



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JS 358/24

In the matter between:

THAKUDI MOTSAPI

Applicant

and

TRANSNET FREIGHT RAIL

Respondent

(Excipient)

Heard: 6 November 2025

Delivered: 30 March 2026

JUDGMENT

PHAJANE, AJ

Introduction

[1] This matter concerns an exception raised by the Respondent against the Applicant's statement of claim. In summary, the Applicant's case entails a claim

for alleged discrimination and or harassment. The claim is brought in terms of the Employment Equity Act¹ (the EEA).

- [2] The Respondent contends that the statement of claim lacks the necessary averments to sustain a cause of action for unfair discrimination as contemplated in section 6 (1) and section 6 (3) of the EEA.
- [3] The Respondent accordingly seeks an order upholding the exception and that the Applicant's statement of claim be struck out. A cost order is also sought.

Background

- [4] The Applicant is an employee of the Respondent. Prior to the events giving rise to this claim, the Applicant lodged a grievance against the Respondent concerning his bursary application for an LLB course.
- [5] The event complained of occurred during a Microsoft Teams meeting held on 8 and 9 February 2024. In the statement of claim the Applicant alleges in broad terms that the Respondent's conduct constitutes discrimination and harassment in that he was victimized during a Microsoft Teams meeting when an employee of the Respondent, Mr. Roggers Mamaila, allegedly discussed the Applicant's grievance against the Respondent concerning his bursary application for an LLB course².
- [6] The Applicant pleads that Mr. Mamaila made the following statements, which are alleged to have "*parturiated in the harassment and or victimization of the Applicant*"³:

6.1. "*we are having extra murals, once you start seeing people instead of applying to do risk assessment, they start applying to do LLB, then you*

¹ Act 55 of 1998.

² SOC, para 6.3

³ SOC at para 6.9

must know they want to go and start negotiating cases with lawyers in court this is the route this takes”⁴.

6.2. *“instead of writing there that you do not know how to do a proper fire inspection in your IDP that will assist you to go to a course you write there that you want to do LLB or safety course...what do you do with a safety course? Or do you do it because it is the easy one without mathematics in it? That is the worry colleagues...”⁵*

6.3. *“This thing of you taking managers out of action to go sit at the CCMA and toy toying because someone wants to do law or someone want to be a pilot and the manager declined a bursary, and you are fighting is nonsense. Check it because I am asking you nicely because you are putting one another under the bus, at the end of the day the employee won’t win something like that, you are just a waste of time, managers hands are bound behind their back for too long for nonsense-nonsense stuff.”⁶*

[7] Following this meeting, the Applicant engaged in email correspondence with Mr. Mamaila, asserting that in saying what he is alleged to have said above, Mr. Mamaila discussed his grievance which had caused him to feel *“victimized, prejudiced, fear, harassment, and degraded”⁷*. The Applicant requested access to a digital recording of the meeting, which Mr. Mamaila declined.

[8] Subsequently, the Applicant pursued an internal grievance against Mr. Mamaila for harassment and/or victimization. The Applicant alleges that the Respondent failed to properly adhere to its own Transnet Grievance Policy.

⁴ SOC at para 6.9(1)

⁵ SOC at para 6.9(2)

⁶ SOC at para 6.9(3)

⁷ SOC annexure “RM”

- [9] Dissatisfied, the Applicant referred a dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA), where the alleged dispute was certified. Then Applicant referred the unresolved dispute to this Court for adjudication.
- [10] The Respondent delivered a notice of intention to defend and thereafter, a notice of exception on the basis that the allegations contained in the statement of claim consist of law and do not set out the material facts necessary to establish a legally sustainable cause of action.

Grounds of the Exception

- [11] The specific grounds upon which the Respondent relies in support of its exception are outlined below. Respondent submits that the Applicant has failed to plead the essential elements of the alleged causes of action in that:
- 11.1. The Applicant fails to allege how the Respondent's conduct constituted unfair discrimination under section 6 of the EEA.
- 11.2. The Applicant's claim is devoid of any of the listed grounds of discrimination as required under section 6(1) of the EEA.
- 11.3. The Applicant's claim concerning a contravention of the code is bad in law.
- 11.4. The Applicant has failed to plead a discharge of the onus of proof.

Legal Principles and Analysis

- [12] An exception is a legal objection to pleadings on the basis that, even if the facts pleaded are accepted as correct, the pleadings are so vague and embarrassing that an intelligible cause of action is not disclosed.
- [13] As a starting point, whether or not the Applicant's statement of case is excipiable is to be determined by reference to rule 11 of the Rules for the Conduct of

Proceedings in the Labour Court⁸. Rule 11 (b) requires the names, descriptions and addresses of the parties, no more than a party referring a statement of claim to record in a concise manner the relevant facts on which the party relies, also in concise terms, the legal issues that arise and the relief sought. 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 measured⁹.

[14] In *Harmse v City of Cape Town*¹⁰, Waglay J (as he then was) said, *inter alia*, the following:

'5. Rule 6 of the Rules of this Court deals with referrals of disputes by way of a statement of claim. Rule 6(1)(b) provides that:

'(1) a document initiating proceedings, known as a 'statement of claim'...

(b) must have a substantive part containing the following information:

- i. The names, description, and address of the parties;
- ii. A clear and concise statement of the material facts, in chronological order, on which the party relies, which statement must be sufficiently particular to enable any opposing party to reply to the document;
- iii. A clear and concise statement of the legal issues that arise from the material facts, which statement must be sufficiently particular to enable the opposing party to reply to the document; and
- iv. The relief sought.

⁸ Rules Regulating the Conduct of the Proceedings of the Labour Court. Published 3 May 2024 (GN 50608). Effective 17 July 2024.

⁹ See: *Liquid Telecommunication (Pty) Ltd v Carmichael-Brown* [2018] 8 BLLR 804 (LC).

¹⁰ [2003] 6 BLLR 557 (LC) at para 5.

- [15] The Applicant bears the onus of demonstrating that on every reasonable interpretation of the pleading, no cause of action is disclosed¹¹. Care must be taken to distinguish the facts which must be proven in order to disclose the cause of action from the facts necessary to prove them. The determination of the latter, in each particular case, is essentially a matter of substantive law rather than procedure.¹²
- [16] The Court is to take as true the allegations pleaded by the Applicant and to assess whether they disclose the cause of action¹³.
- [17] The Applicant's claim is premised on an alleged breach of section 6(3) of the EEA. Section 6(3) of the EEA provides that harassment of an employee is a form of unfair discrimination and is prohibited on any one, or combination, of the grounds listed in section 6(1)".
- [18] The point of departure, thus, is the proper interpretation of section 6(1) and 6(3) of the EEA and an application of that proper meaning to the parties' respective averments to determine whether a cognizable cause of action has been pleaded.
- [19] Section 6(1) of the EEA provides that:
- "No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, color, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or on any arbitrary ground".
- [20] To sustain a claim based on harassment under section 6(3), the Applicant must plead facts establishing conduct that constitutes harassment and demonstrate that such conduct is linked to a prohibited ground contemplated in section 6(1) of the EEA. Accordingly, harassment, for purposes of section 6(3), does not exist in

¹¹ See: *Odendaal v Van Oudtshoorn* 1968 (3) SA 433 (T) 436D-E; *First National Bank of Southern Africa Ltd v Perry NO* 2001 (3) SA 960 (SCA)

¹² See: *Alphedie Investments (Pty) Ltd v Greentops (Pty) Ltd* 1975 (1) SA 161 (T).

¹³ *Drummond Cable Concepts v Advancement (Pty) Ltd* 2020 (1) SA 546 (GJ) at para 7

the abstract. It must be conduct that is connected to one or more of the prohibited grounds listed in section 6(1), or an analogous arbitrary ground.

- [21] In *Ndudula and others v Metrorail – PRASA (Western Cape)*¹⁴, the Labour Court considered an averment that a difference in wages paid to new employees, albeit in error, amounted to unfair discrimination pursuant to section 6(1) of the EEA. The applicants in that matter took the stance that if they relied on the phrase “any other arbitrary ground,” it was unnecessary to specify a ‘ground’ and it was sufficient to describe conduct which was inherently arbitrary. The Court held that the complaint did not articulate a “ground” within the compass of section 6(1). The Court held that:

“[73] The crux of the test for unfairness is the impairment of human dignity or an adverse effect in a comparably similar manner, not the classification of the ground as listed or unlisted. The constitutional distinction between listed and unlisted grounds affects only the burden of proof and nothing else. Differentiation on both a listed and analogous ground amounts to unfair discrimination only if the differentiation has indeed affected human dignity or has had an adverse effect on a similar serious consequence.

[74] This means that the test for unfair discrimination is the same for differentiation on both listed and unlisted grounds. That being the case unfair discrimination on listed and unlisted grounds, respectively, are not different forms of discrimination. The Constitution does not render differentiation on a listed ground automatically unfair.

...

[76] The conclusion to this reasoning is that unfair discrimination may occur on a listed or unlisted ground. The common factor is that differentiation must affect human dignity or must have similar serious consequences. The distinction between listed grounds and analogous grounds is one that finds application only with regard to the burden of proof, both in the Constitution and in section 6.”

¹⁴ (2017) 38 ILJ 2565 (LC)

- [22] The narrow compass interpretation of the phrase “... *any other arbitrary grounds...*” in section 6(1) was also endorsed in *Naidoo and Others v Parliament of the Republic of South Africa*¹⁵.
- [23] On any reading in this matter, the statement of claim does not disclose any of the specified grounds listed under section 6(1) to support the Applicant’s claim under section 6(3). Though it is not apparent from the statement of claim itself, annexure “C” (which is a CCMA notice of set down for con-arb) to the Applicant’s statement of case refers to the primary issue being prohibition of unfair discrimination on arbitrary grounds. Accepting that this is the primary issue, the next step is to consider whether the Applicant has pleaded a cognizable case.
- [24] In considering the exception, I approached the Applicant’s statement of case on the settled basis that pleadings must be read as a whole and interpreted benevolently, with a view to sustaining rather than destroying the cause of action where reasonably possible. To that end, I have considered whether the allegations, together with any reasonable inferences that may properly be drawn from them, disclose the essential elements of a recognized claim in law. However, even affording the Applicant the most charitable interpretation of the Applicant’s statement of claim in an attempt to sustain the claim, I am unable to discern a legally cognizable cause of action from the papers. Accordingly, I find that the statement of claim does not contain the essential averments necessary to sustain a legally cognizable cause of action.
- [25] The Code of Good Practice on Prevention and Elimination of discrimination and harassment at the workplace defines harassment as unwanted conduct that is, *inter alia*, “*related to one or more of the grounds in respect of which discrimination is prohibited in terms of section 6(1) of the EEA.*” I agree with the Respondent’s counsel that the Applicant is caught in an inescapable logical bind and that in order to prove a contravention of the Code, the Applicant must first

¹⁵ (2020) 41 (ILJ) 1931 (LAC)

make the allegations necessary to sustain the claim of harassment, which the statement of claim does not do.

[26] As far as pleadings are concerned, I do not agree with the Respondent's interpretation of *La Foy v Department of Justice and Constitutional Development and Others*¹⁶ as far as the Respondent's claim that the complainant cannot simply make a bald allegation; they must plead and then prove each of the three elements listed in section 11 (2) of the EEA. I understand *La Foy* to simply say that a cause of action comprises the material facts which give rise to the legal right asserted. The essential facts (*the facta probanda*) must be pleaded, while the evidentiary material (*facta probantia*) need not be pleaded.

[27] Accordingly, the exception must be upheld in relation to the first, second and third grounds of exception.

[28] The usual consequence of a successful exception in this Court is the affording of an opportunity to amend if that is possible. Such an opportunity ought to be afforded to the Applicant¹⁷.

Costs

[29] In my view, it is appropriate that no cost order be made.

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

Order

1. Grounds 1, 2 and 3 of the Respondent's exception to the statement of claim is upheld.
2. Ground 4 of the Respondent's exception to the statement of claim is dismissed.

¹⁶ (2023) 44 ILJ 2731 (LC).

¹⁷ See *Naidoo supra*, at para 33.

3. The Applicant is granted leave to amend the statement of claim within ten (10) days of receipt of this order.
4. Should the Applicant fail to amend the statement of claim within the period stipulated above, the Respondent may apply for the dismissal of the claim.
5. The Respondent shall deliver its statement of defense within ten (10) days after receiving the amended statement of claim.
6. There is no order as to costs.

G. K. Phajane

Acting Judge of the Labour Court of South Africa

Appearances:

For The Applicant : Mr. Thakudi Motsapi

For The Respondent : Adv. T Mathopo

Instructed by : Mngandi Attorneys Inc.

LABOUR COURT