(1) Reportable: No
(2) Of interest to other Judges: No
(3) Revised

Signature Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: 2025-084041

In the matter between:

THOMAS SWANEPOEL	**First Applicant**
HESTER SWANEPOEL	**Second Applicant**
JOHANNES SWANEPOEL	**Third Applicant**
ANNA TOERIEN	**Fourth Applicant**
CHRISTOPHER TOERIEN	**Fifth Applicant**
RACHEL LOFF	**Sixth Applicant**
and	
PLATINUM 7 BOERDERY CC	**Respondent**

Heard: 30 July 2026

Delivered: 11 August 2026

This judgment was handed down electronically by circulation to the parties' representatives by email, published on the Labour Court website, and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 11 August 2026.

JUDGMENT

DE KOCK, AJ

Introduction

[1] This is an opposed application, brought in terms of rule 20(4) of the Rules of this Court[1], in which the applicants (the plaintiffs in the pending action under the same case number) seek leave to amend their statement of claim in accordance with their notice of intention to amend. The first defendant in the action, Platinum 7 Boerdery CC ('Platinum'), is the respondent in this application and opposes the amendment.

[2] Only the applicants and Platinum are parties to the application. The remaining defendants in the action, the Vier Nefies Trust and its trustees (the second to sixth defendants) and Sunbird Fruit Farms (Pty) Ltd (the seventh defendant), were not joined in the application.

[3] Platinum objects on the ground that the proposed amendments, if allowed, would render the statement of claim excipiable in that neither of the two new claims sought to be introduced discloses a cause of action. The parties are agreed that the application and the objection, being one of excipiability, falls to be determined as though it were an exception. This Court therefore determines the application on the very basis agreed upon between the parties.

[4] At the hearing this Court raised, in addition to what has been pleaded by the parties, a question concerning the Court's jurisdiction to entertain the two alternative claims. The parties addressed the Court on this issue raised by the Court and the parties were further afforded the opportunity to lodge further written submissions. Only the applicants took up the opportunity to submit further representations. The question of jurisdiction, as raised by this Court *mero motu*, is dealt with below.

Background

---

[1] Rules for the Conduct of Proceedings in the Labour Court, GN 4775, Government Gazette 50608, 3 May 2024, with effect from 17 July 2024.

[5] The applicants' claim in the action arises from a deed of sale concluded on 14 June 2024 between the Vier Nefies Trust, as seller, and Platinum, as purchaser, in respect of the farm Keurkloof.

[6] Clause 21 of the deed of sale, headed *'Staff'*, recorded that the farm workers listed in it were employed by the seller, that the purchaser would take them over after the lease agreement between the seller and the purchaser expired, and that the purchaser undertook, and would be obliged, to employ the same farm workers on the same or better terms than their existing employment contracts. Six of the seven workers named in the clause are the applicants before this Court.

[7] The applicants' pleaded case in the action is that they were employed by the Vier Nefies Trust, either *de facto* or *ex lege*, and that their employment transferred to Platinum by operation of section 197 of the Labour Relations Act[2] ('the LRA'), alternatively that sections 200A and 200B of the LRA apply. They intend to lead evidence at the trial in support of that case.

[8] Platinum's defence is that the applicants were never employed by the Vier Nefies Trust, but were, and remain employed by Sunbird Fruit Farms (Pty) Ltd, an entity that was not a party to the deed of sale or to any amendment of it. Platinum relies on amendments to the sale agreement concluded on 18 September and 7 October 2024, and in particular the second addendum of 7 October 2024, by which the transfer of the applicants' employment was excluded.

[9] The applicants acknowledge those amendments in their statement of claim. Their complaint is that none of them was a party to, or was informed of the negotiations leading to, or the conclusion of, those amendments.

<u>The proposed amendments</u>

[10] The amendment seeks to introduce two new claims, each pleaded in the alternative to the existing case.

[2] Act 66 of 1995.

[11] The first is a contractual claim. By the proposed insertion of paragraphs 6.16 to 6.19, and new prayers 7.5A and 7.5B, the applicants plead that, in the event that the Court finds that they were not employed by the Vier Nefies Trust and that neither section 200A nor section 200B of the LRA applies, clause 21 of the deed of sale constituted a *stipulatio alteri*, a contract for their benefit, which they accepted upon being informed of it, alternatively which they now accept; that Platinum was thereby obliged to employ them; and that Platinum be ordered to do so within two weeks of the order, on the remuneration and benefits they enjoyed while employed by the second and/or seventh defendants.

[12] The second is an estoppel. By the proposed insertion of the paragraphs numbered 6.20 to 6.21 (stated, evidently in error, as a second set of paragraphs 6.18 to 6.19 in the applicants' heads of argument), the applicants plead that, should the Vier Nefies Trust and Platinum deny that clause 21 constituted a *stipulatio alteri*, they represented to the applicants that the deed of sale was a true reflection of their agreement and that the applicants would become employed by Platinum; that the applicants reasonably relied on that representation; that they have suffered prejudice in being subjected to eviction proceedings; and that the Vier Nefies Trust and Platinum are accordingly estopped from denying that clause 21 resulted in their employment by Platinum.

<u>The issue and the applicable principles</u>

[13] The question to be answered by this Court is whether the two proposed claims are, in law, capable of sustaining a cause of action.

[14] The approach to amendments is trite. Our Courts lean towards allowing amendments so that the real issues between the parties may be ventilated, and an amendment will generally be granted unless it is sought *mala fide* or would cause the other party prejudice that cannot be compensated by a costs order.[3]

[15] That inclination by our Courts is subject to a firm limiting principle: an amendment will not be allowed if its effect would be to render the pleading

[3] *Moolman v Estate Moolman* 1927 CPD 27; *Whittaker v Roos and Another*; *Morant v Roos and Another* 1911 TPD 1092.

excipiable, or if it fails to cure an excipiable defect. The court will not sanction a change that leaves the pleading bad in law.[4]

[16] Where the objection to a proposed amendment is that it would render the pleading excipiable, it is preferable to determine the objection at this stage, as though it were an exception, rather than to allow the amendment in the knowledge that an exception would immediately follow.[5]

[17] An exception that a pleading discloses no cause of action will be upheld only if, on every reasonable interpretation, the pleading lacks the averments necessary to sustain the claim. If any reasonable reading discloses a cause of action, the exception must fail. Exceptions are to be applied sensibly, as a useful means of disposing of claims that lack legal merit, and are not to be approached over-technically. It is against that standard that the two proposed claims must be measured.[6]

<u>The *stipulatio alteri* claim</u>

[18] A *stipulatio alteri*, or contract for the benefit of a third party, is a contract between two persons designed to enable a third to come in as a party to a contract with one of them. The third party acquires no right until the benefit is accepted, and the contracting parties remain free to vary or to revoke the stipulation until acceptance.[7]

[19] The first difficulty with the proposed claim is that it is internally contradictory. The alternative is engaged only upon a finding that the applicants were not employed by the Vier Nefies Trust. Yet the benefit that clause 21 is pleaded to confer is the transfer of the applicants' employment to Platinum, which presupposes an existing employment relationship, vested in the transferor, that

---

[4] *Cross v Ferreira* 1950 (3) SA 443 (C); *Trans-Drakensberg Bank Ltd (under Judicial Management) v Combined Engineering (Pty) Ltd and Another* 1967 (3) SA 632 (D) at 640A.

[5] *De Klerk and Another v Du Plessis and Others* 1994 (6) BCLR 124 (T).

[6] *Pretorius and Another v Transport Pension Fund and Others* [2018] ZACC 10; 2019 (2) SA 37 (CC); [2018] 7 BLLR 633 (CC).

[7] *Crookes NO and Another v Watson and Others* 1956 (1) SA 277 (A); *Hofer and Others v Kevitt NO and Others* 1998 (1) SA 382 (SCA).

is capable of being transferred. Clause 21 itself records that the listed workers *'are employed by the Seller'*, which is the very relationship the alternative asks the Court to address in the event of a finding that the applicants were not employed by the 'Seller' and on rejection of the main relief that is sought. On the hypothesis upon which the claim depends, no such relationship existed, and the claim thus comes to life only once its own factual foundation has been negated.

[20] Secondly, a *stipulatio alteri* requires acceptance of the benefit by the third party, communicated to the *promittens*. The pleading alleges that the applicants accepted the stipulation upon being informed of it, alternatively that they now accept it. To be informed of a stipulation is not to accept it, and no date, place or mode of any communicated acceptance is pleaded. The secondary averment, a purported acceptance tendered in the notice of intention to amend delivered on 25 August 2025, is in any event of no effect, because by then the transfer provision had been excluded by the second addendum of 7 October 2024, and the contracting parties were in any event entitled to revoke the stipulation before acceptance.

[21] Thirdly, the stipulation is pleaded between the wrong parties. A *stipulatio alteri* requires a binding contract between two contracting parties, by which the *promittens* assumes an obligation in favour of a third. On the premise of the alternative the Vier Nefies Trust was not the applicants' employer, and it is nowhere pleaded that the Trust, or its trustees, acted for, or were authorised to bind Sunbird Fruit Farms (Pty) Ltd, the entity the respondent contends was the employer. There is accordingly no *promittens* capable of binding the party that could employ the applicants, and a contract between the Trust and Platinum cannot produce the applicants' employment by Platinum.

[22] For these reasons the proposed *stipulatio alteri* claim is bad in law and discloses no cause of action. Its introduction would render the statement of claim excipiable should the application to amend be allowed by this Court.

<u>Estoppel</u>

[23] Estoppel does not constitute a cause of action. It is a defensive doctrine, which precludes a person who has made a representation from denying the truth of

that representation against another who has reasonably, and to that other's detriment, relied upon it. Its proper place is a shield against a claim or a defence, and a party may not invoke it to create a cause of action where none existed before.[8]

[24] The applicants do not deploy estoppel defensively. The proposed paragraphs plead it as a self-standing basis for the relief, culminating in the averment that the Vier Nefies Trust and Platinum are estopped from denying that clause 21 resulted in the applicants' employment by Platinum, and it is harnessed to a mandatory order compelling Platinum to employ them. That is estoppel wielded as a sword. It is invoked not to preclude reliance on a defence, but to bring into existence the very employment relationship that constitutes the cause of action.

[25] The applicants themselves place the matter beyond any doubt. In their heads of argument, they acknowledge that estoppel is ordinarily pleaded in reply and explain that it is raised in the statement of claim in order to obviate a replication to the respondent's statement of response. A doctrine whose proper home is the replication, raised in the statement of claim to meet an anticipated defence, does not thereby become a cause of action.

[26] *Makate v Vodacom (Pty) Ltd*, on which the respondent relied, proceeds on the footing that estoppel is put up as a shield and does not serve as the basis of a claim. The Constitutional Court's criticism of the court below concerned its conflation of estoppel with ostensible authority, a distinct doctrine, and not the shield principle itself. Ostensible authority is not pleaded in the present matter.[9]

[27] There are, in addition, defects in the pleaded elements. A representation founding an estoppel must be a representation of existing fact; a statement as to future conduct or intention will not suffice. The representation pleaded, that the applicants would become employed by Platinum, is a statement as to the future.[10]

---

[8] *Union Government v National Bank of South Africa Ltd* 1921 AD 121 at 128 (Innes CJ).

[9] [2016] ZACC 13; 2016 (4) SA 121 (CC); 2016 (6) BCLR 709 (CC) at para 44.

[10] *Baumann v Thomas* 1920 AD 428.

[28] A causal connection is also required between the representation, the reliance and the prejudice. The prejudice pleaded, i.e., that the applicants are subjected to eviction proceedings, is not alleged to flow from any reliance on the representation. On the pleading it flows from the sale of the farm and from the applicants' employment status. The necessary nexus is absent.[11]

[29] There is a further and more fundamental difficulty with the application. The estoppel is pleaded against Platinum, yet Platinum, the purchaser, is not alleged to have made any representation of existing fact to the applicants concerning their employment. The only representation identified on the pleadings is that of the seller, as to its own status as the applicants' employer, and the alternative is premised on that very representation having been rejected. An estoppel cannot bind the purchaser on the strength of a representation that the purchaser did not make.

[30] It follows that the proposed estoppel is also bad in law and discloses no cause of action.

Jurisdiction

[31] At the hearing this Court raised, of its own accord, a question as to its jurisdiction to entertain the two alternative claims. A court is obliged to satisfy itself that it has jurisdiction, even where the point is not taken by the parties, and jurisdiction cannot be conferred by consent.

[32] This Court is a creature of statute and enjoys no general jurisdiction. Its jurisdiction derives from section 157 of the LRA and, in respect of contractual matters, from section 77(3) of the Basic Conditions of Employment Act[12] ('the BCEA'), which confers concurrent jurisdiction with the civil courts over any matter concerning a contract of employment. Jurisdiction is determined on the pleadings.[13]

---

[11] *Peri-Urban Areas Health Board v Breet NO* 1958 (3) SA 783 (T).

[12] Act 75 of 1997.

[13] *Gcaba v Minister for Safety and Security and Others* [2009] ZACC 26; 2010 (1) SA 238 (CC) (jurisdiction is determined on the pleadings); *TC Smelters (Pty) Ltd and Another v Minister:*

[33] Each alternative is engaged only upon a finding that the applicants were not employed by the Vier Nefies Trust and that neither section 200A nor section 200B of the LRA applies. On that premise every basis for the Court's jurisdiction under the LRA falls away. What remains is a claim founded upon a deed of sale, by which the applicants seek to compel Platinum to employ them although no employment relationship exists. The dispute that remains is contractual, and the relief sought is the creation of a contract of employment rather than the enforcement of one.

[34] The applicants responded to the point in two ways. First, they submitted that the evidence to be led on section 200B will establish a nexus that also sustains the *stipulatio*. That does not assist them at this stage. Section 200B is pleaded in the principal case, and the evidence led upon it bears on whether the applicants reach the alternatives at all; it cannot confer jurisdiction over a claim which, on its own premise, arises only once the statutory foundation of the principal case has failed. Secondly, they submitted that clause 21 confers a contractual, employment-related right, distinct from any right under section 197, and is itself a *stipulatio*, so that the matter is one between employer and employee. But clause 21, on this hypothesis, is no more than an undertaking by a party to a sale to employ persons in the future. Such an undertaking does not, without more, create an employment relationship, and it is the existence of an employment relationship, or of a contract of employment, that founds the jurisdiction of this Court.

[35] In supplementary written submissions delivered after the hearing, the applicants pressed two further points. The first is that section 77(3) should be read to reach not only a matter concerning an existing contract of employment, but also a matter concerning a right to such a contract. This Court is unable to adopt that reading. The section confers concurrent jurisdiction over any matter concerning a contract of employment, and it presupposes a contract to which the matter relates. A claim founded upon a deed of sale, the object of which is

---

Department of Mineral Resources and Energy and Others [2026] ZASCA 40; (2026) 47 ILJ 1071 (SCA).

to bring a contract of employment into being where none exists, is not a matter concerning a contract of employment in the sense contemplated by the section.

[36] The second point is that, even if the alternative would not on its own found the jurisdiction of this Court, the Court may entertain it as a matter ancillary or incidental to the principal claim, which lies within its jurisdiction. The applicants relied on *Groom v Daimler Fleet Management (Pty) Ltd* (*Groom*), and on sections 151(2) and 158(1)(j) of the LRA and the common-law principle of *causae continentia*.[14]

[37] The authority relied upon draws the very distinction that answers the argument. In *Groom* the Labour Appeal Court accepted that this Court could not determine a self-standing claim for relief lying outside its jurisdiction; it held that incidental jurisdiction arose only because the matter there, a counter-application concerning whether an unfair dismissal claim had been abandoned, was interlinked with, and incidental to, a principal claim that the Court had jurisdiction to determine and was in fact determining. The incidental matter assisted in the resolution of the principal claim that remained before the Court.

[38] The present alternative is of a different character. It is not interlinked with a principal claim that the Court is upholding; it is a substitute, engaged only upon a finding that the principal claim has failed in each respect that founds the Court's jurisdiction. When the alternative falls to be decided there is no longer a claim within the Court's jurisdiction to which it can be incidental. It is, in the language of *Groom*, a self-standing claim, and the incidental jurisdiction there recognised does not extend to it. Sections 151(2) and 158(1)(j), and the principle of *causae continentia*, are to the same effect: they attach incidental powers to matters already within the Court's jurisdiction, and do not create jurisdiction over an independent contractual cause of action that arises only once every statutory basis of the principal claim has been rejected.

[39] In a further note delivered on 5 August 2026, the applicants invoked section 77(3) afresh, relying on the recent decision of the Labour Appeal Court in

[14] [2021] ZALAC 23; (2021) 42 ILJ 2179 (LAC); [2021] 11 BLLR 1079 (LAC) at paras 58 to 66.

Downward and Others v Hudaco Trading (Pty) Ltd.[15] The note quotes the judgment as reaffirming that where an issue in dispute 'relates to; is linked to; or connected with an employment contract', the Labour Court has jurisdiction under section 77(3), together with the wide remedial powers conferred by section 77A(e), including specific performance. On that basis the applicants submit that the *stipulatio alteri* claim concerns the very employment relationship that clause 21 was intended to create, and that this Court may order that they be employed on its terms.

[40] The reliance is misplaced. *Downard*, like the line of authority from which the quoted formulation derives, concerned a dispute arising from contracts of employment in existence between the litigating parties, in that instance the enforcement of a restraint of trade. The formulation presupposes a contract of employment to which the dispute relates, is linked or is connected. On the premise upon which the alternative claims arise, there is no contract of employment to which they can relate: their very object is to bring contracts of employment into existence out of a deed of sale concluded between others. A claim of that character is not a matter 'concerning a contract of employment' within the meaning of section 77(3), and the remedial powers in section 77A(e), including specific performance, are exercisable only in a matter over which the Court has jurisdiction under section 77(3). The further note accordingly does not alter the conclusion already reached.

[41] The respondent submitted that the question of jurisdiction and the question whether the alternative discloses a cause of action go hand in hand: if the pleaded facts, taken as true, disclose no claim to which this Court can apply the law, the Court is equally without jurisdiction over the matter. On the pleadings as they stand this Court agrees with this submission. On the premise upon which the alternatives depend, what is left is a contractual dispute under a deed of sale, over which the civil courts, and not this Court, would have jurisdiction.

---

[15] *Downard and Others v Hudaco Trading (Pty) Ltd* [2026] ZALAC 29 (30 July 2026) at paras 29 to 30. The note cites the judgment as 'Michael and Others v H[…] [2026] ZALAC 29'; the first appellant is Ian Michael Downard. The formulation quoted is attributed to Waglay AJP in *Randwater v Stoop and Another* [2013] 2 BLLR 162 (LAC), to which the judgment refers.

The applicants' answer

[42] The applicants contend that the amendments merely expand the *facta probanda*, and that Platinum impermissibly demands proof at the pleading stage. The contention misconceives the very nature of the objection. Platinum does not say that the applicants have failed to prove their averments; it says that the averments, taken as true, sustain no claim known to our law. The defects are defects of law appearing on the face of the proposed pleading, not evidential gaps to be filled at the trial, and they cannot be cured by evidence.[16]

[43] Nor does it assist the applicants that they will lead evidence on sections 200A and 200B in support of their principal case. That evidence bears upon whether the applicants reach the alternative claims at all; it cannot render those claims good in law, because their defects are apparent on the face of the pleading.

Costs

[44] Costs in this Court are governed by section 162 of the LRA and are awarded according to the requirements of the law and of fairness. They do not follow the result as a matter of course.[17]

[45] At the hearing neither party pressed for an order of costs against the applicants. The applicants are farm workers of limited means. The respondent indicated that it would seek costs only if satisfied that the Vier Nefies Trust and Sunbird would in truth bear them and otherwise did not persist in seeking costs against the individual applicants; the applicants, for their part, asked that no order be made against them. Having regard to the requirements of the law and of fairness, and to the positions taken by the parties, this Court considers that no order as to costs should be made.

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

Order

---

[16] *Harmse v City of Cape Town* (2003) 24 ILJ 1130 (LC).

[17] *Zungu v Premier of the Province of KwaZulu-Natal and Others* [2018] ZACC 1; 2018 (6) BCLR 686 (CC).

1. The application for leave to amend is dismissed.

2. There is no order as to costs.

3. The plaintiffs may deliver a replication, if so advised, within 15 days of the date of this judgment.

4. The parties are to deliver a joint pre-trial minute within ten days of the delivery of the replication or, if no replication is delivered, within ten days of the expiry of the period allowed for its delivery.

5. The Registrar is thereafter directed to place the file before a Judge of this Court for directions in respect of the enrolment of the matter for trial.

C de Kock

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicants: Adv PH Kirstein

Instructed by: Hermie Wentzel & Jaenré Botha Attorneys

For the Respondent: R Stelzner SC with G Potgieter

Instructed by: S van R Bredell of Smit Kruger Attorneys