



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO: JS94/2024

JS507/2023

In the matter between:

BRIAN MOHLABANE

Applicant

and

SANDVIK MINING & CONSTRUCTION (PTY) LTD

Respondent

Heard: 22 May 2026

Delivered: 1 June 2026

Summary: Amendments, applications for consolidation, and case management.

JUDGMENT

DANIELS J

Background

[1] The applicant is a layperson and self-represented. His pleadings are, unfortunately, not a model of clarity. Attempts to clarify the underlying disputes in court were ineffectual. Nevertheless, the following is apparent:

- 1.1 The applicant was employed by the respondent in a senior position. This relationship was not harmonious and led to several disputes. The applicant, an African male, believed that he was not being paid the same as white individuals employed in the same or similar positions. He therefore initiated an unfair discrimination dispute. In addition, he claimed that the respondent withheld his bonus for unfair and discriminatory reasons. Further, he claimed that he was dismissed by the respondent and the dismissal was automatically unfair. This dispute was referred to the court on 29 August 2023, under case number JS507/23.
- 1.2 In a further dispute with the respondent, the applicant sought the following relief: “(7.1) relief with respect to unlawful restraint of trade, (7.2) directive with respect to the actual termination date, (7.3) condonation for late termination if related, (7.4) reinstatement if late termination not related to termination (dated a year later)”. That dispute was referred to the court under case number JS94/24.
- 1.3 In a third dispute between the same parties, the applicant alleged that he had been unfairly dismissed by the respondent. He referred the dispute to the CCMA for conciliation and arbitration. When that failed, he instituted review proceedings under case number JR1483/23. The applicant informed the court that the review has been argued and he is awaiting judgment.

Context of the litigation

[2] In respect of JS507/23, the respondent took exception to his statement of claim on the basis that it was vague and embarrassing, and failed to disclose a cause of action. On 24 March 2024, the exception was upheld by Norton AJ, who dismissed the statement of claim. The applicant applied for leave to appeal, but that application was dismissed. Thereafter, the applicant petitioned the Labour Appeal Court (“LAC”) for leave to appeal. On 31 May 2024, the LAC refused the petition. Next, the applicant applied to the Constitutional Court for leave to appeal. On 17 December 2024, the Constitutional Court dismissed the application. Thereafter, on 13 January 2025, the applicant filed a notice of amendment. The respondent objected to the amendment on the basis that the statement of claim had been dismissed and could not be amended.

[3] In respect of JS94/24, the respondent took exception to his statement of claim on the basis that it was vague and embarrassing, and failed to disclose a cause of action. In a judgment handed down on 12 July 2024, Peer AJ upheld the exception on the basis that the pleading did not disclose a cause of action. The learned acting judge struck out all the relief and declared that no competent claim remained. The acting judge held that no amendment could be brought to save the claim. The court dismissed the inevitable application for leave to appeal, and the LAC dismissed the petition for leave to appeal. Despite this, on 24 February 2025, the applicant filed a notice of intention to amend his statement of claim.¹ The respondent objected on the basis that the statement of claim was incapable of amendment, and the pleading was set aside.

¹ In the amendment, the applicant sought to introduce a new claim alleging that the respondent breached his employment contract by failing to pay certain benefits to him. The benefits claimed are unclear. What these benefits are or why the applicant is entitled to them is not clarified. The applicant also seeks payment of a bonus, but provides little clarity on what it relates to and why he is entitled to it. Finally, the applicant seeks “adjustment of (sic) salary wage gap”. Again, there is little clarity about what this means.

- [4] On 18 February 2025, the applicant filed an application to consolidate the disputes under case numbers JS94/24 and JS507/23 and place the matters under case management. The registrar has now enrolled the amendments, the application to consolidate and place the matters under case management for hearing.

Analysis

- [5] The purpose of an exception, brought on the basis that the pleading fails to disclose a cause of action, is to dispose of a defective case or defective part of a case in an expeditious manner. The court must consider whether a case can be established on every interpretation that the pleading can reasonably bear. Accordingly, the threshold for the granting of an exception is high.
- [6] In *Ocean Echo Properties 327 CC and another v Old Mutual Life Assurance Co (South Africa) Ltd*² the Supreme Court of Appeal held:

“The upholding of an exception disposes of the pleading against which the exception was taken, not the action or defence. An unsuccessful pleader is given the opportunity to amend the plea, even when the plea has been set aside because it does not disclose a defence. The rationale for this seems to be that, although the defence contained in the pleading may be bad, the pleading as such continues to exist. Ordinarily therefore the court should grant leave to amend and not dispose of the matter. Leave to amend is not a matter of an indulgence; it is a matter of course unless there is a good reason that the pleading cannot be amended.” (own emphasis)

- [7] In JS94/24, the court dismissed the statement of claim and refused leave to amend. The court held that no amendment could cure the defects in the pleading. Thereafter, the LAC refused leave to appeal. Accordingly, this court cannot reconsider the matter. The issues referred to in that pleading have

² 2018 (3) SA 405 (SCA) at 409 at para [8]

been finally disposed of and cannot be resurrected through a new pleading. The registrar is directed to close that file and archive it.

[8] However, in respect of JS507/23, leave to amend the defective pleading may yet be granted. The proper approach was for the applicant to bring an application in a timely manner seeking leave to amend. Fairness dictates that the applicant be granted an opportunity to file an application seeking leave to amend. It goes without saying that the applicant cannot introduce the claims previously disposed of in JS94/24, nor can he introduce a claim that is bad in law. Given that the court order upholding the exception was handed down on 22 March 2024, it is appropriate that the applicant be directed to apply for condonation.

[9] It follows from what is set out above that the applications for case management and consolidation are incompetent and fall to be dismissed.

Costs

[10] In this court, costs do not follow the result and are determined by the criteria of law and fairness. Law and fairness do not prohibit the court from ordering costs where a litigant's conduct amounts to an abuse of the court. While I may have been inclined to award costs against the applicant on that basis, the respondent did not seek costs. It is therefore not appropriate to award costs.

Conclusion

[11] I make the following order:

11.1 The registrar is directed to close the court file in respect of case number JS94/24 and archive it;

11.2 In respect of JS507/23, the applicant is directed to file an application, within 15 days of this order, for (i) leave to amend his pleadings, (ii) condonation of the delay in filing the application.

11.3 Each party is to bear their own costs.

RN Daniels
Judge of the Labour Court of South Africa

For the applicant:

Self-represented

For the respondent

Ms D Willem

Fasken Attorneys