



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case No: 2026-065290

In the matter between:

ROBOTECH TRAFFIC SYSTEMS (PTY) LTD

Applicant

and

MOGAMAT ROESDEEN WILLIAMS

First Respondent

TMT SERVICES AND SUPPLIES (PTY) LTD

Second Respondent

Heard: 24 July 2026

Delivered: 06 August 2026

JUDGMENT

VENTER, AJ

Introduction

- [1] The main application concerns an application for a restraint of trade order. The Applicant served and filed an application to restrain the Respondents for two years, on 19 March 2026.
- [2] Rule 39(2) of the Labour Court Rules (the Rules) requires that provision be made in the notice of motion for the exchange of four sets of affidavits. The notice of motion makes no provision for a fourth affidavit and the Applicant applied for leave to amend the notice of motion accordingly.
- [3] The Respondents applied for a striking of the irregular step, as contained in the notice of motion.

Background

- [4] The Applicant operates in the technical field of traffic signalised systems and employed the First Respondent during 2001. It appears that the First Respondent was trained by the Applicant and the First Respondent eventually qualified as an Electrician.
- [5] During the course of employment, the parties entered into several restraint of trade agreements. The Applicant avers that the restraint is for a period of two years and that the First Respondent resigned on 14 April 2025. According to the Applicant, the First

Respondent joined the Second Respondent, which is regarded as a competitor in the field. It is further alleged that its trade secrets require protection and that the First Respondent took certain clients to the Second Respondent. The Applicant is, in essence, asserting that its protectable interests require protection.

[6] The Respondents filed a notice to remove the cause of complaint on 24 March 2026. The Respondents submitted that the Applicant took an irregular step, as the notice of motion makes no provision for a fourth affidavit. The Applicant was granted ten days to remove the cause of complaint.

[7] The Applicant served and filed a notice of amendment on 17 April 2026 and applied for condonation of the late filing of the notice to amend on 1 June 2026. The Applicant submits that the notice was filed late due to a miscalculation of the *dies* and that the degree was minimal (8 days).

[8] The Respondents objected to the proposed amendment on 5 May 2026. They further submit that the notice of motion is not a pleading and that Rule 20 therefore does not apply.

[9] The Applicant served and filed a subsequent application to amend the relief prayed for on 1 June 2026.

[10] It should be noted that the matter also involved an application for joinder, but the parties informed the court that the application for joinder was withdrawn and that the court is only called upon to determine whether the Applicant should be granted leave to amend.

Legal principles

[11] Rule 39(1) provides that an application for restraint of trade will be enrolled only when the procedures have been strictly adhered to by an applicant party. Rule 39(2) requires that the notice of motion must provide for the exchange of four sets of affidavits.

[12] Rule 20(1) stipulates that any party may apply to amend a pleading or a document other than a sworn statement. Rule 20(3) caters for an objection by the other party.

[13] In *Moolman v Estate Moolman*¹ it was held that an amendment would normally be

¹ [1927] CPD 27

allowed unless the application is *male fide* or unless the amendment would cause an injustice to the other party.

[14] In *Media 24 (Pty) Ltd v Nhleko & Another*, the Supreme Court of Appeal held that the purpose of pleadings is to define the issues between the parties. It emphasised that the court will be reluctant to deny a party the right to amend when the application is made *bona fide* and provided that no injustice will result from the amendment. Prejudice has been found only where the opponent is worse off than at the time of the amendment, for example, the withdrawal of an admission can have a detrimental effect in certain circumstances.

[15] The Supreme Court of Appeal considered similar principles and held in *Magnum Simplex International (Pty) Ltd v MEC Provincial Treasury, Provincial Government Limpopo*² that a proposed amendment did

² [2018] ZASCA 78

not introduce a separate cause of action and that prejudice is an important factor.

[16] In *Caxton Ltd v Reeve Forman (Pty) Ltd & Another*³ the Supreme Court of Appeal confirmed that the court is vested with a wide discretion.

[17] The Labour Appeal Court also had its say on the issue in *Association of Mineworkers & Construction Union v Chamber of Mines*⁴ and found that a court needs to exercise its discretion judicially. The court held that:

³ [1990] ZASCA 47

⁴ [2024] 45 ILJ 1954 (LAC)

"[45] A party may apply for an amendment of its pleadings at any time prior to judgment being handed down in a matter. In determining an application for amendment, the court must have regard to whether the amendment seeks to introduce a new cause of action or rather to introduce new or alternative facts in support of the original cause of action. The court may, in the exercise of its judicial discretion, grant or refuse such an application having regard to whether the amendment sought raises a triable issue, which would if granted allow the proper ventilation of the real dispute between the parties, with due regard to issues of prejudice. A delay in seeking an amendment is not in itself, in the absence of prejudice to the other party, a basis on which to refuse the amendment. An appeal court will not lightly interfere with the exercise of such discretion unless it is satisfied that the lower court misdirected itself or failed in its exercise of the judicial discretion."

Evaluation

- [18] The issue before this Court is not whether the Applicant's original notice of motion complied with Rule 39(2). It plainly did not. The notice of motion omitted the provision for the filing of the fourth affidavit prescribed by the Rule. The question is whether that defect is of such a nature that the application should be struck from the roll or whether the Applicant ought to be afforded an opportunity to cure the defect by amendment.
- [19] The Respondents correctly submitted that the notice of motion constituted an irregular step. Rule 39(2) is couched in peremptory terms and exists to regulate the exchange of affidavits in restraint proceedings. Compliance with the Rule is important because restraint applications are generally brought on an urgent basis and require a structured exchange of affidavits. The Applicant therefore initiated the proceedings by means of a defective notice of motion.
- [20] The Labour Court Rules expressly provide for amendments to a pleading or a document other than a sworn statement. Although a notice of motion is not a pleading in the strict sense, it is undoubtedly a procedural document commencing application proceedings. The Rule is deliberately framed broadly by referring not only to pleadings but also to a document. There is no indication that a notice of motion is excluded from the ambit of Rule 20 merely

because it does not constitute a pleading. Indeed, if procedural documents could never be amended, Rule 20 would have little practical application outside pleadings.

- [21] A generous approach towards amendments should be followed. Amendments should ordinarily be granted unless they are sought *mala fide* or unless they occasion prejudice which cannot be cured by an appropriate order as to costs or procedure. Amendments should generally be permitted where they facilitate the proper ventilation of the real dispute and do not occasion irreparable prejudice.
- [22] Applying these principles, the court is unable to conclude that the proposed amendment introduces a new cause of action, alters the factual basis upon which relief is sought or expands the substantive relief claimed against the Respondents. The amendment merely inserts the procedural provision required by Rule 39(2) for the exchange of a fourth affidavit. The substantive dispute between the parties remains precisely the same.
- [23] Equally important is the absence of prejudice. The Respondents do not suggest that the amendment deprives them of any material defence, necessitates the gathering of additional evidence or fundamentally alters the case they are required to meet. On the contrary, the amendment affords the Respondents the procedural opportunity contemplated by Rule 39(2), namely the right to deliver a fourth affidavit should they elect to do so. The Respondents are therefore procedurally better protected after the amendment than before it.
- [24] The Respondents nevertheless contend that because the initiating process was defective, the entire application should be struck from the roll. The court does not agree. The purpose of an irregular-step procedure is to remove prejudice arising from procedural irregularities. It is not intended to punish parties for every procedural defect nor to elevate form above substance. Once the Applicant seeks leave to amend to cure the procedural defect, the court is

required to determine whether justice would be better served by permitting the defect to be remedied or by terminating the proceedings altogether.

- [25] Striking out the application would serve little practical purpose. The Applicant would simply be entitled to institute fresh proceedings by filing a new notice of motion containing precisely the same substantive allegations and seeking precisely the same relief. Such an approach would result in unnecessary duplication of proceedings, increased costs and further delay without conferring any corresponding benefit upon the Respondents. Courts have consistently discouraged procedural formalism where no substantive prejudice is demonstrated.
- [26] The Respondents have therefore failed to establish prejudice and the procedural defect is capable of being cured entirely through amendment, and no injustice incapable of remedy has been shown.
- [27] For these reasons, the court is satisfied that the amendment is sought *bona fide*, that it is directed solely at curing a procedural irregularity, that it does not alter the nature of the dispute between the parties and that it occasions no prejudice incapable of being addressed by an appropriate order. In the exercise of a discretion, leave to amend should accordingly be granted.
- [28] Once leave to amend is granted, the very irregularity upon which the Respondents rely ceases to exist. The application to strike out the notice of motion consequently becomes academic. There is no longer a defective notice of motion before the court, but an amended notice authorised by order of the court. The application to strike out the original notice of motion must therefore be dismissed.
- [29] The Respondents sought costs. The court has wide discretion to award costs in terms of section 162 of the Labour Relations Act, 66 of 1995. The Applicant successfully cured the defect and the procedural defect was minor. In light of the requirements of law and fairness, the court is not inclined to award costs.

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

Order

1. The Applicant is granted leave to amend its Notice of Motion in accordance with the application for amendment.
2. The Respondents are granted leave to deliver a fourth affidavit contemplated in Rule 39(2) within five (5) court days of the date of this judgment.
3. The Respondents' application to declare the Applicant's Notice of Motion an irregular step and to strike it out is dismissed.
4. There is no order as to costs

P Venter

Acting Judge of the Labour Court of South Africa.

Appearances:

For the Applicant: MS Mongo (Herold Gie Attorneys)

For the Respondent: Adv Crookes (Instructed by Pepler O' Kennedy Attorneys)