IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

JUDGMENT

Reportable/Not Reportable

Case No**: 2025-036611**

In the matter between:

ASAVELA NKAMISA Plaintiff

and

ALLAN GRAY (PTY) LTD Defendant

Neutral citation: *Asavela Nkamisa v Allan Gray (Pty) Ltd* (Case no 2025-036611) [2026] ZAWCHC (05 June 2026)

Heard: 23 April 2026

Delivered: 11 June 2026

Summary: Exception – Misjoinder and non-joinder – Alleged entitlement to R500 000 gratitude gift following termination of fixed-term employment – Annexure relied upon not binding defendant – Particulars of claim failing to disclose contractual cause of action – Exception upheld on all grounds – Plaintiff ordered to pay costs, including costs of counsel on Scale C.

ORDER

---

1. The exception is upheld on all three grounds;
2. The Plaintiff is ordered to pay the costs of the exception, including the costs of counsel on scale C.

JUDGMENT

ADAMS AJ

Introduction and background

[1] This is an exception application brought by the Defendant, Allan Gray, pursuant to a claim instituted by the Plaintiff, a former employee, wherein she claims payment of R500 000 from the Defendant as a gratitude gift.

[2] The exception is raised on three grounds, namely: (a) misjoinder and non-joinder; (b) that annexure 'POC2'[1] does not bind the Defendant; and (c) that the Particulars of Claim do not disclose a contractual cause of action. The Defendant further raises, in substance, a jurisdictional complaint premised on the Labour Relations Act 66 of 1995 (the LRA), contending that the dispute, properly characterised, falls within the exclusive competence or primary jurisdiction of the Labour Court.

[3] The relevant factual matrix, distilled for purposes of the exception application, is as follows. The Plaintiff was employed by the Defendant under a fixed-term employment contract which terminated on 31 January 2025. The dispute centres around a payment of R500,000 referred to as a "gratitude gift." The Plaintiff contends that she became entitled to this payment following the termination of her employment. This gratitude gift was due for payment in early February 2025, after the Plaintiff's fixed-term contract expired on 31 January 2025.

[4] The Plaintiff's claim is founded primarily on a document annexed as 'POC2', which records a communication originating from Gill Gray, a founding member of the

[1] POC2 is a communication sent by Gill Gray, a founding member of the defendant, wherein she undertakes to pay a gratuity gift to certain employees who meet the stipulated criteria

defendant, describing a discretionary gift (the gratitude gift) intended for certain employees. The Plaintiff contends that eligibility criteria were circulated by or through the Defendant, requiring employees to be in employment on 8 December 2024 and not serving notice of resignation at the time of payment. The Plaintiff alleges that she satisfied these criteria but was excluded from payment.

[5] The Plaintiff further pleads that, on 19 December 2024, the Defendant circulated an email to allegedly eligible employees relating to the gratitude gift. The Plaintiff contends that the Defendant thereafter engaged in communications concerning eligibility criteria and implementation of the gift.

[6] The Plaintiff relies further on correspondence annexed as 'POC3' to 'POC8', including exchanges between the Plaintiff and representatives of the Defendant, in which the Plaintiff queried her exclusion from payment and the Defendant responded that she did not meet the applicable eligibility criteria.

[7] The plaintiff opposed the defendant's application. In resisting the exception application, the Plaintiff characterises her claim as 'multi-layered', relying on contractual terms (express, tacit, and implied), statutory employment protections under the LRA and the Employment Equity Act 55 of 1998 (the EEA), and alleged unfair labour practice and discrimination claims. The Defendant disputes this characterisation and contends that it represents an impermissible re-engineering of a fundamentally defective cause of action. The Defendant contends further that the exception fails only if any one of the pleaded interpretations reasonably sustains a cause of action.

Plaintiff's case as pleaded

[8] The Plaintiff pleads that her employment relationship with the Defendant carried with it obligations of fairness, equal treatment, and proper application of policies, whether express or implied. These obligations are said to arise both contractually, and statutorily by operation of the LRA and the EEA.

[9] She further pleads that Gill Gray arranged a 'gratitude gift' for employees and that the Defendant circulated eligibility criteria governing the entitlement thereof. She alleges that she met such criteria but was wrongfully excluded.

[10] The Plaintiff accordingly avers that this conduct gives rise to liability on the basis of non-compliance with tacit and implied contractual terms, unfair labour practices within the meaning of section 186(2)(a) of the LRA, unfair discrimination in terms of section 6 of the EEA, and contravening statutory labour protections afforded under section 5 of the LRA.

[11] The Plaintiff alleges that the Defendant made a 'clear and unambiguous promise' to pay the gratitude gift. She further pleads what are described as 'overlapping breaches', relying on:

[11.1] alleged express terms of the gratitude gift;

[11.2] tacit terms of the employment contract;

[11.3] implied obligations derived from labour legislation;

[11.4] unfair labour practice protections under the LRA; and

[11.5] protections against unfair discrimination and victimisation under the EEA and LRA.

Defendant's grounds of exception as pleaded

Misjoinder and non-joinder

[12] The Defendant contends that, properly construed, the alleged promise in respect of the gift emanated from Gill Gray personally and not from the Defendant. On this basis, it is argued that the Defendant was mis-joined and Gill Gray, alternatively her estate, has a direct and substantial interest in the relief sought. Accordingly, Gill Gray bears direct liability and should have been joined as a necessary party.

[13] In addition, the Defendant argues that any alleged non-joinder of Gill Gray or her estate cannot be cured without fundamentally altering the pleaded cause of action, whereas misjoinder of the Defendant is fatal to the claim as presently formulated.

Annexure 'POC2' does not bind the Defendant

[14] The Defendant contends that annexure 'POC2', properly interpreted, reflects a personal gesture of gratitude by Gill Gray and not a binding undertaking by the Defendant. Thus, on the Plaintiff's own version, Gill Gray is the true promisor and therefore bears direct liability. In this regard, reliance was placed on repeated references in the document to 'my journey', 'my deep appreciation', 'I have arranged a gift', and 'from me to each of you'. Since the Plaintiff does not allege that there is any agency, cession, *stipulatio alteri*, or contractual adoption by the Defendant, there is no pleaded basis for holding the Defendant liable for a promise it did not make, authorise, adopt, assume, or ratify.

[15] The Defendant further contends that any of its alleged involvement in communicating or administering eligibility criteria does not amount to legal assumption of liability, and that the Plaintiff impermissibly seeks to elevate its administrative involvement in the eligibility criteria into a binding contractual obligation. The Defendant submits that nowhere in the pleadings or annexures does it appear that Allan Gray exercised any discretion concerning the gift or undertook payment thereof from its own funds.

No contractual cause of action / jurisdictional defect

[16] The Defendant's third exception is directed at the absence of a valid contractual foundation for the claim. The Defendant argues that the Plaintiff fails to establish any contractual entitlement to payment of the R500,000. The employment contract contains a non-variation clause, and no valid amendment or separate enforceable agreement obliging payment of the R500,000 is pleaded. Thus, so the Defendant's further contention goes, the Plaintiff's reliance on tacit or implied terms

is an attempt to circumvent the express contractual framework, and no pleaded facts support the existence of a legally enforceable contractual obligation.

[17] It is further contended that the Plaintiff's reliance on statutory labour protections cannot cure the absence of a contractual cause of action in the high court. Rather, it confirms that the true nature of the dispute is an unfair labour practice concerning a 'benefit' under section 186(2)*(a)* of the LRA, which falls within the jurisdiction of the Labour Court or the Commission for Conciliation, Mediation and Arbitration (CCMA).

The relevant legal principles

[18] Uniform rule 23(1) (rule 23(1)) permits a litigant to except to a pleading on the basis that it is vague and embarrassing, or alternatively, that it lacks averments necessary to sustain a cause of action or a defence, as the case may be.[2] The rule is directed at pleadings which are so deficient that they do not disclose, even on a broad and benevolent reading, a legally cognisable claim or defence. The function of the rule is not to facilitate a factual enquiry or to resolve disputes on evidence, but rather to test the legal sufficiency of the pleaded case at its formative stage.

[19] An exception founded on vagueness and embarrassment is aimed at pleadings which are so obscure that the other party is prejudiced in identifying the case it is required to meet. An exception on the basis that no cause of action is disclosed is more fundamental: it strikes at the legal validity of the pleaded claim itself, even if all factual averments are accepted as correct. In that sense, rule 23(1) operates as a mechanism to eliminate claims which are legally unsustainable at the outset of proceedings.

[2] The relevant parts of the Rule provide as follows: '23. Exceptions and applications to strike out (1) Where any pleading is vague and embarrassing, or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may apply to the registrar to set it down for hearing within 15 days after the delivery of such exception'.

[20] It is trite that an exception will only succeed where, on every reasonable interpretation of the pleading in question, no cause of action is disclosed.[3] The enquiry is confined to the four corners of the pleading, read as a whole, and assumes the truth of the factual averments therein for purposes of adjudication.

[21] The approach has consistently been tempered by judicial caution. In *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA (Telematrix),*[4] the Supreme Court of Appeal (the SCA) emphasised that exceptions should not be employed as a technical device to dissect pleadings with excessive refinement or formalism. The SCA warned against an over-technical approach that elevates form over substance, particularly where the pleaded facts are capable of supporting a cause of action on a generous reading.

[22] The principles enunciated in *Telematrix* were reaffirmed in *Venator Africa (Pty) Ltd v Watts*,[5] where it was held that the proper enquiry remains whether, upon a proper construction of the particulars of claim, a legally sustainable cause of action is disclosed. While courts must be cautious not to dispose of matters prematurely, exceptions remain a useful procedural tool where a claim is plainly excipiable and cannot be cured by evidence. Thus, the enquiry remains a focused consideration of the pleaded case, the applicable authorities, and whether a legally sustainable cause of action has in fact been disclosed.

[23] In *Marney v Watson,*[6] it was further confirmed that, although the factual allegations in a pleading are generally accepted as correct for purposes of an exception, this does not preclude a party from raising issues such as misjoinder or non-joinder where a cited party is incorrectly before court. In such circumstances, the legal sufficiency of the proceedings may be challenged notwithstanding the acceptance of the pleaded facts.

---

[3] *Venator Africa (Pty) Ltd v Watts and Another* [2024] ZASCA 60; 2024 (4) SA 539 (SCA) para 20.
[4] *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA* [2005] ZASCA 73; 2006 (1) SA 461 (SCA) para 3.
[5] Ibid fn 2 para 20.
[6] *Marney v Watson and Another* 1978 (4) SA 140 (C) at 146D-E.

[24] The approach to exceptions has also been restated in *Parker Attorneys v Pillay,*[7] and in *Barloworld Motor Retail South Africa, a Division of Barloworld South Africa (Pty) Ltd v Badger Holdings South Africa (Pty) Ltd*,[8] where it was held that pleadings must be read holistically, benevolently, and with due regard to whether the factual matrix, properly construed, sustains a cause of action. The exercise is not one of textual nit-picking but of substantive legal evaluation.

[25] It was further contended, with reliance on *Knoesen v Maritz*[9]and *Maseko v Allandins Ring Trading 519 CC,*[10] that non-joinder and misjoinder may properly be raised by way of exception. This approach is consistent with *Telematrix*, which recognises that exceptions serve the important function of filtering out legally unsustainable claims at an early stage, thereby avoiding unnecessary costs and delay.

[26] Having set out the applicable principles relating to exceptions, I turn next to consider the principles relating to concurrent jurisdiction in terms of section 157(2) of the LRA as it may find application in the present matter.

Concurrent jurisdiction in terms of section 157(2) of the LRA

[27] This case raises a complex question involving the battle for jurisdiction between the civil courts and the labour courts. Simply put, this case raises the vexed question of concurrent jurisdiction between the High Court and the specialist tribunals established by the LRA. To this end, I deem it proper to review the law and relevant authorities on the concurrent jurisdiction of the labour court and the civil

[7] *Parker Attorneys v Pillay* (21594/2022) [2025] ZAWCHC 386 (26 August 2025).
[8] *Barloworld Motor Retail South Africa, a Division of Barloworld South Africa (Pty) Ltd v Badger Holdings South Africa (Pty) Ltd and Another* (12223/2024) [2025] ZAWCHC 313 (25 June 2025) para 10.
[9] *Knoesen and Another v Huijink-Maritz and Others* (5001/2018) [2019] ZAFSHC 92 (31 May 2019) para 4 and 5
[10] *Maseko and Another v Allandins Ring Trading 519 CC and* Another (1691/2023) [2024] ZAFSHC 107 (15 April 2024) para 14

courts in the context of this case before I can consider the grounds of exception raised by the defendant.

[28] Having set out the applicable principles relating to exceptions, I turn next to consider the principles relating to concurrent jurisdiction in terms of section 157(2) of the LRA as it may find application in the present matter.

[29] Section 157 of the LRA regulates the jurisdictional boundaries between the Labour Court and the High Court in employment-related disputes. Section 157(2) provides that the Labour Court and the High Court have concurrent jurisdiction in respect of alleged or threatened violations of fundamental rights entrenched in Chapter 2 of the Constitution, arising from employment and labour relations, as well as disputes concerning the constitutionality of acts or omissions of the State in its capacity as employer. This provision must be read in context. Section 157(1) of the LRA confers exclusive jurisdiction on the Labour Court in respect of matters that are assigned to it by the LRA or other legislation. The interplay between these subsections establishes that while the high court is not entirely divested of jurisdiction in employment-related matters, its jurisdiction is circumscribed where the dispute falls squarely within the specialised labour dispute resolution framework.

[30] The high court is therefore not deprived of jurisdiction merely because a dispute arises in an employment context. However, the existence of concurrent jurisdiction under section 157(2) is limited to matters implicating constitutional rights or issues not specifically reserved for determination under the LRA. The jurisdictional enquiry is therefore one of characterisation: the true nature of the dispute must be ascertained from the pleadings.

[31] The principle of subsidiarity, as articulated in *Chirwa v Transnet Ltd and Others,*[11] and reaffirmed in *Gcaba v Minister for Safety and Security and Others*,[12] further limits direct reliance on constitutional rights where legislation has been enacted to give effect to those rights. Where the LRA provides a comprehensive

---

[11] *Chirwa v Transnet Ltd and Others* [2008] 2 BLLR 97 (CC).
[12] *Gcaba v Minister for Safety and Security and Others* [2009] 12 BLLR 1145 (CC).

framework for the resolution of labour disputes, litigants are generally required to rely on its mechanisms rather than bypass them by framing their claims in constitutional or common-law terms.

[32] Courts have consistently cautioned against attempts to circumvent the LRA dispute-resolution architecture by re-characterising labour disputes as contractual or constitutional claims. In *Makhanya v University of Zululand*,[13] as well as *South African Maritime Safety Authority v McKenzie*,[14] it was emphasised that the mere formulation of a claim in contractual or constitutional terms does not alter its true character where, in substance, it constitutes a labour dispute regulated by statute.

[33] The distinction between a labour dispute created by statute and a claim founded on the common law is well established. Where a litigant seeks to enforce rights and remedies created by the LRA, the dispute must ordinarily be pursued through the mechanisms established by that Act. This includes disputes concerning benefits contemplated in section 186(2)(a) of the LRA, where the complaint is that an employer has committed an unfair labour practice relating to the provision of benefits.

[34] By contrast, where the cause of action is founded upon an alleged breach of a contract of employment and the litigant seeks to enforce contractual rights recognised at common law, the claim remains one sounding in contract. The fact that the dispute arises within the context of an employment relationship does not, without more, convert it into a statutory labour dispute. Section 77(3) of the Basic Conditions of Employment Act 75 of 1997 expressly recognises this distinction by conferring concurrent jurisdiction upon the Labour Court and the civil courts in respect of matters concerning contracts of employment.

---

[13] *Makhanya v University of Zululand* 2010 (1) SA 62 (SCA).
[14] *South African Maritime Safety Authority v McKenzie* 2010 (3) SA 601 (SCA).

[35] This principle was affirmed by the Supreme Court of Appeal in *Fedlife Assurance Ltd v Wolfaardt*[15], where the Court held that the LRA did not extinguish an employee's common-law right to enforce contractual obligations arising from an employment contract. The Constitutional Court reiterated the position in *Baloyi v Public Protector and Others*[16], emphasising that contractual rights and statutory labour rights are distinct sources of legal entitlement. The fact that a particular set of facts may potentially found a claim for an unfair labour practice relating to benefits under section 186(2)(a) of the LRA does not preclude a litigant from pursuing a claim based on an independent contractual entitlement, provided that the pleaded cause of action is founded upon contract rather than upon a statutory labour right. The availability of a remedy under the LRA therefore does not, in itself, deprive the civil courts of jurisdiction to adjudicate a properly pleaded contractual claim.

[36] The contention advanced that the dispute implicates constitutional rights relating to equality, fair treatment, and labour protections does not, without more, determine jurisdiction. The court must still determine whether those rights are being asserted independently of, or as part of, a statutory labour dispute properly falling within the LRA framework.

[37] Properly construed, section 157(2) cannot be interpreted to permit litigants to bypass section 157(1) and the exclusive jurisdiction of the Labour Court where the dispute is, in essence, one contemplated by the LRA. The provisions must be read harmoniously so as to preserve the integrity of the specialised labour dispute resolution system.

---

[15] Fedlife Assurance Ltd v Wolfaardt [450/99) [2001] ZASCA 91; [2002] 2 All SA 295 (A); 2002 (1) SA 49 (SCA); (2001) 22 ILJ 2407 (SCA); [2001] 12 BLLR 1301 (SCA) (18 September 2001) at para 17.

[16] Baloyi v Public Protector and Others [2020] ZACC 27 at para 45.

[38] The Constitutional Court in *Chirwa*[17] and *Gcaba*[18] emphasised that jurisdiction is determined on the pleadings and that the court must look to the substance of the claim rather than its form. This approach ensures that litigants do not avoid the statutory framework by artful pleading.

[39] Accordingly, where legislation such as the LRA gives effect to constitutional labour rights, litigants are generally required to rely on that legislative scheme and its remedies, rather than to pursue parallel or alternative remedies outside its confines.

[40] It follows that attempts to bypass the LRA by recasting a labour dispute as contractual, constitutional, or administrative in nature are impermissible where the essence of the dispute falls within the statutory labour framework. Courts have consistently cautioned against litigants recasting labour disputes as contractual claims in order to bypass the LRA framework.[19]

[41] The Plaintiff relied on section 157 of the LRA concerning concurrent jurisdiction, and reference was also made to the EEA in support of the proposition that certain labour-related claims may, in limited circumstances, fall within the jurisdiction of the High Court.

[42] The Plaintiff accordingly submitted that the present matter implicates constitutional and statutory rights relating to equality, fair treatment and labour protections, and that this Court therefore retains jurisdiction notwithstanding the labour-related nature of the dispute. The Defendant, however, correctly in my view submitted that section 157(2) must be read together with section 157(1) of the LRA, which confers exclusive jurisdiction on the Labour Court in matters specifically assigned to it by the LRA and other labour legislation.

[17] Supra.
[18] Supra.
[19] *Makhanya v University of Zululand* 2010 (1) SA 62 (SCA); *South African Maritime Safety Authority v McKenzie* 2010 (3) SA 601 (SCA).

[43] The Defendant contends that the Plaintiff's claim is, in substance, an unfair labour practice dispute concerning a workplace "benefit" under section 186(2)*(a)* of the LRA, which falls within the specialised labour dispute resolution framework rather than the high court's jurisdiction.

Jurisdiction and characterisation of the dispute

[44] The question of jurisdiction is inextricably linked to the proper characterisation of the dispute as pleaded. It is well established that jurisdiction is determined on the pleadings as they stand, and not on the substantive merits that may emerge at trial. In *Chirwa* and *Gcaba,* the Constitutional Court reaffirmed that a court must look primarily to the pleaded case in order to determine whether it has jurisdiction to entertain the dispute. The enquiry is therefore not an abstract assessment of the underlying facts, but a legal assessment of the nature of the claim as formulated.

[45] On this approach, the pleadings serve a jurisdictional gatekeeping function: if properly construed they reveal a dispute that falls within a specialised statutory framework, the court must respect the jurisdictional boundaries created by legislation such as the LRA. The form in which the claim is couched cannot alter its true substance. It is the substance of the dispute, as discerned from the pleadings, that is decisive.

[46] The Constitutional Court, in *Chirwa* and *Gcaba,* further emphasised that the principle of subsidiarity plays a central role in the operation of section 157(2) of the LRA. This principle holds that where legislation has been enacted to give effect to constitutional rights, a litigant is generally required to rely on that legislation rather than bypass it by direct reliance on constitutional provisions. In the labour law context, this means that where the LRA provides a comprehensive framework for the resolution of employment disputes, including unfair dismissal and unfair labour practice disputes, that framework must ordinarily be utilised.

[47] The effect of the subsidiarity principle is that section 157(2), which confers concurrent jurisdiction on the high court in respect of constitutional labour-related

disputes, cannot be interpreted as a parallel avenue for litigants to avoid the statutory mechanisms established under the LRA. Rather, it operates within a confined sphere, primarily where the dispute properly engages constitutional rights that fall outside the exclusive or specialised jurisdiction of the Labour Court.

[48] In this context, reliance was placed on *South African Maritime Safety Authority v McKenzie (SAMSA),* where the SCA held that statutory labour rights are not to be imported into contracts of employment by implication or tacit term, particularly where the employment relationship is governed by express contractual provisions, including non-variation clauses. The SCA emphasised the importance of maintaining the distinction between contractual rights arising from agreement and statutory rights created by labour legislation.

[49] This distinction is significant in jurisdictional disputes, as it underscores that the mere existence of an employment relationship does not automatically transform all disputes arising therefrom into contractual or constitutional matters capable of being adjudicated outside the LRA framework. Where the substance of the dispute concerns rights and obligations regulated by the LRA, it remains subject to the specialised dispute resolution mechanisms established by that statute.

[50] It follows that where legislation such as the LRA has been enacted to give effect to constitutional labour rights, litigants are generally required to rely on that legislative framework and the remedies it provides, rather than to bypass it by invoking constitutional provisions directly or by seeking alternative relief in the high court. This approach preserves the coherence of the labour relations system and ensures that disputes falling within the specialised competence of the Labour Court are dealt with in accordance with the statutory scheme designed for that purpose.

[51] The Constitutional Court in *Chirwa* and *Gcaba* made it clear that permitting litigants to bypass the LRA by relying directly on constitutional rights would undermine the carefully structured system of labour dispute resolution. The courts have therefore consistently sought to prevent parallel or duplicative jurisdictional routes that would disrupt the legislative framework.

[52] Against this backdrop, it is apparent that litigants may not circumvent the specialised labour dispute resolution framework established under the LRA by re-characterising what is, in substance, a labour dispute as one sounding in contract, constitutional law, or administrative law. The characterisation of a dispute is a matter of substance rather than form, and courts are enjoined to examine the true nature of the complaint rather than the label attached to it.

[53] Accordingly, where the pleaded facts disclose, in essence, a dispute concerning employment-related rights regulated by the LRA, the high court's jurisdiction is either excluded or circumscribed, depending on the proper application of section 157(1) and section 157(2). The authorities in *Chirwa*, *Gcaba*, and *SAMSA* collectively reinforce the principle that the statutory labour framework cannot be bypassed through artful pleading or re-labelling of the dispute.

Evaluation of the exceptions

Misjoinder and non-joinder

[54] On a proper reading of the pleadings, the Plaintiff's reliance on consultation or involvement by the Defendant in implementing eligibility criteria does not establish that the Defendant made or assumed the alleged promise. The Plaintiff's pleaded case suggests that Gill Gray originated the concept of a "gratitude gift", while the Defendant may have been involved in communicating or administering eligibility criteria.

[55] The Defendant submitted that the pleadings reveal that Gill Gray, to the extent that the Plaintiff alleges an enforceable promise, is the promisor and therefore the party with a direct and substantial interest in the relief sought. The Defendant contends that the primary defect is misjoinder.

[56] Administrative involvement in implementation does not, without more, establish legal assumption of liability. The Plaintiff has not pleaded agency, assumption of debt, ratification, or any recognised juridical mechanism by which the

Defendant became bound by Gill Gray's alleged undertaking. In the absence of such averments, liability cannot be imputed to the Defendant.

[57] The pleaded case therefore discloses a fundamental disconnect between the alleged promisor and the cited Defendant. On the Plaintiff's own version, Gill Gray, alternatively her estate, has a direct and substantial interest in the relief sought.

[58] The primary defect is therefore misjoinder: the Defendant is sued on a promise it did not make. Any non-joinder of Gill Gray or her estate underscores the incompleteness of the pleaded case but does not cure the fundamental defect that the wrong party is before court.

[59] The misjoinder point is accordingly well founded. While non-joinder may in some instances be curable by amendment, misjoinder of the Defendant as the alleged obligor is not, where the pleadings fail to establish any legally cognisable link between the Defendant and the alleged promise.

Annexure "POC2" and liability

[60] Annexure "POC2", properly construed, reflects a personal expression of gratitude originating from Gill Gray. The language of the document, on any ordinary reading, does not establish an undertaking by the Defendant as employer.

[61] Nothing in the pleadings demonstrates adoption or incorporation of that undertaking into the Defendant's legal obligations. The pleaded case is not that Gill Gray, or anyone else, paid money to Allan Gray for onward distribution to employees. Nor is it pleaded that Allan Gray itself undertook payment of the gift from its own funds.

[62] The annexure refers to criteria determined by Gill Gray. The mere fact that the Defendant may have communicated or consulted in relation to those criteria

cannot, without more, transform them into contractual obligations assumed by the Defendant.

[63] The Defendant submitted that nowhere in the correspondence does it appear that Allan Gray exercised any discretion in relation to the gift or assumed liability for payment thereof. The correspondence consistently reflects the Defendant's position that the Plaintiff did not satisfy Gill Gray's criteria.

[64] The Plaintiff's reliance on internal administrative correspondence or consultation regarding eligibility criteria does not transform the nature of the obligation from a personal expression of gratitude into a binding obligation on the Defendant. At best, it reflects administrative implementation of a decision taken elsewhere.

[65] Even if the Defendant participated in defining or applying criteria, that does not elevate the document into a binding contractual undertaking. No pleaded facts establish adoption or incorporation into the Defendant's contractual obligations.

[66] The Defendant relied on clauses 2.5, 2.6 and 2.7 of the employment contracts, contending that those clauses concern performance bonuses payable by the employer under the employment relationship and bear no relation to the gratitude gift allegedly promised by Gill Gray personally.

[67] The Plaintiff's reliance on *Apollo Tyres South Africa (Pty) Ltd v CCMA* does not confer jurisdiction on the high court. At most, the authorities concerning "benefits" under section 186(2)*(a)* of the LRA reinforce that disputes relating to discretionary workplace benefits fall within the labour dispute resolution framework.

[68] Accordingly, on every reasonable interpretation, annexure "POC2" does not support a cause of action against the Defendant.

No contractual cause of action / jurisdiction

[69] The Constitutional Court in *Chirwa v Transnet Ltd,*[20] and in *Gcaba v Minister for Safety and Security,*[21] confirmed that jurisdictional inquiries are determined on the pleadings as they stand. The court is required to assess the pleaded case, not the evidence that may later emerge, in determining whether a matter properly falls within its jurisdiction.

[70] The Plaintiff's claim, in substance, is a labour dispute concerning an alleged benefit arising in the employment context. The Plaintiff's formulation is internally inconsistent in that it seeks to rely simultaneously on contract, tacit terms, implied statutory obligations, unfair labour practice principles under the LRA, unfair discrimination under the EEA, and patrimonial loss.

[71] The Plaintiff's pleadings consist of a diffuse grouping of allegations culminating in a conclusion that does not coherently disclose a legally sustainable cause of action. The Plaintiff's reliance on express contractual terms cannot succeed, as the employment contract annexed as "POC1" contains no provision entitling the Plaintiff to payment of a gratitude gift promised by Gill Gray.

[72] As to tacit and implied terms, reliance was placed on *SAMSA* for the proposition that statutory labour protections may not be imported into contracts of employment by implication. The non-variation clause in the employment contract further militates against any attempt to imply additional contractual obligations.

[73] Nothing in the employment contract or annexure "POC2" discloses a contractual claim against the defendant, Allan Gray, for payment of the R500,000. Properly analysed, the essence of the Plaintiff's claim is the alleged non-payment of a "benefit" arising within an employment context. Such disputes fall squarely within section 186(2)*(a)* of the LRA.

---

[20] *Chirwa v Transnet Ltd and Others* [2007] ZACC 23; 2008 (4) SA 367 (CC) paras 155 and 169.
[21] *Gcaba v Minister for Safety and Security and Others* 2010 (1) SA 238 (CC) para 75.

[74] In *Apollo Tyres South Africa (Pty) Ltd v CCMA and Others,*[22] the Labour Appeal Court confirmed that the term “benefit” includes discretionary advantages administered within the employment relationship. The present claim falls within that category and is therefore regulated by the specialised labour dispute resolution framework.

[75] The authorities relied upon by the Plaintiff, including *Aucamp v SARS,*[23] *Thiso and Others v Moodley No and Others,*[24] *Mkhize v Rand Water SOC Ltd,*[25] and *City of Cape Town v Van Der Merwe NO and Others,*[26] were all determined within the labour law framework and, according to the Defendant, reinforce rather than undermine the proposition that disputes concerning discretionary employment benefits fall within the jurisdiction of the Labour Court, bargaining councils, or the CCMA.

[76] The Defendant submitted that the Plaintiff’s attempt to enforce the dispute in the High Court by re-characterising it as contractual is impermissible, as held in *SAMSA* and *Makhanya*.

[77] The Plaintiff’s reliance on implied terms derived from labour statutes cannot circumvent the jurisdictional structure established by *Chirwa*, *Gcaba*, and *SAMSA*. A statutory labour dispute cannot be converted into a contractual claim merely by re-labelling it.

[78] The Defendant further submitted that the Plaintiff’s reliance on unfair labour practice claims under section 186(2) of the LRA, and unfair discrimination under the EEA, demonstrates that the dispute is fundamentally labour-related.

---

[22] *Apollo Tyres South Africa (Pty) Ltd v Conciliation Mediation and Arbitration and Others* (2013) 34 ILJ 1120 (LAC).
[23] *Aucamp v South African Revenue Services* [2014] JDR 1462 (LC).
[24] *Thiso and Others v Moodley No and Others* [2014] ZALCCT 64; (2015) 36 ILJ 1628 (LC).
[25] *Mkhize v Rand Water SOC Ltd* (JR1515/22) [2024] ZALCJHB 284.
[26] *City of Cape Town v Van Der Merwe No and Others* [2025] ZALCCT 103.

[79] The Plaintiff's supplementary heads of argument were said to reinforce this conclusion by relying extensively on labour law authorities decided in the Labour Court and Labour Appeal Court.

[80] The Defendant characterised the Plaintiff's reliance on concurrent contractual and labour remedies as impermissible forum shopping, relying in this regard on *Zungu v Premier of KwaZulu-Natal*.

[81] The Plaintiff's allegations all arise from the same essential complaint, namely that the Defendant, as former employer, unfairly exercised a discretion concerning a workplace benefit.

[82] In addition, the Defendant submitted that *Mkhize v Rand Water* demonstrates that unfair labour practice remedies are generally available only to employees and not former employees. The Plaintiff's employment terminated on 31 January 2025, whereas the gift was allegedly payable in February 2025.

[83] The Plaintiff's attempt in supplementary heads of argument to characterise the Defendant's conduct as administration of the gift constitutes an impermissible attempt to supplement the pleaded case through argument rather than through amendment.

[84] The wording of annexure “POC2”, particularly repeated references by Gill Gray to “my journey”, “my deep appreciation”, “have arranged a gift”, and “from me to each of you”, plainly reflects a personal undertaking.

[85] The correspondence annexed as POC3 to POC8, demonstrates that the Defendant consistently informed the Plaintiff that she did not meet Gill Gray's eligibility criteria and that the gratitude gift originated from Gill Gray personally.

[86] In paragraph 24.1 of the Particulars of Claim, the Plaintiff alleges that Allan Gray made a “clear and unambiguous promise” of payment. Such allegation is irreconcilable with annexure “POC2”, which on any ordinary reading reflects a personal undertaking by Gill Gray and not by Allan Gray.

[87] The Plaintiff's references to implied contractual terms derived from the EEA and LRA therefore amount to an impermissible attempt to import statutory labour protections into the employment contract contrary to *SAMSA*.

[88] Even if, hypothetically, Allan Gray had made the promise, the Plaintiff's own reliance on section 186(2)*(a)* of the LRA demonstrates that the dispute concerns a "benefit" under the LRA and therefore falls within the labour dispute resolution framework rather than the high court. *SAMSA*, *Chirwa*, *Gcaba*, and *Zungu* demonstrates that labour disputes may not be dressed up as contractual claims in order to invoke the jurisdiction of the high court.

[89] The Plaintiff's reliance on *Aucamp v SARS* does not assist her case. *Aucamp* confirms that disputes concerning bonuses or discretionary employment benefits constitute unfair labour practice disputes within the labour law framework. Likewise, *Apollo Tyres* confirms that discretionary benefits under section 186(2)*(a)* are justiciable within the labour dispute resolution system and not through ordinary contractual claims in the High Court.

[90] *Trans-Caledon Tunnel Authority v CCMA* and *Tiso v Moodley* distinguish between legally enforceable civil rights and labour rights protected under section 186(2)*(a)* of the LRA. The Plaintiff has failed to plead any legally enforceable contractual right and has instead attempted to rely on tacit and implied terms to import labour legislation into the employment contract.

[91] The Plaintiff's reference to patrimonial loss in paragraph 26 of the Particulars of Claim is ordinarily one that sounds in delict, yet the Plaintiff has failed to plead the necessary elements of a delictual claim, including wrongfulness, fault and causation.

[92] In relation to the EEA, the Plaintiff's reliance on section 6 of the EEA, concerning discrimination and victimisation, likewise falls within the labour dispute resolution framework.

[93] The Defendant submitted, correctly in my view that section 5 of the LRA is merely a protective provision and that any alleged contravention thereof falls within the exclusive jurisdiction contemplated in section 157(1) of the LRA.

[94] The court is not required to interpret ambiguous contractual provisions but rather to apply established authority and the pleaded facts. There are no terms in either POC1[27] or POC2 which, on any reasonable interpretation, sustain the contractual cause of action pleaded by the Plaintiff.

[95] The fact is that even on the most generous reading of the Particulars of Claim, the Plaintiff has failed to disclose a cognisable contractual cause of action within this Court's jurisdiction.

The relief sought

[96] The Defendant seeks an order upholding the exception with costs. Although the Defendant does not seek punitive costs, it contends that the matter is complex and warrants the costs of counsel on scale C.

[97] The Defendant further seeks an order striking out the Plaintiff's claim. The Defendant contends that the authorities demonstrate that no sustainable cause of action exists within the jurisdiction of this Court.

[98] Alternatively, the Defendant submitted that should the court not be inclined to strike out the claim, the court should uphold the exception with costs and grant directions concerning the filing of any proposed amendment in terms of rule 28(1), should the Plaintiff be advised that the claim is capable of amendment.

[99] The Plaintiff, on the other hand, seeks dismissal of the exceptions.

Conclusion

[27] The contract of employment concluded between the Plaintiff and Defendant

[100] The Plaintiff's Particulars of Claim, even when interpreted benevolently and holistically, do not disclose a sustainable cause of action against the Defendant. The pleading is fundamentally defective in that it seeks to impose liability on a party who, on the pleaded facts, did not make the alleged promise.

[101] The misjoinder exception is well founded, as the Defendant is not the promisor and no legal basis is pleaded for its liability. The non-joinder of Gill Gray or her estate further underscores the defect in the formulation of the claim.

[102] Annexure "POC2" does not, on any reasonable construction, bind the Defendant, and cannot be elevated into a contractual undertaking absent pleaded facts establishing legal assumption or incorporation.

[103] Finally, the Plaintiff's reliance on contractual and statutory labour principles does not disclose a cognisable cause of action in this Court. Properly characterised, the dispute falls within the ambit of the LRA and not within the jurisdiction of the high court.

[104] In this matter, application rather than interpretation is required. The employment contract and annexure "POC2" are clear in their terms. There is no ambiguity requiring interpretive intervention. The authorities and statutory framework must simply be applied to the pleaded facts.

[105] The Plaintiff's contention that the Defendant ought merely to plead cannot be sustained in light of the established jurisprudence, which recognises the competency of an exception where the pleadings disclose no cause of action. Where a pleading is fatally defective in law, an exception remains not only competent but appropriate.

[106] Each of the Defendant's exceptions succeeds. First, the Defendant has been mis-joined, as no pleaded facts establish that it made or assumed the alleged promise. Secondly, annexure "POC2" does not bind the Defendant on any reasonable construction of the pleadings. Thirdly, the claim discloses no enforceable

contractual cause of action and, in substance, falls within the ambit of the LRA dispute resolution framework and not within the jurisdiction of this Court.

Costs

[107] The matter is not an ordinary run-of-the-mill exception application. It involves complex issues concerning the interaction between contractual principles, labour legislation, jurisdiction, and the proper characterisation of disputes. In the circumstances, the costs of counsel on scale C are warranted.

Order

[108] In the result, the following order is made:

106.1 The exception is upheld on all three grounds;

106.2 The Plaintiff’s claim is struck out.

106.3 The Plaintiff is ordered to pay the costs of the exception on a party and party scale, including the costs of counsel on scale C.

M F ADAMS

ACTING JUDGE OF THE HIGH COURT

Appearances

For the Plaintiff: Adv. Mdana
Instructed by TJC Dunn Attorneys

For the Defendant: Adv. Heinrich Jansen van Rensberg
Instructed by Ward Brink Attorneys