



(1) Reportable: YES
(2) Of interest to other Judges: YES

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: 11 May 2026

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

JUDGMENT

DANIELS J

Introduction

- [1] Following his dismissal on 12 November 2012 and reinstatement on 1 August 2018, the plaintiff instituted a contractual claim against the defendant for arrears of remuneration.
- [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").
- [3] This judgment concerns only the first special plea, as the parties have agreed that the second and third special pleas can only be properly determined after evidence is presented.

Non-appearance of the plaintiff

- [4] The plaintiff's attorney, despite having been sent the notice of set down, failed to appear. Prior to the hearing, the defendant delivered a request for the enrolment of its first special plea and its heads of argument. This alone should have alerted the plaintiff to the matter being enrolled.
- [5] The Rules do not explicitly address instances in which the plaintiff fails to attend court to argue a special plea, separately enrolled prior to trial. However, Rule 71 of the Rules of this Court, together with Rule 39(3) of the Uniform Rules of Court, provides guidance. Rule 71 provides that where a situation arises for which the Rules do not provide, the court may adopt any procedure it deems appropriate and expedient in the circumstances to achieve the objects of the LRA. Rule 39(3) states that, when a trial is called, and the defendant is present, but the plaintiff is absent, the defendant is

entitled to an order granting absolution from the instance, but it may also lead evidence and seek final judgment. It is necessary to take all the circumstances into consideration. First, there is no reason to believe that the plaintiff was unaware of the hearing and unable to attend. Second, the dispute was referred to this court on or about 30 January 2020, and the plaintiff seeks relief regarding the period from 2012 until 2017. Thus, the dispute relates to events going back more than ten years. Third, one of the primary objects of the Labour Relations Act No. 66 of 1995 is the expeditious resolution of employment disputes. Fourth, the plaintiff can suffer no real prejudice given that it has replied to the special plea, and its arguments are before the court. Fifth, in respect of a special plea raised by the defendant, the plaintiff's position is more aligned with that of the defendant, on the merits.

- [6] In addition, in *PFE International and others v Industrial Development Corporation of South Africa Ltd*¹ the Constitutional Court held as follows:

“[30] Since the rules are made for courts to facilitate the adjudication of cases, the superior courts enjoy the power to regulate their processes, taking into account the interests of justice. It is this power that makes every superior court the master of its own process. It enables a superior court to lay down a process to be followed in particular cases, even if that process deviates from what its rules prescribe. Consistent with that power, this court may in the interests of justice depart from its own rules.”

(own emphasis)

- [7] Bearing this in mind, in the exercise of my discretion, having also considered the prejudice to the defendant, the effect on the administration of justice, and the absence of any prejudice to the plaintiff, it is in the interests of justice to decide the first special plea in the absence of the plaintiff.

Special plea and analysis

¹ 2013 (1) SA 1 (CC)

[8] 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 the ILPA when damages are sought and he does not seek damages.

[9] The defendant argues that the claim is incompetent because the plaintiff failed to comply with section 3 of the ILPA. That the defendant is an organ of state is clear from section 1(1) of the ILPA.

[10] The following provisions of the ILPA are relevant:

10.1 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,

10.2 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 of the date the debt became due.

10.3 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. The plaintiff has not sought condonation.

[11] In response, the plaintiff submits that it does not seek damages but fails to explain why backpay sought for the alleged breach of contract does not

constitute damages. Presumably, it believes that the claim relates to compensation. This submission is without merit. Back pay cannot be equated with compensation. Our courts have held as much.² And contractual damages³ cannot be equated with compensation contemplated by section 194 of the Labour Relations Act No. 66 of 1995.⁴

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

[13] In summary, 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.

Conclusion

² *Equity Aviation Services (Pty) Ltd v CCMA & others* (2008) 29 ILJ 2507 (CC) at para [40]

[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] Coppin 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’).”

[14] Although the defendant has been successful, costs do not follow the result.⁵ There being no reason in law and fairness to award costs, I make no order as to costs.

⁵ See *Member of the Executive Council for Finance, KwaZulu-Natal & another v Dorkin NO & another* (2008) 29 ILJ 1707 (LAC) at para [19]

[15] In conclusion, I make the following order:

15.1 The special plea raised by the defendant is upheld,

15.2 There is no order as to costs.

RN Daniels

Judge of the Labour Court of South Africa

For the plaintiff:

No appearance

For the defendant:

Adv Boda SC

Phatshoane Henney Inc