



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

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: 2026-060674

In the matter between:

PLASMA TAKWANA BANDASON

Applicant

and

WOOLWORTHS HOLDINGS LIMITED

First Respondent

WOOLWORTHS (PROPRIETARY) LIMITED

Second Respondent

Heard: 24 July 2026

Delivered: This judgment was handed down electronically by circulation to the parties and their legal representatives by email; and publication on the Labour Court website and released to SAFLII. The date for hand-down is deemed to be 3 August 2026.

Summary: Application for leave to amend a statement of claim in terms of Rule 20 of the Labour Court Rules – proposed statement of claim substituted in its entirety without identification of the amendments – amendment nonetheless determined on its own terms – whether the proposed statement of claim identifies which facts sustain which cause of action and against each respondent – prejudice in responding – leave to amend refused – no order as to costs.

JUDGMENT

MOTSHEKGA, AJ

Introduction

- [1] In this interlocutory application, the applicant, a self-represented litigant and the plaintiff in the main proceedings, seeks leave in terms of Rule 20(4) of the Rules of the Labour Court¹ to amend her statement of claim by the substitution of a fourth amended statement of claim ('the proposed statement of claim'). The first respondent, Woolworths Holdings Limited ('WHL'), and the second respondent, Woolworths (Proprietary) Limited ('WPL'), oppose the application.
- [2] The respondents object to the proposed statement of claim on two grounds. The first is that the proposed statement of claim does not plead the material facts necessary to sustain a direct claim under section 6(1) of the Employment Equity Act² ('the EEA') against WHL. The applicant pleads that WPL was her contractual employer and, that WHL is not cited in that capacity but as a person who directly participated in the employment policies or practices applied to her. The second objection is that the proposed amendment does not delineate the factual allegations against the separate causes of action, and further, it fails to allocate the factual allegations to each respondent, thereby making it difficult for the respondents to identify the case each is required to meet.
- [3] The grounds of objection are intertwined in that, the second objection, which is broader in ambit, is dispositive and axiomatically renders unnecessary any determination on the first objection. For avoidance of doubt, in order to decide

¹ GN 1665 of 1996: Rules of the Conduct of Proceedings in the Labour Court (repealed, effective 17 July 2024).

² Act 55 of 1998 as amended.

whether sufficient facts have been pleaded to sustain a s 6(1) claim under the EEA, the Court would need to first consider whether those facts have been allocated to that respondent at all. As it will become apparent, this exercise cannot lie within the province of either respondent and it is not one the Court will undertake on their behalf. Accordingly, the Court will not make a determination on the first objection.

The form of the proposed amendment of the statement of claim

- [4] The applicant's notice of intention to amend states that the existing statement of claim is to be amended by the substitution of the proposed statement of claim 'in its entirety'. It identifies no paragraphs sought to be amended, nor is any schedule of amendments provided. Additionally, the 'existing operative statement of claim' sought to be amended does not form part of the application. Consequently, the Court is without a comparator statement of claim, a difficulty which was raised with the parties during argument.
- [5] A notice of intention to amend serves to notify the opposing party of what is sought to be amended and, in the event of an objection, to enable the Court to determine what was prior to the proposed amendment, vis-à-vis what will be should leave to amend be granted.
- [6] Accordingly, the Court considers the current amendment application on the proposed statement of claim as introduced by the applicant in its entirety. The respondents have approached it on that footing, with the grounds of objection resting against its four corners.

The proposed statement of claim

- [7] The applicant claims the following relief: as against WPL, declarations that it contravened sections 6(1), 6(3) and 60 of the EEA and that it failed to take the steps contemplated in section 60(2), together with compensation under section 50; and as against WHL, a declaration that it contravened section 6(1) of the EEA by directly participating in the later discriminatory employment practices applied to the applicant, together with compensation under section 50(1). Patrimonial damages under section 50 are also claimed. Three causes

of action arise: unfair discrimination under section 6(1), advanced against both respondents; harassment under section 6(3); and employer liability under section 60, both advanced against WPL.

- [8] The proposed statement of claim comprises 260 paragraphs spread over nine parts: Part A identifies the parties and narrates the facts regarding WHL's post-escalation conduct, concluding with an averment that any 'references to the Respondents are references to one or both Respondents according to the conduct specifically pleaded'; Part B pleads jurisdiction; Part C pleads the grounds relied upon and introduces the claim in terms of section 60 of the EEA; Part D, which constitutes the substantive portion of the proposed statement of claim, pleads the facts; Part E pleads WPL's liability under section 60 of the EEA; Part F pertains to WHL's direct liability under section 6(1) of the EEA; Part G introduces the harassment claim, without identifying the respondent against whom the claim is directed; Part H lists the 'actionable contraventions' relied upon and cross-references selected facts in Parts C and D in support of every claim and against both respondents, pleading further that WHL's post-escalation conduct is relied upon 'as part of the same continuing employment sequence and not as a separate dispute'; and Part I contains the relief as summarised in paragraph 7 above.

Statutory framework – The EEA

- [9] Section 6(1) of the EEA prohibits unfair discrimination by any person against an employee, in any employment policy or practice, on any of the listed grounds³ or on any other arbitrary ground. Section 6(3) provides that harassment is a form of unfair discrimination which is prohibited on any one or more of the grounds listed in section 6(1). Section 60 deems an employer to have contravened the relevant provision where the contravening conduct of an employee is brought to its attention and the employer fails to consult and take the necessary steps.⁴ Section 60(4) exonerates the employer from

³ The listed grounds are: 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.

⁴ Sections 60(1), 60(2) and 60(3) of the EEA.

liability where it is able to prove that it did all that was reasonably practicable to avert contravention of the Act by the employee.

[10] The question of onus oscillates across the applicant's three causes of action. On the discrimination claim based on a listed ground, section 11(1) of the EEA requires an employer against whom the allegation is made to prove on a balance of probabilities that it did not occur as alleged, or that it is rational and not unfair, or it is otherwise justifiable. Contrastingly, where the discrimination is based on an arbitrary ground, section 11(2) requires the complainant to prove that the conduct complained of is not rational, amounts to discrimination and is unfair. Furthermore, liability of the employer under section 60 of the EEA is predicated upon a finding of contravention committed by an employee, notification to the employer regarding the contravention and a subsequent failure by the employer to take the necessary steps.

[11] It follows that what each respondent bears the burden of proving or disproving depends on the facts pleaded against it, the provision relied upon and the ground.

Discussion

[12] The generous approach adopted by the Court regarding amendments is trite. The Court's discretion is wide and leans towards the proper ventilation of disputes. An amendment will generally be permitted unless it is made in bad faith or will result in an injustice not curable by an appropriate order as to costs.⁵ That is not, however, carte blanche to introduce a defective pleading and require the other party to plead over its objections. Our Courts have also held that where an amendment would render a pleading excipiable, leave to amend will ordinarily be refused.⁶

[13] The rules require a statement of claim to be a clear and concise statement of the material facts, with sufficient particularity to enable the opposing party to

⁵ *Blaauwberg Meat Wholesalers CC v Anglo Dutch Meats (Exports) Ltd* 2004 (3) SA 160 (SCA) at para 12; *Affordable Medicines Trust and Others v Minister of Health and Another* 2006 (3) SA 247 (CC) at para 9.

⁶ *Cross v Ferreira* 1950 (3) SA 443 (C) at 450.

reply, and a statement of the legal issues that arise from those facts.⁷ The evident purpose of these requirements is to define the issues so that each party knows the case it must meet, and every fact necessary to establish the claim must be clearly set out.⁸

- [14] The enquiry into whether a pleading is vague and embarrassing is twofold: whether the pleading lacks particularity to the extent that it is vague; and whether the vagueness causes embarrassment such that the excipient is prejudiced, in the sense of being unable to plead or properly prepare for trial. The excipient must show that the pleading is ambiguous, meaningless, contradictory or capable of more than one meaning, to the extent of vagueness which causes embarrassment.⁹ In *Roberts Construction Co Ltd v Dominion Earthworks (Pty) Ltd*, the Court held that:

‘The inquiry is not - whether a cause of action lies somewhere wrapped up in the particulars of the plaintiff’s claim...The enquiry relates to the embarrassment arising from the form of the pleadings. A plaintiff is certainly not entitled to plead a jumble of facts and to require the defendant to sort them and fit them together in order to determine the real basis of the claim.’¹⁰

- [15] The objection in this matter is not that the proposed statement of claim is incoherent. The proposed document, albeit lengthy, appears organised and arranged in parts as discussed in paragraph 8 above. It contains headings, with genuine attempts to narrate the facts in accordance with the pleaded grounds and contraventions. These attempts, however, fail to allocate the facts founding each cause of action to either respondent. Resultantly, the question upon which the enquiry rests is rather crisp: are the respondents able to respond to the proposed statement of claim in its current form.

⁷ Rule 11(1)(b)(ii) and (iii) of the Labour Court Rules.

⁸*Harmse v City of Cape Town* (2003) 24 ILJ 1130 (LC) at paras 6 - 7; *McKenzie v Farmers’ Co-operative Meat Industries Ltd* 1922 AD 16 at para 23.

⁹ *Trope v South African Reserve Bank and Another* 1992 (3) SA 208 at 211; *BFLM SA (Pty)Limited v Sequence Logistics (Pty) Limited* (2023/061832) [2025 ZAGPJHC 831] (6 March 2025) at para 18.

¹⁰*Roberts Construction Co Ltd v Dominion Earthworks (Pty) Ltd* 1968 (3) SA 255 (A) at 262H - 263A.

Do Parts E and F cure the complaint?

- [16] The applicant submits that Part E delineates WPL's liability and Part F delineates WHL's liability, and that this resolves the objection. The Court accepts that both parts are discrete, that each is directed at an identified respondent, and that Part E is a properly constituted section 60 claim in terms of the EEA. The submission nonetheless does not meet the objection, for reasons following hereunder.
- [17] Firstly, Parts E and F address the section 60 claim against WPL and the section 6(1) claim against WHL. The relief goes further. A declaration is sought at paragraph 260.1 that WPL contravened section 6(1), yet no part of the proposed statement of claim pleads that case against it. Part G pleads harassment without naming a respondent, yet relief under section 6(3) is sought against WPL, in circumstances where the conduct relied upon as harassment at paragraph 246.5 is the same conduct relied upon against WHL at paragraph 241.2.
- [18] Secondly, Parts E and F allocate conclusions and not facts. Part F identifies which conclusion is directed at whom. It does not identify which of the underpinning facts are alleged against whom. Conclusions of law are not a substitute for the material facts grounding those conclusions, and marshalling the conclusions while leaving the facts unallocated does not cure the defect complained of.
- [19] Thirdly, there is discordance between the two parts. Paragraph 79 pleads as a primary averment that the group-level functions were WPL's authorised representatives. Part F pleads as its primary case that those same functions were WHL acting in its own right. Paragraph 237 then pleads, as an alternative within Part F, the very averment advanced as primary at paragraph 79. The same conduct by the same persons is thus attributed to both respondents on competing primary cases, without a delineable construction.

Averments which are contradictory and are not pleaded in the alternative are patently vague and embarrassing.¹¹

- [20] It behoves an applicant to formulate a statement of claim which marshals the material facts and allocates them to each cause of action and to each respondent, so as to enable each to engage separately and meaningfully with the case made against it. Therefore, the respondents in the present matter cannot be expected to assemble their respective cases from the applicant's supporting affidavit, the replying affidavit, a roadmap, a chronology and a table in the heads of argument. That the applicant found it necessary to provide a roadmap and a chronology demonstrates that the statement of claim does not speak for itself. Ultimately, to require the respondents to collate and synthesise those documents in an attempt to decipher which case each must meet represents the vagueness and embarrassment contained in the proposed statement of claim.

The applicant's remaining submissions

- [21] The applicant further submitted that the respondents' own objection demonstrates that they 'understand' the case pleaded. As the applicant appears in person, the Court explains the distinction plainly. To understand in general terms what a litigant has submitted as their case is not synonymous with being able to respond in a manner that allows for a matter to be triable. A statement of response is a formal document in which each respondent must consider the allegations made against it and state, of each, whether it is admitted, denied, or admitted subject to explanation. That requires knowing, allegation by allegation, whether the allegation is made against that respondent at all. The difficulty is exacerbated by the citing of multiple respondents, each of which must deliver its own statement of response, and WHL not being the applicant's contractual employer. Yet paragraph 48 of the proposed statement of claim directs the respondents to determine for themselves which allegations are made against which of them.

¹¹ *Ferris v Naledi Local Municipality* (121/2022) [2022] ZANWHC 55 (6 December 2022) at para 14.

[22] The applicant in addition submits that no statement of response has been filed, that pleadings have not closed, that no pre-trial conference has been convened and that no trial date has been allocated such that no prejudice can arise. This submission speaks to the delay, wasted preparation or the disruption of an allocated trial date. The prejudice relied upon by the respondents arises because no statement of response has yet been delivered, their complaint being directed at the document they have been called upon to answer. The submission carries a further difficulty. An objection to a proposed amendment of a statement of claim is taken before the response is delivered. If the absence of a statement of response were an answer to such an objection, Rule 20¹² would prove otiose. The submission therefore finds no basis.

[23] Finally, the applicant submitted that any prejudice occasioned by the amendment may be cured by an appropriate order as to costs. The Court is in agreement with counsel for the respondents that this is not such a case. An order as to costs compensates a party for wasted expenditure and cannot piece together the material facts for the respondents. The respondents would thus remain unable to determine which allegations are directed at each of them. The prejudice occasioned by a vague and embarrassing pleading is accordingly not one curable by costs.

Conclusion

[24] Leave to amend accordingly falls to be refused. This order does not dispose of the applicant's claims. The applicant's operative statement of claim is accordingly extant.

Costs

[25] Rule 20(8)¹³ holds a party who gives notice of amendment liable for the costs occasioned to any other party by the amendment, unless the Court directs otherwise. Having regard to the requirements of law and fairness, the

¹² The Rules of the Labour Court.

¹³ Ibid.

application being neither frivolous nor vexatious,¹⁴ each party is to bear their own costs.

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

Order

1. The application for leave to amend the statement of claim in terms of rule 20(4) is dismissed.
2. There is no order as to costs.

M. J. Motshekga

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: In person.

For the Respondents: Advocate P Maharaj-Pillay.

Instructed by: Edward Nathan Sonnenbergs Incorporated.

¹⁴*MEC for Finance, KwaZulu-Natal v Dorkin NO and Another* (2008) 29 ILJ 1707 (LAC) at para 19.