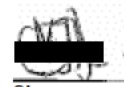




(1) Reportable: NO
 (2) Of interest to other Judges: NO


 Signature

08 April 2026
 Date

**THE LABOUR COURT OF SOUTH AFRICA
 AT CAPE TOWN**

CASE NO: C11 /2022

In the matter between:

JOAN VILLET

Applicant

AND

BONAKELE BENNET JACOBS

1ST Respondent

THE MEC FOR THE DEPARTMENT OF SPORTS

ARTS & AGRICULTURE, NOTHERN CAPE PROVINCE

2ND Respondent

Heard: 21 June 2023

JUDGMENT

DUBA AJ

Introduction

- [1] The Applicant filed a statement of claim on basis of being harassed, victimized, unilateral changes in work conditions, the equal work equal pay principle and discriminated against by the Respondent. The application is opposed by the Respondent. Subsequently interlocutory applications were filed by both parties to be determined by the court.
- [2] On 23 March 2022 the Respondents raised an exception to the statement of claim of the Applicant on basis that it is vague and embarrassing.
- [3] In response the Applicant filed an irregular step application, in terms of Court Rules, to the Respondent's exception on the basis that it is erroneously based on Rule 18 of the Uniform Rules instead of Rule 6 of the Labour Court Rules.

The general principles governing exceptions

- [4] The general principles governing exception are summarized by Erasmus¹:

(a) In each case the court is obligated first of all to consider whether the pleadings does lack particularity to an extent amounting to vagueness. Where a statement is vague it is either meaningless or capable of more than one meaning.

(b) If there is vagueness in this sense, the court is then obligated to undertake a quantitative analysis of such embarrassment as the excipient can show is caused to him or her by the vagueness.

¹ Fundamental Principles of Civil Procedure (LexisNexis 2 ed 2008) at 218, citing *Buthelezi v Minister of Bantu Administration* 1961 (3) SA 256 (N)

(c) *In each case an ad hoc ruling must be made as to whether the embarrassment is so serious as to cause prejudice to the excipient if he or she is compelled to plead to the pleading in the form to which he or she objects. A point may be of the outmost importance in one case, and the commission thereof may give rise to vagueness and embarrassment, but the same point made in another case be only a minor detail.*

(d) *The ultimate test as to whether or not the exception should be upheld is whether the excipient is prejudiced.*

(e) *The onus is on the excipient to show both vagueness amounting to embarrassment and embarrassment amounting to prejudice.*

(f) *The excipient must make out his or her case for embarrassment by reference to the pleadings alone*

[5] In the matter of *Harmse v City of Cape Town*² the Court noted that the Rules of this Court “do not require an elaborate exposition of all facts in their full and complex details – that is the role of evidence, whether oral or documentary”. And what is more, the *pre-trial* conference provides an occasion “for the detail or texture of the factual dispute to begin to take shape”.

[6] Bearing that cautionary note in mind and bearing in mind that the parties in this matter have not yet had a pre-trial conference, the court must decide if the Respondents are prejudiced because of the vagueness in the statement of claim as it stands.

The applications

² (2003) 6 BLLR 557 (LC)

- [7] The Respondent raised an exception titled: Notice in terms of Rule 11 (Exception – vague and embarrassing), assuming that is in terms of the Labour Court Rules. When considering the entire whole content of the application, actually it refers to the Uniform Rules of the High Court more so Rule 18(4).
- [8] The Respondent main ground of exception is that the statement of claim does not contain clear and concise statements of the material facts upon which the pleader relies, to enable the Respondent to properly respond. It falls short of the requirements of Rule 18(4) and thus vague and embarrassing. Further the Respondent mentioned that it is unable to plead without risking prejudice as result of insufficient particularity in the pleading.
- [9] It has been argued by the Respondent that in citing the Rule 18(4) of the Uniform Rules as opposed to Rule 6 of the Labour Court Rules, is merely a cosmetic error. The heart of the problem with the Applicant's papers, the substance, is that there is not sufficient particularity for the Respondents to properly respond thereto³.
- [10] According to the Respondents the wording of Rule 6(1)(ii) and (iii) of the Labour Court Rules, though cosmetically different, in terms of where the words are placed, is fundamentally and substantially similar to Rule 18(4) of the Uniform Rules⁴.

³ Page 3 Respondent's heads – par. 3.7

⁴ Page 4 Respondent's heads – par 3.9

[11] The Respondent further maintained that Rule 11 of the Labour Court Rules is of such a nature that it is flexible and permits the invoking of the Uniform Rules, in instances where the Rules of the Labour Court are silent⁵.

[12] It is the submission of the Respondents that the Applicant statement of claim is pleading and must state sufficient particularity, the claim that the Respondent must answer and the Applicant's papers fall short of this standard as highlighted in the- exception⁶.

[13] The Respondent emphasized that the object of pleadings is to enable each side to come to trial prepared to meet the case of the other and not be taken by surprise. Pleadings must therefore be lucid and logical and in an intelligible form and the cause of action or defence must clearly appear from the factual allegations made. The particulars of claim should be so phrased that the defendant may reasonably and fairly be required to plead thereto⁷.

[14] Subsequent to the Respondent exception, the Applicant filed an irregular step application on the basis that Rule 6 stipulates clearly what is required of a statement of claim, the delivery of the Respondents' notice in terms of Rule 11, is an irregular step as envisaged in Uniform Rule 30⁸.

[15] It is common cause that the Labour Court Rules and specifically Rule 6(1)(b)(ii), do contain requirements substantially similar to those of the Uniform Rule 18(4), in that they both essentially require a clear and concise

⁵ Page 4 Respondent's heads – par. 3.14

⁶ Pages 17-21 Pleading bundle

⁷ Page 6 Respondent's heads – par. 4.6

⁸ Page 25 Pleadings - par. 3

statement of material facts, with sufficient particularity to enable a Respondent to reply thereto.

[16] However, the Labour Court Rule 6(1)(b)(ii) should not be viewed in isolation and that it should be read with, the provisions of Rule 6(1)(b)(iii), which provides for a description of the legal issues that arise from the facts set out in the statement of claim⁹.

[17] The Applicant argued that the Uniform Rules do not contain a requirement similar to that in Labour Court Rule 6(1)(b)(iii). In fact, in the case pleadings as envisaged in the Uniform Rules, it is not necessarily the legal conclusion in the pleadings which determines the real issues between the parties but the facts relied upon¹⁰.

[18] When considering the Respondent's grounds for exception refer only to the requirement of a clear and concise statement of material facts, with sufficient particularity to enable a respondent to reply thereto, but lack the legal issues that in terms of the statement of facts arise from those factual allegations (my emphasis).

[19] It is incorrect to view the factual allegations in isolation, and not in the context of the legal issues that they pertain to, the Applicant maintains that she needed to state material facts and more particularly facts that are legally relevant to the legal ground or conclusion relied upon by the Applicant¹¹.

⁹ Page 3 Applicant's heads – par. 2.6

¹⁰ Page 3 Applicant's heads – par. 2.8

¹¹ Page 4 Applicant's heads – par. 2.10

[20] The Applicant emphasize that it is precisely the requirement in the Labour Court Rules that an applicant state what specific legal ground or provision is relied upon, and this distinction between Labour Court Rules and the Uniform Rules, that the Respondent either overlooked or attempted to avoid by basing their exception on the provisions of Uniform Rule 18(4), rather than on Labour Court Rule 6(1)(b)¹².

[21] The Court agrees with the Applicant that the Respondent has no right to choose whether to rely on the Labour Court Rules or the Uniform Rules. It was held that¹³:

“(the) limited application of rule 11 is not the gateway to the wholesale importation and application of the Uniform Rules, and thereby the creation of a parallel system of procedure in this court. In the presence, for example, the thrust of the excipient in that the respondent has failed to comply with the provisions of uniform rule 18, which generally regulates pleadings in the high court. Whether or not the respondent’s statement of claim is excipiable is to be determined by reference to rule 6 of the rules of this court, not rule 18 of the uniform rules. Rule 6 requires no more than that a party referring a statement of claim record in a concise manner the relevant facts on which that party relies, and also in concise terms, the legal issues that arise. In the absence of any directive to the contrary, this is all that is required, and the standard against which any pleading is to be measured”.

and

¹² Page 5 Applicant’s heads – par. 2.13

¹³ (2018) 39 ILJ 1779 (LC)

“Both parties have conducted this litigation as if the rules of this court did not exist. This court has its own rules board, and the board has issued rules which apply to this court and the Labour Appeal Court. There is a good reason for this – one of the primary purposes of the LRA is to establish a system of dispute resolution that is less formal, efficient, expeditious and inexpensive. The rules are an integral element in achieving this purpose”.

[22] The grounds of exception as addressed in the notice of exception do not as much refer to the legal issues that arise from the impugned factual averments in the statement of claim¹⁴.

[23] The Applicant submit that it is the facts that legally relevant to make out a case disclosing a cause of action that would be material and that therefore need to be stated with sufficient particularity to make it possible to respond to the statement of fact. It is further been argued that particulars that are not required to be pleaded in order to disclose a cause of action and that can be acquired in the form of further particulars or during pretrial proceedings would not be material and need not be pleaded for a statement of fact to comply with the requirement of particularity.

Evaluation

[24] It is necessary for the Court to mention that the dispute was instituted and argued under the former rules of the Court, and it is considered as such for the purpose of this decision.

¹⁴ Page 8 Applicant's heads – par. 4.2

[25] On consideration of applications, it is trite that exception must relate to the whole of the cause of action and not to a particular paragraph(s) in the cause of action.

[26] An exception on the basis that a statement of claim is vague and embarrassing and does enable a respondent to respond thereto, would only be competent where the statement are so vague that it is impossible to determine the nature of the claim and the burden is on an excipient to show that this is the case.

[27] The Constitutional Court in *Pretorius & Another v Transport Pension Fund & Others*¹⁵ made the following points about exceptions:

- In deciding an exception a court may accept all allegations of fact made in the particulars of claim as true, and may not have regard to any other extraneous facts or documents;
- A court may uphold an exception only when the excipient has satisfied the court that the cause of action or conclusion of law in the pleading cannot be supported on every interpretation of the facts; and
- It is a useful procedure to weed out bad claims at an early stage, but an overly technical approach must be avoided¹⁶.

[30] The submission by the Respondent that the citation of Rule 18(4) of the Uniform Rules as opposed to Rule 6 of the Labour Court Rules, is merely a cosmetic error is unacceptable.

¹⁵ (2018) 39 ILJ 1937 (CC)

¹⁶ Paragraph 15

[28] Further that Rule 11 of the Labour Court Rules is of such nature that it is flexible and permits for the invoking of the Uniform Rules in instances where Rules of the Labour Court are silent. This an indication that the Respondent is aware when the Uniform Rules are applicable and in this instance elected to turn a blind eye the Labour Court Rules specifically Rule 6.

[29] Whether or not the statement of claim is excepiable is to be determined by reference to Rule 6 of the Labour Court Rules not Rule 18 of the Uniform Rules. It is the Court emphasis that the limited application of Rule 11 is not a gateway to the wholesale importation and application of the Uniform Rules, and thereby the creation of a parallel system of procedures in this court¹⁷.

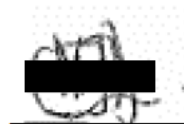
[30] It is the Court view, that the Respondent reliance on a more formal Uniform Rule 18(4), rather than the less formal provisions of the provisions of Rule 6(1)(b)(ii) and(iii) of the Labour Court Rules, and they have no right to choose whether to rely on the Labour Court Rules or the Uniform Rules.

[31] For the reasons given I make the following order:

Order:

1. That the application for exception is dismissed, and the irregular step is upheld.
2. Costs to be determined in the main application.

¹⁷ Footnote 13 supra



J Duba

Acting Judge of the Labour Court

Appearances:

For the Applicant: Adv. JL Olivier

Instructed by: Engelsman Magabane Attorneys

For the Respondents: M Ramabulana from State Attorney – Kimberly