof and relevant for purposes of this dispute, are clauses 7.3.2 and 7.3.3. The said

clauses provided that overtime should be approved by the municipal manager or his/her delegated authority, which in this instance was the HOD, in writing prior to the overtime being worked. Furthermore, persons earning above the threshold as set out in the ministerial determination, do not have a legal right to demand payment in respect of overtime.

- [24] Mr Sibiya was also referred to 'Circular 03/2019 Regulating Overtime' (the circular) wherein reference was made to the 'Collective Agreement Conditions of Service' and specifically the clause providing for overtime as follows:

"All employees shall be paid overtime, except those employees on the first four reporting levels including those acting on the first four reporting levels on the basis of the Basic Conditions of Employment Act (Act 75 of 1997) which excludes senior managerial employees from the payment of overtime."

- [25] The circular further recorded that:

"To regulate overtime within the City of Johannesburg, measures are put in place to reduce departmental overtime expenditure.

With immediate effect the attached template must be completed and approved by the Head of Department prior to any overtime worked."

- [26] Mr Sibiya also agreed that they earned above the threshold prescribed in the BCEA and as such, they were excluded from the application of Chapter 2 (regulation of working time) of the BCEA. He agreed that under normal circumstances the Plaintiffs do not qualify for overtime.

- [27] It was put to Mr Sibiya that their overtime was not approved in writing by the HOD, as required by the collective agreement and the circular and that Ms Mokasi as the director: operations was not authorised or delegated to approve overtime. Mr Sibiya could not dispute this but insisted that they had worked under instruction, and they accepted the instruction on face value, with no reason to believe that their overtime was not approved. He further testified that in the municipality it was normal practice to work overtime without written approval and at the time, circumstances were exceptional and the Covid pandemic was different from the normal position.

- [28] Mr Sibiya conceded that they do not have a legal right to demand overtime payment and that they would not automatically qualify for such payment. However, he insisted that the instruction to work overtime was given with a promise that they would be paid and therefore, the Plaintiffs are not demanding payment for overtime, they are merely asking the Defendant to do as they promised.
- [29] Mr Sibiya agreed that the Plaintiffs were not covered by the collective agreement to receive payment for overtime and that their claim is premised on an oral agreement that they would be paid. It was put to Mr Sibiya that an agreement to pay overtime could only be entered into by an official who has the authority to approve overtime, to which proposition Mr Sibiya responded that in the JMPD it was not possible to follow regulations and that nobody could plan for Covid.
- [30] Mr Sibiya was referred to the Plaintiffs' amended statement of claim where it was pleaded in paragraph 20 that the Defendant made an oral undertaking that the Plaintiffs would be compensated for working overtime, in paragraph 22 it was pleaded that they were promised by Ms Mokasi that they would be compensated for working overtime and in paragraph 24 that they were advised by Ms Mokasi that they would be compensated for working overtime. It was put to Mr Sibiya that the Plaintiffs' pleaded case is that there was an oral agreement as to the payment of overtime, but the terms of the pleaded case show that there was uncertainty about what their engagement and agreement with Ms Mokasi was and that it does not make out a case that there was indeed an oral agreement. Mr Sibiya indicated that this is merely semantics and that he was present in Court to clarify the claim.
- [31] After Mr Sibiya adduced evidence, the Plaintiffs' case was closed. Mr Govender on behalf of the Defendant, made an application for absolution from the instance.

Absolution from the instance:

- [32] The test for absolution from the instance sought at the close of the plaintiff's case is not whether the evidence led by the plaintiff established what would

finally be required to be established, but whether there is evidence upon which a Court, applying its mind reasonably to such evidence could or might (not should, or ought to) find for the plaintiff⁹.

- [33] This implies that the plaintiff has to make out a *prima facie* case in the sense that there is evidence relating to all the elements of the claim in order to survive absolution because without such evidence no court could find for the plaintiff¹⁰.
- [34] This is the test I must apply in the application for absolution.
- [35] The consideration of an absolution application entails some measure of evaluation of the Plaintiff's evidence, which must be compared to the documentary evidence and the pleadings.
- [36] The issue this Court must decide is whether the Plaintiffs are entitled to the payment of overtime in terms of an oral agreement that they had concluded with Ms Mokasi. The existence of the agreement is disputed and alternatively the Defendant's case is that Ms Mokasi did not have the authority to enter into such an agreement.
- [37] It is one thing to allege that an oral agreement was concluded, but it is another thing to prove that it exists. It is trite that the burden of proof is on the party who alleges the existence of the agreement, whether the agreement was in writing or orally. In the case of a written agreement, the burden of proof is obviously simplified. *In casu* the onus to establish that a valid and legally binding oral agreement was concluded, rests with the Plaintiff.
- [38] Mr Govender submitted that the Plaintiffs failed to prove the basic elements of their pleaded case. They had to present evidence to raise a credible belief that an oral agreement existed and as such they had to prove the existence of the oral agreement, the terms of the agreement and that the person who had entered into the agreement, had the authority to conclude the agreement.

⁹ See: *Municipality of Christiana v Victor* 1908 TS 1117; *Van Rensburg v Reid* [1958] 2 All SA 319 (E); and *De Wet and others v Western Bank Ltd* 1977 (2) SA 1033 (W).

¹⁰ See: *Gordon Lloyd Page and Associates v Rivera and another* 2001 (1) SA 88 (SCA). *Claude Neon Lights (SA) Ltd v Daniel* 1976 (4) SA 403 (A).

- [39] Mr Govender emphasized that the issue between the parties is a narrow one – it is not whether the Plaintiffs were instructed to work overtime, but it is whether they could have concluded an agreement with Ms Mokasi to be paid overtime, in contravention with the provisions of the law and the applicable collective agreements. He submitted that the Plaintiffs failed to prove the aforesaid and therefore absolution from the instance should be granted.
- [40] Mr Gwebu for the Plaintiffs submitted that in the statement of response, the Defendant admitted that the HOD gave the instruction for the Plaintiffs to work overtime and the instructions were carried out by Ms Mokasi. The Plaintiffs must prove that they have worked overtime at the instruction of the employer and if they succeed to show that, they are entitled to payment for the overtime worked on instruction of their employer.
- [41] Mr Gwebu submitted that as it is admitted that the HOD gave the instruction for the Plaintiffs to work overtime, the Defendant has a case to answer. Ms Mokasi gave the instruction and supported their claim for overtime, wherefore the Defendant has a case to answer, the trial must proceed and Ms Mokasi must come to testify.
- [42] I re-iterate: the onus to establish that a valid and legally binding agreement was concluded, rests with the Plaintiffs and they must prove their case *prima facie* on a preponderance of probabilities. The onus is not on the Defendant to disprove the Plaintiffs' case where the existence of the oral agreement is disputed. It is the Plaintiffs' pleaded case that such an agreement was concluded with Ms Mokasi and there is not a duty on the Defendant to call Ms Mokasi as a witness where the onus to prove the existence of the agreement is on the Plaintiffs.
- [43] The question to be considered at this point is whether there is evidence upon which this Court, applying its mind reasonably to the evidence, could or might find in favour of the Plaintiffs.
- [44] The starting point is the pleaded case. It is evident from the Plaintiffs' statement of claim that their claim, premised on an oral agreement, is pleaded in vague terms. They pleaded that because they accepted an instruction by

Ms Mokasi to work overtime, it resulted in an oral agreement. It is unclear whether the Plaintiffs worked overtime as per instructions or whether it was in terms of the oral agreement.

- [45] Instead of pleading the terms of the agreement, the Plaintiffs made vague averments to the effect that Ms Mokasi either made an oral undertaking that they would be paid for working overtime, or that she '*promised*' or '*advised*' that they would be compensated for working overtime.
- [46] It is further evident from the pleadings that the Plaintiffs never pleaded that Ms Mokasi had the authority to enter into an agreement with them regarding the payment of overtime. The pleadings do not sustain the Plaintiffs' cause of action.
- [47] The evidence adduced by Mr Sibiya neither supported a case that a binding oral agreement regarding the payment of overtime was indeed concluded. On the contrary, Mr Sibiya conceded that the Plaintiffs were excluded from the applicable provisions of the BCEA regulating overtime and that the Defendant's policies and collective agreements were applicable to them. The collective agreement provided specifically that overtime should be approved by the municipal manager or his/her delegated authority (the HOD) in writing prior to the overtime being worked
- [48] In my view the difficulty with the Plaintiffs' case is that they confused the instruction to work overtime with an agreement to pay for overtime. It is clear from the provisions of the BCEA and the applicable collective agreements, regulating the conditions of service, that the Plaintiffs were excluded from the payment of overtime. The Plaintiffs were aware of this reality, therefore Mr Sibiya conceded that they do not have a legal right to demand overtime payment and that they did not automatically qualify for such payment.
- [49] The prescripts were clear: overtime should be approved by the municipal manager or HOD in writing and prior to the overtime being worked. The Plaintiffs could not show any written approval for their overtime which would entitle them to be remunerated for overtime worked.

- [50] The Plaintiffs' acceptance of the instruction is only that – the acceptance of an instruction by an employee who works under instruction and such acceptance did not convert to some or other oral agreement in contravention of the BCEA or the Defendant's policies and collective agreements.
- [51] Although I accept that the period during the Covid-19 pandemic and the national state of disaster was unusual and unplanned for, Mr Sibiya's evidence that in all his years in the employ of the Defendant overtime was never pre-approved, it was normal practice to work overtime without written approval and that prescripts regarding that was not followed in the JMPD, is concerning.
- [52] The Plaintiffs claim overtime for the period from March to August 2020. Evidently the period spanned over five months, which allowed sufficient time to follow the correct procedures. Covid-19 might have created unusual circumstances, but in the context of the facts placed before me, this was certainly not a situation where an unexpected crisis occurred, which called for immediate and short-term attention, with no time to comply with the necessary prescripts.
- [53] If there is truth in Mr Sibiya's allegations that it was normal practice to work overtime without prior written approval, it would constitute a serious contravention of the Defendant's prescripts. It can never be in the interest of the Defendant or its employees or ratepayers to act in contravention of collective agreements, policies and procedures and to act in a manner which undermine the principles of good governance and responsible decision taking. Policies and collective agreements are there to provide clear direction, to ensure a uniform approach and understanding of what is permissible and what is not and to ensure that the relevant parties act in accordance with the prescripts. The flouting of rules and policies and prescripts does not belong in the running of a municipality, which is funded by ratepayers and other public funds - it will undermine the rule of law and will create chaos and uncertainty.

[54] Be that as it may, the onus is on the Plaintiffs to prove the existence of an oral agreement and to show that there is an obligation to pay them overtime in terms of the said agreement.

[55] In my view the Plaintiffs failed to make out a *prima facie* case and they failed to adduce evidence to discharge their onus. There is no evidence upon which this Court, applying its mind reasonably to the evidence, could find for the Plaintiffs. It follows that the application for absolution from the instance should succeed.

Costs

[56] This Court has a wide discretion in respect of costs and in my view, this is a matter where the interest of justice will be best served by making no order as to costs. The parties have an ongoing relationship and Mr Govender indicated that the Defendant would leave the issue of costs in the hands of the court.

[57] Accordingly, the following order is made:

Order

1. Absolution from the instance is granted.
2. There is no order as to costs.

C. Prinsloo

Judge of the Labour Court of South Africa

Appearances:

For the Plaintiffs: Mr E Gwebu from Madlela Gwebu Mashamba Inc Attorneys

For the Defendant: Mr C Govender from Saljee Govender van der Merwe Inc Attorneys

LABOUR COURT