



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

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case No: D170/2020

In the matter between:

ZIBUYILE MANZI

Applicant

and

NEDBANK GROUP LIMITED

Respondent

Heard: 10 October and 3 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties and / or their legal representatives by email. The date and time for handing-down is deemed 12h00 on 4 May 2026.

JUDGMENT – APPLICATION FOR
LEAVE TO AMEND

ALLEN-YAMAN J

Introduction

- [1] Upon the trial in this matter and the cross-examination of the applicant having commenced on 16 April 2024, it became apparent that the applicant's pleaded case did not entirely accord with her own appreciation of the extent of her claim. The applicant's attorney, Mr Dunstan Farrell, indicated that there was a possible need to amend the applicant's Statement of Claim and the matter stood down, with Mr Farrell having been given leave to consult with the applicant on the issue.
- [2] The parties' representatives subsequently advised this court that they had agreed to adjourn the trial for the applicant to initiate amendment proceedings.
- [3] No further steps were taken by the applicant until 8 July 2025, on which date she delivered her Notice of Intention to Amend her Statement of Claim. Opposition to her proposed amendments led to her initiating the present application on 25 July 2025. Her application was likewise opposed, and the matter was enrolled for argument on 10 October 2025. This court required sight of the applicant's CCMA form 7.11 (the issue of conciliation having been the basis of one of the respondent's objections to the proposed amendment) and pursuant to the conclusion of the parties' main arguments, the application was adjourned to 3 November 2025 so as to enable them to address this court on any further aspects of the matter that they may have wished to do so in consideration of the CCMA form 7.11 which was then to be made available by the applicant.

Analysis

- [4] The applicant's claim was one brought in terms of ss6(1) and (4) of the Employment Equity Act, 1998, her contentions having being that the respondent discriminated against her on the basis of both her race and gender by having remunerated her at a substantially lower rate than that of both her white and male colleagues in circumstances in which they perform substantially the same work as one another. She asked for relief as follows,

- '54. *The Applicant's remuneration therefore be reviewed in line to that of her "white" and "male" colleagues at R852 779.00 (eight hundred and fifty-two thousand seven hundred and seventy-nine rand) per annum, equivalent to that of investigator 1, Mr Adriaan Van Rooyen, alternatively to be brought in line with the pay grade area for forensic investigator II D2 median / mid, being R701 350.00 (seven hundred and one thousand three hundred and fifty rand).*
55. *The Applicant be paid compensation and backpay calculated at the difference between the Applicant's current earnings at R478 404.00 and the revised amount of R852 779.00 for a 12 (twelve) month period for the year 2019 at R374 375.00, or alternatively backpay for a period of 12 (twelve) months for the year 2019 calculated from the difference in the revised amount of R701 350.00 in the amount of R222 946.00 (two hundred and twenty two thousand nine hundred and forty-six rand).'*

- [5] By way of her application for leave to amend, the applicant sought to effect numerous amendments to her Statement of Claim. Many of these proposed amendments constituted no more than the rephrasing or slight amplification of that which had already been pleaded in her existing Statement of Claim. For example, the amendment sought to be effected to paragraph 7 would change the word 'team', to the word, 'group', and in paragraph 15 the word, 'those' is sought to be substituted with the word, 'that'.
- [6] The most far reaching amendment sought to be effected, being that to which the respondent directed its objections, was that pertaining to the relief sought by her in these proceedings. In circumstances in which her claim had been curtailed to the period which commenced in the year 2019, by way of her proposed amendment she asked for an order that,

- '1. *The Applicant's remuneration therefore be reviewed and aligned to that of her "white" and "male" colleagues at R852 779.00 (eight hundred and fifty-two thousand seven hundred and seventy-nine rand) per annum or to the median at the date of judgment.*

2. *The Applicant be paid backpay calculated at the difference between the Applicant's earnings and the revised amount, from the period she commenced employment as a forensic investigator II to date.'*

[7] In her application for leave to amend the applicant asserted that the amendments sought were crucial to the proper ventilation of her case. Further, that the intended amendments did not seek to introduce a new cause of action, and nor that the respondent would be prejudiced thereby.

[8] The respondent took a different view, and raised a raft of objections to the proposed amendments. In summary, the respondent argued that:

- The issues sought to be introduced went beyond those which had been agreed to in the pre-trial minute, and sought to introduce a new cause of action in relation to her claim for backpay retrospective to 2011, which claim had previously been abandoned.
- The claim for backpay retrospective to 2011 had prescribed in terms of the Prescription Act, 1969.
- The claim for backpay and Short Term Incentives had never been referred to the CCMA for conciliation.
- The claim was one of horizontal and not vertical discrimination, and could accordingly not be adjudicated under the Employment Equity Act, 1998, which prohibits only horizontal discrimination.
- The applicant had conceded under cross-examination that she was unable to substantiate her allegations that she had been subject to discrimination in relation to her remuneration from the moment she had been employed by the respondent.
- The respondent would be prejudiced by being obliged to defend a claim relating to events of some 16 years prior, in that records and witnesses are no longer available or reliable.
- The delay between April 2024, when the trial was adjourned to enable the applicant to make the present application, and July 2025, when the application was finally brought, was prejudicial to the respondent.
- The amended claim is bad in law in that it ignored differences in performance ratings, and failed to address the alternative explanations for the differences in remuneration.

- [9] The overriding principle relating to amendments to pleadings was articulated in Moolman v Estate Moolman 1927 CPD 27 at 29,
‘... the practical rule adopted seems to be that amendments will always be allowed unless the application to amend is mala fide or unless such amendment would cause an injustice to the other side which cannot be compensated by costs, in other words, unless the parties cannot be put back for the purposes of justice in the same position as they were when the pleadings which it is sought to amend were filed.’
- [10] As against this, and the other specific principles applicable to amendments, the respondents various objections to the proposed amendments will be considered.
- [11] Certain of the respondent’s objections cannot be upheld. It’s objections that the applicant’s claim for backpay and Short Term Incentives had not been referred to the CCMA for conciliation; her claim related to vertical and not horizontal discrimination; and her claim ignored the explanations provided for the differences in remuneration are not issues which would operate as a bar to the amendments *per se* (and were not expressed as objections in relation to any specific amendment), but are issues relating to jurisdiction and the merits of her claim, to be resolved in the course of the trial if necessary.
- [12] The first of the respondents’ competent objections relates to what it contends constitutes a new cause of action, one which had previously been abandoned and, which event, had prescribed. In response, the applicant argued that her cause of action remains unaltered, it has only been expanded in its scope.
- [13] The proposed amendment constitutes the second intended amendment to the applicant’s Statement of Claim. In her original Statement of Claim dated 5 May 2020 the applicant claimed,

‘54. *The Applicant’s remuneration be reviewed and aligned to that of her “white” and “male” colleagues at R852 779.00 (eight hundred and fifty two thousand*

seven hundred and seventy nine rand) per annum or median at R701 350.00 (seven hundred and one thousand three hundred and fifty rand) per annum.

55. *The Applicant be paid backpay calculated at the difference between the Applicant's earnings and the revised amount, for the period that she commenced employment as a forensic investigator to date.'*

[14] The respondent raised a number of preliminary points in its initial response to her first Statement of Claim, one of which related to the issue of the backpay portion thereof,

- '13. *Respondent avers that Applicant is not entitled to relief sought as set out in terms of paragraph 55 of her Statement of Claim.*
14. *In terms of paragraph 55, Applicant seeks –*
To be paid backpay calculated at the difference between the Applicant's earnings and the revised amount, for the period that she commenced employment as a forensic investigator to date.
15. *The Applicant commenced her employment as a forensic investigator on 17 December 2011. Therefore, the backpay sought amounts to a total of 101 months as at the date that Applicant instituted her claim to this Honourable Court.*
16. *The Applicant's relief is vague and embarrassing. The Applicant is invited to amend her statement of claim.*
17. *The Applicant avers facts in her statement of claim for the period 2018 – 2019. It is unclear on what basis she claims relief for the period from the commencement of her employment in August 2011.*
18. *In amplification of paragraph 17 above, the Applicant has failed to indicate for each period for which she seeks backpay –*
- 18.1 *who the comparator/s is; and*
- 18.2 *what the comparator/s remuneration was.*
19. *This Honourable Court is unable to fairly determine the Applicant's relief in respect of backpay without the information set out in paragraph 18 above.'*

[15] The applicant did not then amplify her claim so as to remove the cause of the objection that, as formulated, it was vague and embarrassing; she amended it so as to limit the backpay portion thereof to the year 2019.

[16] It is difficult to appreciate the effect of her first amendment to be anything other than the express abandonment of that part of her claim for backpay preceding 2019. The applicant did not deal with this aspect of the respondent's objection in her response to its assertions that the extraneous portion had been abandoned. Instead, she simply denied 'the contents' of the paragraph in question and asserted that,

'The proposed amendments serve to clarify the factual and legal basis upon which the relief is sought, ensuring that the pleadings accurately reflect the issues for adjudication.'

[17] The further impediment to the proposed amendment to the relief sought by the applicant relates to the fact that to allow the amendment would be to allow (i) the introduction of a new cause of action, (ii) which, as was the case with her initial Statement of Claim, is unsupported by any pleaded facts which could give rise to the granting of the relief sought, and (iii) which has potentially prescribed.

[18] As previously stated, the applicant's claim is one founded on ss6(1) and (4) of the Employment Equity Act, 1998,

'(1) 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, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth, or on any other arbitrary ground.

...

(4) A difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in subsection (1) is unfair discrimination.'

[19] Her claim, as present framed, was founded upon her dissatisfaction with the differentiation between her terms and conditions of employment and others

performing what she asserts is the same or substantially similar work as herself in 2019. In particular, her complaint concerns the differentiation in the respondent's remuneration structure as it applied to the members of its forensic investigation team in 2019, and not before then. No interpretation of her presently formulated Statement of Claim gives rise to any claim (whether on the basis of discrimination or otherwise) preceding the year 2019. Conversely put, her allegations that she was discriminated against in 2019 and has continued to be discriminated against thereafter cannot, without more, give rise to a claim for payment on the basis of some historical discrimination which occurred prior thereto.

[20] As the information which led to her claim was discovered by her in 2019, it is entirely possible that any claim made by her in 2025 for retroactive backpay would by now have prescribed. It is, however, unnecessary to make any finding on the point, for the reason that the amended claim, as a new cause of action, is wholly unsupported by any pleaded allegations which could notionally have sustained the claim. As with the applicant's first Statement of Claim, even if the applicant were to prove every aspect of her pleaded claim (in its amended form) by the conclusion of the trial, she would nonetheless not be entitled to judgment in her favour in relation to any portion of her claim for backpay which preceded 2019.

[21] The final impediment to the proposed amendment to the relief sought by the applicant is that of prejudice. The respondent took issue with the time taken by the applicant to have initiated her application, since having been given leave to do so in April 2024. Whilst the respondent alleged that such delay was prejudicial to it, it did not articulate any specific basis upon which it claimed to have been prejudiced by the delay. This was not, however, the case in relation to the prejudice it asserted it would sustain as a result of being obliged to defend a claim relating to events originating some sixteen years in the past, given that its records and witnesses from that time were neither available nor reliable. The applicant's response did not address this issue, save to suggest that the respondent's concerns were speculative, and could, if need be, be ameliorated by a request for further particulars or an adjournment. It was not

explained how either a request for further particulars or an adjournment would cure the problems created by the erosion of evidence caused by the effluxion of time. Moreover, the respondent's assertions in relation to its documents were not speculative: it stated unequivocally that its records are retained for seven years. It is also not unreasonable to accept that the evidence of any potential witness called to testify in relation to salary differences within the respondent's business after a period of sixteen years, without the benefit of documentation, is unlikely to be accurate.

[22] The prejudice which the respondent would sustain in the event that it was required to answer a claim originating in 2011 in circumstances in which it no longer has documentary evidence or reliable witnesses constitutes the type of prejudice which cannot be cured by an order as to costs, or as suggested by the applicant, a request for further particulars or an adjournment. Such prejudice is the type envisaged in Moolman, operating as a bar to the proposed amendment relating to backpay.

[23] In consideration of the proposed amendments, there is no impediment to the proposed amendments being effected to those aspects of her claim insofar as they relate and the app only to minor corrections or changes, seemingly effected to do no more than to articulate the applicant's claim in the clearest possible terms. The applicant will accordingly be granted leave to amend her claim insofar as these amendments are concerned. To the extent that the proposed amendments seek to introduce a cause of action relating to a claim for backpay prior to 2019, leave will be refused for the reasons set out above.

[24] It may be mentioned that the applicant's notice of intention to amend contains several errors in relation to numbering and, on the face of it, seeks to amend existing paragraph 24 no less than six times. This court considered the substantive paragraphs in question and identified the correct numbering in relation to the existing statement of claim, and it is the numbering of the existing statement of claim as identified by this court which will be referred to in the order which follows.

Costs

[25] Both parties have been partially successful and there is accordingly no reason for this court to depart from the usual principle that each party bear its own costs.

Order

1. The applicant is granted leave to amend the following paragraphs in her Statement of Claim in accordance with her Notice of Intention to Amend dated 4 July 2025: 3; 6 7; 8; 10; 12; 13; 14; 15; 17; 18; 23; 24; 25; 26; 27; 30; 38; 39; 40; 42; 44; 45; and 46.
2. Leave to amend paragraphs 16 and 41 of her Statement of Claim is refused.
3. The applicant is granted leave to amend paragraph 54 of her Statement of Claim by the substitution therefor of the relief sought in paragraph 31(1) of her Notice of Intention to Amend dated 4 July 2025.
4. Leave to amend paragraph 54 of her Statement of Claim by the substitution of the further relief sought in paragraph 31(2) of her Notice of Intention to Amend dated 4 July 2025 is refused.
5. There is no order as to costs.

K. ALLEN-YAMAN J

Judge of the Labour Court of South Africa

Appearances

Applicant:

Mr D Farrell, Farrell Inc Attorneys

Respondent:

Mr F A Boda SC, instructed by Cliff Dekker Hofmeyr

Mr T Maruapula, Cliff Dekker Hofmeyr

LABOUR COURT