



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO: J2375/2019

In the matter between:

MONGALE, MOJALEFA WILLIAM

Plaintiff

and

MANGAUNG METROPOLITAN MUNICIPALITY

Defendant

Heard: 27 February 2026

Delivered: 22 April 2026

Headnote: *Special plea ~ failure to give notice in terms of Institution of Legal Proceedings Against Certain Organs of State Act*

JUDGMENT

DANIELS J

Introduction

- [1] Following his dismissal on 12 November 2012, and reinstatement on 1 August 2018, the plaintiff instituted a contractual claim for arrear remuneration from the defendant.
- [2] The defendant raised three special pleas, the first of which relates to the plaintiff's failure to give notice in terms of section 3(1)(a) of the Institution of Legal Proceedings Against Certain Organs of State Act No. 40 of 2002 as amended ("the ILPA"). This judgment deals only with the first special plea - the parties having agreed that the second and third special pleas can only be properly determined after evidence is presented.
- [3] It is common cause that no notice has been given by the plaintiff to the defendant in terms of the ILPA, nor has the defendant consented to the failure to give notice. Instead, the plaintiff submits that notice is only required in terms of ILPA when damages are sought and he does not seek damages.

Legal provisions

- [4] The defendant is an organ of state, which section 1(1) of the ILPA makes clear.
- [5] Section 1(1) defines "debt" as any debt arising from any cause of action:
- (a) which arises from delictual, contractual or any other liability, including a cause of action which relates to or arises from any-
 - (i) act performed under or in terms of any law; or
 - (ii) omission to do anything which should have been done under or in terms of any law; and
 - (b) for which an organ of state is liable for payment of damages, whether such debt became due before or after the fixed date,

- [6] Section 3(1)(a) of the ILPA states that no legal proceedings for the recovery of a debt may be instituted against an organ of state unless the creditor has given the organ of state notice in writing of his intention to institute legal proceedings or the organ of state has consented in writing to the failure to give notice. Notice must be given within six months from the date on which the debt became due.
- [7] Section 4(a) of the ILPA states that if an organ of state relies on a creditor's failure to serve a notice the creditor may apply to a court having jurisdiction for condonation of such failure.

Analysis

- [8] The plaintiff argues that it does not seek damages, but does not clarify why the backpay sought, for the alleged breach of contract, does not constitute damages. Presumably he believes that his claim relates to compensation.
- [9] It is trite that damages¹ cannot be equated with compensation contemplated by section 194 of the Labour Relations Act No. 66 of 1995.² Backpay itself is not compensation. Our courts have stated as much expressly. In *Republican Press (Pty) Ltd v CEPPWAWU and others*³ Nugent JA stated: “*I do not think that the back-pay to which a worker ordinarily becomes entitled when an order for reinstatement is made is to be equated with compensation.*”

[1] The nature of damages for breach of contract was stated by Innes CJ in *Victoria Falls & Transvaal Power Co Ltd v Consolidated Langlaagte Mines Ltd* 1915 AD 1 as: “The sufferer by such a breach should be placed in the position he would have occupied had the contract been performed, so far as that can be done by the payment of money, and without undue hardship to the defaulting party.”

[2] In *SA Airways (Pty) Ltd v Jansen van Vuuren & another* (2014) 35 ILJ 2774 (LAC), in relation to a discrimination claim brought under the Employment Equity Act No. 55 of 1998, the Labour Appeal Court distinguished between damages and compensation. At para [76] Coppins JA stated: “In my view, the only rational meaning that can be given to the terms is that ‘damages’ connotes a monetary award for patrimonial loss and ‘compensation’ connotes a monetary award for non-patrimonial loss (including a ‘solatium’).”

[3] 2008 (1) SA 404 (SCA) at para [19]

[10] Section 1(1) itself is clear that the ILPA applies where contractual damages are sought.

Conclusion

[11] As explained above, that claim for backpay constitutes damages is correct. The ILPA is clear that, where damages are claimed from an organ of state, arising from any cause of action, notice must be given to that organ of state unless it is prepared to consent to the failure to give notice. Here, no notice has been given to the defendant and no consent to the absence of such notice was given. Accordingly, the special plea must succeed. Although the defendant has been successful, costs do not follow the result.⁴ There being no reason in law and fairness to award costs, I make no order as to costs.

[12] In the result, I make the following order:

12.1 The special plea raised by the defendant is granted,

12.2 There is no order as to costs.

RN Daniels

Judge of the Labour Court of South Africa

For the plaintiff:

□

For the defendant:

⁴ See *Member of the Executive Council for Finance, KwaZulu-Natal & another v Dorkin NO & another* (2008) 29 ILJ 1707 (LAC) at para [19]

Adv Boda SC

Phatshoane Henney Inc