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| (1) Reportable Yes/No                   |            |
| (2) Of interest to other Judges: Yes/No |            |
| (3) Revised                             |            |
| TDM                                     | 26/08/2026 |

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## THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JS 680/2020

In the matter between:

**LORRAINE BALESENG MOLABA**

**Plaintiff**

and

**MAMBA TECHNICAL (PTY) LTD**

**Defendant**

**Heard: 20 August 2026**

**Delivered: 26 August 2026**

**This judgment was handed down electronically by circulation to the parties via email. The date for hand-down is deemed to be 26 August 2026.**

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### JUDGMENT

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**PRINSLOO, J**

#### Introduction

[1] It is common cause that following a retrenchment process, the Plaintiff was dismissed by the Defendant (Mamba) on 30 June 2020.

[2] The Plaintiff filed a statement of claim on 5 October 2020, challenging the fairness of her dismissal. The Defendant filed a statement of response on 2 December 2020. For three years, no further steps were taken to prosecute

the claim, until November 2023, when the Plaintiff filed an amended statement of case. The parties signed a pre-trial minute in February 2025, and the Plaintiff requested that the matter be enrolled only in October 2025.

- [3] This Court must express its concern that this matter was not properly and actively prosecuted and that it went to trial more than six years after the Plaintiff's dismissal.
- [4] One of the primary objects of the Labour Relations Act<sup>1</sup> (LRA) is the effective resolution of disputes. The Constitutional Court, in the opening paragraph of *Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and others*<sup>2</sup> (*Toyota*) held that:

'Time periods in the context of labour disputes are generally essential to bring about timely resolution of the disputes. The dispute-resolution dispensation of the old Labour Relations Act was uncertain, costly, inefficient and ineffective. The new Labour Relations Act (LRA) introduced a new approach to the adjudication of labour disputes. This alternative process was intended to bring about the expeditious resolution of labour disputes which, by their nature, require speedy resolution. Any delay in the resolution of labour disputes undermines the primary object of the LRA. It is detrimental not only to the workers who may be without a source of income pending the resolution of the dispute but, ultimately, also to an employer who may have to reinstate workers after many years.'

- [5] The delay in the prosecution of this case no doubt undermined the statutory purpose of expeditious dispute resolution and finality.

#### The pleadings and pre-trial minute

- [6] Before I deal with the merits of the case and the evidence adduced, it is necessary to say something about the pleadings filed. It is trite law that the court and the parties are bound by the pleadings, the pre-trial agreement<sup>3</sup>, and the issues they agreed to in the pre-trial minute.<sup>4</sup> This Court cannot and

<sup>1</sup> Act 66 of 1995, as amended.

<sup>2</sup> (2016) 37 ILJ 313 (CC) at para 1.

<sup>3</sup> See: *Chemical, Energy, Paper, Printing, Wood and Allied Workers Union and Others v CTP Ltd and Another* [2013] 4 BLLR 378 (LC).

<sup>4</sup> See: *Professional Transport and Allied Workers Union on behalf of Khoza and Others v New Kleinfontein Gold Mine (Pty) Ltd* (2016) 37 ILJ 1728 (LC); *National Union of Metalworkers of SA and Others v Driveline Technologies (Pty) Ltd and Another* (2000) 21 ILJ 142 (LAC).

should not go beyond the issues it is required to determine, with reference only to the pleadings and the pre-trial minute.

[7] Jacob and Goldrein<sup>5</sup> aptly capture the position as follows:

‘As the parties are adversaries, it is left to each of them to formulate his case in his own way, subject to the basic rules of pleadings... For the sake of certainty and finality, each party is bound by his own pleading and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial.

The Court itself is as much bound by the pleadings of the parties as they are themselves. It is not part of the duty or function of the Court to enter upon any enquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by their pleadings. Indeed, the Court would be acting contrary to its own character and nature if it were to pronounce upon any claim or defence not made by the parties...

The Court does not provide its own terms of reference or conduct its own enquiry into the merits of the case but accepts and acts upon the terms of reference which the parties have chosen and specified in their pleadings. In the adversary system of litigation, therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to.’

[8] In *SA Breweries (Pty) Ltd v Louw*<sup>6</sup> (*Louw*), the Labour Appeal Court (LAC) was required to, *inter alia*, determine a complaint by the appellant that the court *a quo* decided the case on factual issues not properly put before it on the pleadings, nor as refined in the pre-trial conference minute. The LAC held that:<sup>7</sup>

‘[4] To state the obvious, litigation is complex. Among the duties of legal practitioners is to conduct cases in a manner that is coherent, free from ambiguity and free from prolixity. True enough, the holy grail of translating what is complex into simplicity is not always attainable, but the ground rules are irrefrangible: say what you mean, mean

<sup>5</sup> JHI Jacob, IS Goldrein, ‘*Pleading: Principles and Practice*’, Sweet & Maxwell, at pp 8 - 9.

<sup>6</sup> (2018) 39 ILJ 189 (LAC).

<sup>7</sup> Ibid at paras 4 to 5.

what you say and never hide a part of the case by a resort to linguistic obscurities. The norm of a fair trial means each side being given unambiguous warning of the case they are to meet. Moreover, these requirements are not mere civilities as between adversaries; the court too, is dependent upon the fruits of clarity and certainty to know what question is to be decided and to be presented only with admissible evidence that is relevant to that question. Making up one's case as you go along is an anathema to orderly litigation and cannot be tolerated by a court. Counsel's duty of diligence demands an approach to litigation which best assists a court to decide questions and no compromise is appropriate.

[5] The critical complaint in this matter is that the court a quo decided the case on factual issues not properly put before it on the pleadings, nor as refined in the pretrial conference minute. The complaint had been raised during the hearing and in argument at the conclusion of the trial, considered by the court a quo and dismissed. In our view, the complaint is justified and the court a quo was in error.'

[9] The LAC further held that:<sup>8</sup>

'The relationship between the pleadings and the pretrial conference minute has been the subject of several judicial pronouncements<sup>9</sup>. In short, a minute of this sort is an agreement from which one cannot unilaterally resile. Also, a pleading binds the pleader, subject only to the allowing of an amendment, either by agreement with the adversary, or with the leave of the court. The case pleaded cannot be changed or expanded by the terms of a minute; if it does, it is necessary that that change go hand in hand with a necessary amendment. The chief objective of the pretrial conference is to agree on limiting the issues that go to trial. Properly applied, a typical minute – cum – agreement will shrink the scope of the issues to be advanced by the litigants. This means, axiomatically, that a litigant cannot fall back on the broader terms of the pleadings to evade the narrowing effect of the terms of a minute. A minute, quite properly, may contradict the pleadings, by, for example, the giving of an admission which replaces an earlier denial. When, such as in the typical retrenchment case, there are a potential plethora of facts, issues and sub-issues, by the time the pretrial conference is

<sup>8</sup> Id fn 6 at para 8.

<sup>9</sup> See: *Price NO v Allied - JBS Building Society* 1980 (3) SA 874 (A) at 882D - E; *Zondo and others v St Martin's School* (2015) 36 ILJ 1386 (LC) at paras 10 to 11.

convened, counsel for the respective litigants have to make choices about the ground upon which they want to contest the case. There is no room for any sleight of hand, or clever nuanced or contorted interpretations of the terms of the minute or of the pleadings to sneak back in what has been excluded by the terms of a minute. The trimmed down issues alone may be legitimately advanced. Necessarily, therefore, the strategic choices made in a pretrial conference need to be carefully thought through, seriously made, and scrupulously adhered to. It is not open to a court to undo the laces of the straitjacket into which the litigants have confined themselves.'

[10] In summary, a statement of claim must inform the defendant of the material facts and the legal issues arising from those facts upon which the plaintiff will rely to succeed in its claims. Those must be sufficiently detailed to enable the defendant to respond and to be informed of the nature or essence of the dispute. Each side must be given an unambiguous warning of the case they are to meet.

[11] The issues raised by the Plaintiff must be considered against the backdrop that the pleadings provide the architecture and the evidence at trial provides the detail and texture. However, it is not for this Court to decide a case on factual issues not properly pleaded or refined in the pre-trial minute. This principle was confirmed by the Supreme Court of Appeal (SCA) in *MEC for Health and Social Development of Gauteng Provincial Government v Slabbert*<sup>10</sup>, where it was held that:

'A party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for a plaintiff to plead a particular case and seek to establish a different case at the trial. It is equally not permissible for the trial court to have recourse to issues falling outside the pleadings when deciding a case.'

#### The pleaded case

[12] The Plaintiff was employed by Mamba as a technical coordinator on 5 February 2019, and she was dismissed on 30 June 2020. The Plaintiff's pleaded case, as recorded in her amended statement of claim, is that on 28 April 2020, all employees were given a notice of contemplated restructuring

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<sup>10</sup> [2010] 2 All SA 474 (SCA).

and retrenchment, as envisaged in section 189(3) of the LRA. The Plaintiff's case is that her dismissal was substantively and procedurally unfair because the Defendant failed to comply with the legal principles set out in section 189 of the LRA.

- [13] She pleaded that Mamba failed to provide relevant information despite requests from the Plaintiff and other affected employees. During the trial, the Plaintiff adduced no evidence to show what information was requested or that such a request was refused. The pleaded averment was unsupported by any evidence and requires no further consideration by this Court.
- [14] The crux of the Plaintiff's pleaded case is that she was not part of the consultation process, because the Defendant failed to consult in good faith *'after the affected employees were advised in writing to elect three representatives to partake in the consultation processes, but however the Respondent decided unilaterally to appoint one of the managers, Ms Terblanche to represent the Applicant and others.'*
- [15] In respect of substantive fairness, the Plaintiff referred to the provisions of section 189(3) of the LRA, which requires that the reason for retrenchment must be fair. She stated that the Defendant *'referred to COVID-19 during the retrenchment process that happened a month prior'*. Her case is that she was retrenched for operational reasons.
- [16] It has to be emphasized that the LRA recognises three grounds on which a termination of employment might be legitimate, which include the operational requirements of the employer's business.

#### Substantive fairness

- [17] Substantive fairness involves more than merely showing the existence of an operational requirement and a decision to retrench based on that operational requirement. The employer has to present evidence substantiating the basis for its decision to retrench.
- [18] As alluded to, the Plaintiff's pleaded case did not properly set out the grounds on which she challenges the substantive fairness of her dismissal or disputes the Defendant's business rationale for retrenchment.

- [19] In the pre-trial minute, it was recorded that there was no reason to retrench the Plaintiff, and she disputed the existence of the need to retrench. The Defendant's case is that the need to retrench was directly related to Covid-19.
- [20] In terms of section 192(2) of the LRA, the onus of proving that the employees' dismissals were substantively fair rests on the Defendant. *In casu* the Defendant has to prove, on a balance of probabilities, the existence of a valid commercial rationale, that it considered alternatives and that the selection criteria were fair, in order to establish the substantive fairness of the dismissal.
- [21] The test to be applied in evaluating substantive fairness was described by the Labour Appeal Court (LAC) in *National Union of Food Beverage Wine Spirits and Allied Workers v Coca Cola Beverages South Africa (Pty) Ltd*<sup>11</sup> (*Coca Cola*) as:

[41] To the extent that the appellants pursue the submission that there was no general need to retrench and that the retrenchment was substantively unfair for that reason, this is not a submission that can be sustained by reference to the evidence. The economic case for restructuring and the consequent redundancies in particular occupational posts was made in the s 189(3) notice and elaborated on in detail in the evidence given by Leonhardt, Rajbally and Phetha. Although certain of the English authorities to which the Labour Court referred in its judgment may reflect an overly deferential approach, the Labour Court acknowledged that fairness, rather than correctness, was the applicable benchmark and that the Court was obliged to determine the rationality between the retrenchment and CCBSA's commercial objectives and in particular, whether the decision to retrench was a reasonable option in all the circumstances. This approach cannot be faulted.'

- [22] In *HeroTel (Pty) Ltd v Moses and Others*<sup>12</sup> the LAC confirmed the applicable test for substantive fairness in operational requirements dismissals - a decision to retrench will be substantively fair if it is a rational and reasonable response to the operational requirements predicament faced by an employer.

<sup>11</sup> (2024) 45 ILJ 1813 (LAC) at para 41.

<sup>12</sup> [2025] 10 BLLR 1026 (LAC).

The LAC affirmed that whilst employers have the prerogative to restructure their operations to maximise profits and operational efficiency, the courts do not accept the employer's proffered rationale at face value. Rather, adopting the test in *BMD Knitting Mills (Pty) Ltd v SA Clothing and Textile Workers Union*<sup>13</sup>, a court is entitled to examine whether the particular decision has been taken in a manner which is also fair to the affected employees, and to enquire as to whether a reasonable basis exists on which the decision to dismiss for operational requirements is predicated. Fairness, not correctness, is the mandated test. The LAC further endorsed the principle that there must be a rational connection between the employer's scheme and its commercial objective, and that through consideration of alternatives an attempt must be made to find the option which least harms the rights of the employees.

[23] In *Edge Line Engineering (Pty) Ltd v Association of Mineworkers and Construction Union and others*<sup>14</sup> the LAC confirmed that in scrutinising the grounds advanced for a retrenchment, a court does not second-guess the commercial or business efficacy of the employer's ultimate decision but rather determines whether the decision was genuine and not a sham. It is not the court's function to decide whether the decision was the best decision under the circumstances, but only whether it was a rational commercial or operational decision.

[24] The starting point when scrutinising the commercial rationale or the reason for retrenchment is to establish the presence of a *bona fide* operational requirement. An operational requirement is defined in section 213 of the LRA as '*requirements based on the economic, technological, structural or similar needs of an employer*'. This is followed by an inquiry into whether the decision to retrench was, in fact, based on that operational requirement<sup>15</sup>.

[25] Where an employer contends that there is operational justification for its decision to retrench, it must put forward evidence to show that the operational reason is real and that the dismissal was a fair consequence of its existence. This calls for a consideration of the evidence adduced.

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<sup>13</sup> [2001] 7 BLLR 705 (LAC).

<sup>14</sup> [2026] 4 BLLR 327 (LAC).

<sup>15</sup> *Retrenchment Law in South Africa*, Rochelle le Roux, LexisNexis 2016 at p 187 - 191.

- [26] The evidence adduced by the Defendant's technical manager, Ms Terblanche, was that the nature of the Defendant's business is the installation of alarm systems and closed-circuit televisions and the rendering of general operational services in the security industry. Covid-19, which resulted in a hard lock down in March 2020, affected Mamba severely. There were 15 employees at Mamba, but during the Covid-19 pandemic period there was not enough work to keep the teams busy. The state of national disaster had a devastating effect on the business. The Defendant experienced a drastic decline in revenue, and Ms Terblanche testified that the Defendant's turnover dropped from R 800 000 in January/February 2020 to R 70 000 by May 2020. Mamba's sales figures dropped by 90%.
- [27] Ms Terblanche further testified that new business virtually ceased, cancellations increased, and the Defendant's new contracts and customers dropped by two-thirds, from 150 in January 2020 to 35 in April 2020. It declined even further as businesses closed and people stayed home.
- [28] The Plaintiff did not dispute the substantial evidence proffered by the Defendant regarding the reasons or business rationale that it advanced for retrenchment. In my view, the Defendant's evidence established that its constrained financial circumstances, drastic downturn in business and decline in revenue as well as the devastating effects of Covid-19, constituted a sound reason for retrenchment. In fact, it resulted in the retrenchment of 12 employees. Measured against the applicable standards, it cannot be said that the Plaintiff's retrenchment was irrational or disconnected from Mamba's operational requirements, nor that it was an unreasonable option in the prevailing circumstances.
- [29] The Defendant indeed discharged its onus to establish an operational rationale, which was justifiable and reasonable.
- [30] The Plaintiff's contention that there was no consideration of alternatives and that she should have been moved to a control room position is without merit.
- [31] The evidence showed that the Plaintiff was informed of a vacant control centre operator position at another entity, Mamba Strike, but she did not apply for the position. The Plaintiff, in her evidence before the Court,

conceded that she had not applied for the said vacant position, as she did not possess the required PSIRA qualification.

- [32] In relation to the selection criteria, the Plaintiff has not pleaded that the criteria applied were unfair or applied unfairly. In the pre-trial minute, the Plaintiff recorded that there was no selection criteria and that the Defendant failed to use fair and reasonable criteria.
- [33] I already referred to the LAC authority, which confirmed that the case pleaded cannot be changed or expanded by the terms of a pre-trial minute, and that, if it does, the change must go hand in hand with a necessary amendment. The chief objective of the pre-trial conference is to agree on limiting the issues to be tried and to shrink the scope of the issues to be advanced by the litigants.
- [34] The Plaintiff cannot be permitted to include a dispute about the fairness of selection criteria in a pre-trial minute, when that was not part of her pleaded case.
- [35] In conclusion, the Defendant has discharged the onus to prove that the Plaintiff's retrenchment was substantively fair.

#### Procedural fairness

- [36] Section 189(1) of the LRA requires an employer to consult with certain parties when it contemplates retrenchment. The employer must invite the relevant parties to consult by way of a notice issued in terms of section 189(3). Section 189(3) enumerates the relevant information that is required to be disclosed to the consulting parties.
- [37] Section 189(2)(a) of the LRA provides that the employer and other consulting parties must consult and engage in a meaningful joint consensus-seeking process to attempt to reach consensus on certain prescribed issues.
- [38] The main objective of consultation before a final decision on retrenchment is taken must be to avoid retrenchments altogether, alternatively to reduce the

number of retrenchments and to mitigate the consequences<sup>16</sup>. The objective is not to ensure that the *status quo* is maintained.

- [39] Section 189 of the LRA imposes a number of obligations in peremptory terms, for instance, that the employer '*must consult*', '*must issue a written notice*', and that the employer and the other consulting parties '*must*' engage in a meaningful joint consensus-seeking process.
- [40] Consultation in a retrenchment process must be distinguished from negotiations during a collective bargaining process. Consultation in anticipation of retrenchment calls for a joint problem-solving approach to explore the needs of all parties. Section 189(2) places an obligation on both parties to consult. The employer has to invite the other parties to consult, but the consultation process is a two-way street and requires engagement by all the consulting parties, with the aim of reaching consensus. There is a duty on the other consulting party to put alternatives on the table and to participate meaningfully.
- [41] The Plaintiff's pleaded case is that her dismissal is procedurally unfair because she was not part of the consultation process, because the Defendant failed to consult in good faith '*and the Defendant decided unilaterally to appoint Ms Terblanche, to represent her and others*'.
- [42] Ms Terblanche testified that she was elected by the employees in the technical department as their representative during the retrenchment consultation process. She explained that the section 189 (3) notice was issued on 28 April 2020 to all employees in the technical department. The section 189 (3) notice sets out the reason for the contemplated need to retrench as the economic conditions occasioned by the pandemic, the drastic decline in revenue and the fact that the current structure became unsustainable. The notice further addressed all the topics, as envisaged in section 189(3) and stated *inter alia* that 13 positions would be affected out of the 15 employees, LIFO would be used as proposed method of selection and severance pay would be as per the provisions of section 41 of the Basic Conditions of Employment Act<sup>17</sup> (BCEA). It was made clear in the notice that

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<sup>16</sup> *Atlantis Diesel Engines (Pty) Ltd v National Union of Metalworkers of SA* (1994) 15 ILJ 1247 (A).

<sup>17</sup> Act 75 of 1997.

elected employee representatives would participate in the consultation process.

- [43] Ms Terblanche testified that the first consultation meeting was held on 4 May 2020, and the second on 8 May 2020, both of which she attended as the elected employee representative. The second consultation focussed on alternatives to retrenchment. She referred to the minutes of the two meetings and explained that a consultation was held with all the employees in the technical department, including the Plaintiff, where all the issues discussed in the consultation meetings were discussed with the employees, questions were answered, and they were provided with the minutes of the meetings.
- [44] A third consultation was held on 14 May 2020, with the focus on selection criteria, and the same process was followed. A meeting was held with all the employees on 15 May 2020 to give them feedback and to provide them with copies of the minutes.
- [45] Ms Terblanche testified that the Plaintiff attended all the aforesaid meetings, she was properly consulted and she never objected to Ms Terblanche being the elected representative of the employees in the technical department. The Plaintiff also did not object to the process followed and she raised no issues. Had the Plaintiff objected, she too could have attended the meetings which Ms Terblanche had attended as elected representative.
- [46] The gist of the Plaintiff's case is that she was not part of the consultation process because a representative was elected to attend the consultation meetings with Mamba's management.
- [47] There is no merit in this complaint. Section 189(1)(d) of the LRA provides specifically for an employer to consult with a nominated representative of the employees likely to be affected by the proposed dismissals. There is no requirement in the LRA, or in general, that when a representative has been elected to consult with the employer, the employer must consult with the affected employees directly and individually. Consultation with the nominated representative constitutes consultation for purposes of section 189.
- [48] Ms Terblanche gave feedback to the employees, including the Plaintiff, after consulting with the employer; she discussed the issues with them, provided

them with copies of the minutes, and raised the issues the employees had with the employer.

[49] The Plaintiff's case that she was not part of the consultation process because Ms Terblanche was representing the employees has no merit and is premised on a wrong understanding of the provisions of section 189 of the LRA. She was indeed invited to consult on the issues prescribed in section 189 (3) and the evidence shows that three consultation meetings were held, which were attended by the Plaintiff and she did not adduce any evidence to show that she objected to the process or that she was denied an opportunity to be consulted.

[50] The Plaintiff's dismissal was procedurally fair.

[51] In my view this is a case where the interest of justice will be best served by making no cost order.

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

Order

1. The Plaintiff's case is dismissed;
2. There is no order as to costs.

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Connie Prinsloo

Judge of the Labour Court of South Africa

LABOUR COURT

Appearances:

For the Plaintiff: In person

For the Defendant: Ms T von Holdt from Von Holdt Attorneys

LABOUR COURT