



(1) Reportable: Yes/No
(2) Of interest to other Judges: Yes/No
(3) Revised: N/A

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No. JS755/22

In the matter between:

TANDIWE MASANGO

Plaintiff

and

ROAD TRAFFIC MANAGEMENT CORPORATION

Defendant

Heard: 7 – 8 May 2026

Delivered: 18 May 2026

JUDGMENT

MAKHURA, J

[1] The plaintiff brought these proceedings in terms of section 6(1) of the Employment Equity Act¹ (EEA) alleging that the Road Traffic Management Corporation (RTMC), the defendant, had unfairly discriminated against her on arbitrary grounds. The matter was set down for trial on 7 and 8 May 2026.

¹ Act 55 of 1998.

[2] The plaintiff testified on 7 May 2026 and concluded her evidence on 8 May 2026, after which she closed her case. The defendant then applied for absolution from the instance. The question that arises, therefore, is whether the plaintiff has met the low threshold required at the close of her case, namely, whether there is evidence upon which a Court, applying its mind reasonably to such evidence, could or might find in her favour. This approach was set out in *Gordon Lloyd Page & Associates v Rivera & another*² as follows:

‘The test for absolution to be applied by a trial court at the end of a plaintiff’s case was formulated in *Claude Neon Lights (SA) Ltd v Daniel* 1976 (4) SA 403 (A) at 409 G-H in these terms:

“... (W)hen absolution from the instance is sought at the close of plaintiff’s case, the test to be applied is not whether the evidence led by plaintiff establishes what would finally be required to be established, but whether there is evidence upon which a Court, applying its mind reasonably to such evidence, could or might (not should, nor ought to) find for the plaintiff. (*Gascoyne v Paul and Hunter* 1917 TPD at 173; *Ruto Flour Mills (Pty) Ltd v Adelson* (2) 1958 (4) SA 307 (T)).”

This implies that a plaintiff has to make out a *prima facie* case - in the sense that there is evidence relating to all the elements of the claim - to survive absolution because without such evidence no Court could find for the plaintiff (*Marine & Trade Insurance Co Ltd v Van de Schyff* 1972 (1) SA 26 (A) at 37G-38A; *Schmidt Bewysreg* 4th ed at 91-2). ... The test has from time to time been formulated in different terms, especially it has been said that the Court must consider whether there is “evidence upon which a reasonable man might find for the plaintiff” (*Gascoyne* (loc cit)) — a test which had its origin in jury trials when the “reasonable man” was a reasonable member of the jury (*Ruto Flour Mills*). Such a formulation tends to cloud the issue. The Court ought not to be concerned with what someone else might think; it should rather be concerned with its own judgment and not that of another “reasonable” person or Court. Having said this, absolution at the end of a plaintiff’s case, in the ordinary course of events, will

² *Gordon Lloyd Page & Associates v Rivera and another* 2001 (1) SA 88 (SCA) at para 2, quoting the test as formulated in *Claude Neon Lights (SA) Ltd v Daniel* 1976 (4) SA 403 (A) at 409G – H.

nevertheless be granted sparingly, but when the occasion arises, a Court should order it in the interest of justice.' (Emphasis added)

- [3] The Court must first decide whether the plaintiff has, on the face of the evidence presented, established a *prima facie* case covering all the elements of the claim. If she has, absolution must be refused. If she has not, the Court must then consider whether it is in the interest of justice to end the litigation at that stage or to continue regardless and require the defendant to present evidence. Ultimately, the Court exercises a discretion to grant or refuse absolution. Although the discretion should be exercised cautiously, when the occasion arises, and justice so demands, absolution should be granted.³
- [4] Section 6(1) of the EEA, which this claim is based on, 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, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or on any other arbitrary ground.'
- [5] The plaintiff was employed as a Personal Assistant (PA) from 1 September 2016. Around 2019, she was asked to assist in the Training and Development subdivision of the Transformation Unit. It is common cause that the defendant restructured its organisation in about 2020. From her evidence, the plaintiff anticipated that she would be moved to a different unit with different responsibilities (from her substantive PA position) rather than remaining in her PA role. This, however, did not materialise.
- [6] In November 2020, she was asked to resume her duties as a PA to Zoe Mobeng, Executive Manager: Corporate Services. Although she initially resisted, she eventually agreed after being assured by Mobeng that the arrangement would be temporary. She was dissatisfied with performing PA duties due to the lack of

³ See also *Carmichele v Minister of Safety and Security and Another (Centre for Applied Legal Studies Intervening)* 2001 (4) SA 938 (CC) at para 79.

growth and/or career advancement. From March 2021, she worked in the unit with the assistance of Brian Chabangu until August 2021, when Chabangu was transferred to another unit. She subsequently continued to work alone.

[7] On 20 December 2021, the plaintiff scheduled an online meeting for 21 December 2021. Because the meeting was scheduled for 9h30 to 15h00, she asked Mobeng if she could work from home. Mobeng indicated that the meeting would last for about an hour and that she could take a day off, which she did. Chabangu was to stand in for her. Later, Mobeng sent an email to the plaintiff, copying, amongst others, Chabangu, expressing concerns that Chabangu had to stand in for the plaintiff and that Chabangu had no replacement while working during his own leave, which she considered unfair. The plaintiff apologised for the misunderstanding, and Mobeng indicated an expectation of improvement in the new year

[8] The plaintiff responded as follows on the same day:

‘Please note that in the new year, I will request to be deployed to other unit even if it’s Training and Development where I worked for two years then restructuring took me back to a PA position...’

[9] Mobeng acknowledged the plaintiff’s request and undertook to explore possible placement options with human resources and other units.

[10] On 21 December 2021, Mobeng informed the plaintiff by email that she would be transferred to the Secretariat Unit with effect from 15 January 2021. However, the plaintiff objected to the transfer to the Secretariat Unit, citing her health condition as the reason. When asked to explain what difficulty she had with the Secretariat Unit, which, according to Mobeng, was not “*heavy duty based*” and was “*one of the calmest in the corporation*”, the plaintiff maintained that it was because of her health condition and that she had “*no problem with all other units ... except for Secretariat*”. When pressed further, the plaintiff said:

‘There is nothing wrong with the unit, I have health conditions that can make me unproductive [and] ineffective in the unit.’

- [11] To support her claim, the plaintiff relied on a general medical practitioner’s report dated 10 January 2022, a psychiatrist’s report dated 16 May 2022, and an occupational therapist’s report dated 7 June 2022. These reports were admitted into evidence by agreement between the parties. The general practitioner’s report stated:

‘Thank you for attending the above-mentioned patient who is known to my practice with three chronic medical conditions.

Her condition is worsening even under medication, we therefore highly recommend that her work pressure be eased to assist with management of her illness.’

- [12] The psychiatrist’s report recorded that the plaintiff was:

‘last evaluated in April 2022, and is still exhibiting residual depressive symptoms with impaired concentration. This despite being on a chronic medication ...

I hereby humbly request that the employer consider her previous position where she coped very well as a suitable alternative for her placement.’

- [13] The occupational therapist reported that the plaintiff presented with fair insight and judgment. The plaintiff confirmed that she informed the occupational therapist, who recorded in her report that she had *“been part of the skills and training department fulfilling duties of a facilitator and trainer”* and that:

‘she has been challenged by how despite her negotiation and requests with her manager she has not been given the opportunity to work within the department / area she knows she would better strive in. Contrary she has felt that her requests have been met with hostility from her supervisor with little to no empathy and understanding of how is suffering. In light of the challenges with her health status as well as the hostile environment at work she finds that she is unable to perform as per requirement...’

[14] Under conclusions and recommendations, the occupational therapist wrote:

'In view of the pre-morbid level functionality Mrs Masango presents on this assessment with fair functional capacity to engage currently in full time employment:

- With a decreased workload within her current administrative position.'

[15] The plaintiff was not transferred on 15 January 2022 as initially indicated. She was only transferred to the Secretariat Unit on 1 April 2022. She lodged a grievance on 11 April 2022 (dated 5 April 2022). She complained that she was transferred to the Secretariat Unit "*by force*" or against her will despite her request not to be transferred to that unit because of her health condition, and that "*minute taking*" was her weak point, which would make her ineffective and unproductive.

[16] She later referred an unfair discrimination dispute to the CCMA for conciliation, which was unresolved, hence these proceedings. She claimed that the defendant moved her to the Secretariat Unit without her consent, failed to act on the recommendation from the occupational therapist that she be transferred from the Secretariat Unit due to her mental health, and that the Secretariat Unit had "*extensive duties of minute taking during meetings*" in comparison to her original unit.

[17] The plaintiff further claimed that due to her medical condition and mental state, she was incapable of performing the duties of minute-taking. She had "*requested to be moved back to her old unit or any unit that does not require of her to take meeting minutes*" but the defendant "*discriminated against [her] arbitrarily and failed and or refuse to move [her]*" and that despite her providing "*medical certificates and letters/reports confirming that she should have a reduction of her duties ... due to her health*", the defendant "*arbitrarily discriminated against [her]*" by failing or refusing to move her without any reasonable explanation.

- [18] The Labour Appeal Court in *Association of Mineworkers & Construction Union on behalf of Members v Aberdare Cables (Pty) Ltd & others*⁴ (*Aberdare Cables*) revisited the test for unfair discrimination. Relying on its earlier decision in *Naidoo & others v Parliament of the Republic of SA*⁵ (*Naidoo*), the LAC affirmed that:

‘... the narrow interpretation of an ‘arbitrary ground’ is correct, and that a claimant seeking to establish discrimination on that basis must necessarily identify an arbitrary ground of discrimination, as opposed to making a general allegation of mere arbitrariness or capriciousness. The Court said the following about section 6(1):

‘The injunction in s 6(1) is to outlaw, not “arbitrariness”, but rather to outlaw unfair discrimination that is rooted in “another” arbitrary ground (the syntax of “any other...” cannot be understood as otherwise than looking back at what has been stipulated in the text that precedes it). Capriciousness, by definition, is bereft of a rationale, but unfair discrimination on a “ground” must have a rationale, albeit one that is proscribed. The glue that holds the listed grounds together is the *grundnorm* of Human Dignity...’.⁶

- [19] The LAC in *Naidoo* endorsed the following passage in the judgment of Prinsloo J in *Ndudula & others v Metrorail - Prasa (Western Cape)*:⁷

‘The crux of the test for unfair discrimination 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 as is evident from the quotation from *Harksen*. 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 in a similar serious consequence*.’⁸

⁴ [2025] ZALAC 26; [2025] 7 BLLR 698 (LAC).

⁵ [2020] 10 BLLR 1009 (LAC); (2020) 41 ILJ 1931 (LAC).

⁶ *Aberdare Cables* at para 18.

⁷ [2017] 7 BLLR 706 (LC); (2017) 38 ILJ 2565 (LC).

⁸ *Ibid* at para 73.

- [20] In her statement of claim, the plaintiff did not identify the specific arbitrary ground of discrimination on which she relied. Instead, she grounded her claim on a mere mention of the concept of an *arbitrary ground* and an alleged unreasonable explanation for the transfer or refusal to transfer her to a different unit than the Secretariat. The statement of claim, as it stands, was susceptible to an exception.⁹
- [21] The pre-trial and supplementary pre-trial minutes did not remedy the deficiency. Indeed, when the foundation of the plaintiff's claim was faulty, it is not expected that the pre-trial minutes could fix it. In the supplementary pre-trial, the plaintiff stated that she relied on "*direct discrimination*", adding confusion to the claim.
- [22] At the commencement of the proceedings, the Court asked the plaintiff's legal representative, Mr Grove, to clarify what conduct constituted the alleged discrimination. Mr Grove responded that the discriminatory act is based on the defendant's decision to transfer the plaintiff to the Secretariat Unit, which involved greater responsibilities, and in its failure to transfer her to a different unit with lesser responsibilities despite its knowledge of the plaintiff's health condition. Mr Grove referred to the statement of claim, where the plaintiff asserted that she had informed the defendant that, due to her medical condition and mental state, she would not be able to cope with the minute-taking duties required in the Secretariat Unit, and relied on this as the basis for the discrimination claim.
- [23] The plaintiff's evidence was that the alleged act of unfair discrimination consisted of her transfer to the Secretariat Unit despite having disclosed her health condition and being compelled to perform duties there notwithstanding those concerns. She identified the relevant conduct as occurring on 1 April 2022, when the transfer took effect. Fundamentally, the plaintiff conceded that when the transfer decision was communicated on 21 December 2021, Mobeng was unaware of her alleged health condition. The plaintiff nevertheless suggested that

⁹ Although the rules of this Court did not contain a specific rule dealing with exceptions at the time, litigants and this Court borrowed from the Uniform Rules of Court to deal with exceptions. Exceptions are now governed by Rule 14 of the Rules Regulating the Conduct of the Proceedings of the Labour Court, GG 50608, 3 May 2024.

the defendant ought to have known of her condition because over three years prior in 2018, she had been hospitalised for approximately 27 days.

- [24] During arguments opposing absolution, Mr Grove argued that the discrimination was on an arbitrary ground akin to *ill-health*. He further submitted that *ill-health* constituted a listed ground of discrimination. When pressed by the Court to identify where the EEA recognises ill-health as a listed ground, Mr Grove submitted, in the alternative, that if ill-health is not a listed ground, the plaintiff's health condition should be regarded as analogous to disability. Mr Grove ultimately submitted that the plaintiff's case is based on an arbitrary ground of health condition analogous to disability.
- [25] It is evident from this that the plaintiff failed to clearly define the specific ground of discrimination on which she relied. The statement of claim relied on an arbitrary ground, yet the supplementary pre-trial minute characterised the claim as one of direct discrimination. The plaintiff's legal representative struggled to consistently identify the alleged ground, initially claiming ill-health was listed and later describing the health condition as analogous to disability.
- [26] There was, however, no evidence indicating that the plaintiff was incapable of performing the duties required in the Secretariat Unit. Her complaint, as reflected in both her pleadings and testimony, was primarily that the role involved frequent meetings requiring minute-taking. She had not raised issues regarding workload with the defendant, nor had there been any criticism of her performance. Her dissatisfaction also stemmed from remaining in a PA role, which she regarded as offering limited prospects for growth and/or advancement.
- [27] The defendant was not aware of her health condition when the decision was made to transfer her to the Secretariat Unit. In any event, there were no medical reports, either before 21 December 2021 or after, that suggested that she could not take minutes, nor were there any reports that suggested that she should be transferred from the Secretariat Unit, contrary to her pleaded case. On her own evidence, the plaintiff simply did not want to work as a PA.

[28] Having considered the statement of claim, pre-trial minutes, the plaintiff's evidence and her legal representative's arguments, the conclusion that the claim lacked a foundation from the outset is inevitable. The plaintiff's evidence failed to establish even a basic case of differential treatment, let alone discrimination. The arguments advanced on her behalf were inconsistent and eventually rested on a case of disability, which is not supported by the statement of claim and the plaintiff's evidence. In these circumstances, requiring the defendant to present evidence would not serve the interests of justice, as there was no evidence upon which the Court could reasonably find in favour of the plaintiff. Accordingly, the defendant is absolved from further proceedings at this stage.

[29] In the premises, the following order is made:

Order

1. The defendant is granted absolution from the instance.
2. There is no order as to costs.

M. Makhura

Judge of the Labour Court of South Africa

Appearances:

For the Plaintiff: Mr C.G. Grove

c/o CGG Incorporated

For the Defendant: Mr N. Matidza

Instructed by: Tlhatlha Attorneys

LABOUR COURT