



IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: C432/17

In the matter between:

SHAEIDA JACOBS

Applicant

and

STELLENBOSCH MUNICIPALITY

First Respondent

JEROME PETERSEN

Second Respondent

Date heard: 29 July 2020 on the papers

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court's website and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 3 August 2020.

JUDGMENT

RABKIN-NAICKER, J

[1] This is an opposed interlocutory application arising from a special plea of jurisdiction raised by the respondents in their statement of response to the applicant's amended statement of claim. It is being considered on the papers by agreement between the parties.

- [2] The respondents submit that the Court lacks jurisdiction to entertain the claim to the extent that the substance of applicant's claim relates to alleged unfair labour practices arising from section 186(2) of the LRA, rather than to claims under the EEA which the applicant relies on in bringing the matter to the Labour Court.
- [3] In the alternative, the respondents submit that to the extent that the applicant's allegations may be construed as relating to breaches of the LRA and/or alleged breach of contract, the applicant has failed to present a case which falls within the jurisdiction of the Court and/or is capable of being answered or adjudicated.
- [4] The background to this application which is rather lengthy and tortuous is as follows:
- 4.1 The applicant filed her first statement of claim on 27 July 2017 alleging that first respondent had failed to protect her from sexual harassment, constant verbal abuse, victimization, intimidation and harassment and therefore had undermined her dignity and unfairly discriminated against her.
- 4.2 In addition to the above a 'supplementary' statement of claim was filed on that day alleging that first respondent as her employer had failed to protect her from incidents of unfair discrimination, sexual harassment, victimization and intimidation which were reported to her employer. She also claimed that first respondent aided and abetted the perpetrator by exercising undue pressure on her to perform duties outside of her job description and had refused to pay her outstanding back-pay in terms of an audit report and task assessments.
- 4.3 The applicant through her trade union representative, applied for default judgment on 13 June 2018.
- 4.4 The first respondent filed a notice of opposition on 9 October 2018 and a supporting affidavit on 26 November 2018.
- 4.5 The application for default judgment was set down for hearing on the 27 November 2018. The application for default judgment being fatally defective, the Court granted a postponement to allow the respondents an opportunity to file a statement of defence.

- 4.6 The respondents filed a Notice of Exception on 10 December 2018 on the grounds that the applicant's statement of claim and supplementary statement of claim were vague and embarrassing. After no response was forthcoming to this Notice, the application to uphold the exception was filed on the 18 January 2019.
- 4.7 The applicant then filed a notice to remove the cause of complaint on 11 February 2020 stating that she was "withdrawing the current cause of complaint in order 'to amend and submit the statement of case.'"
- 4.8 A new statement of claim along with an application for condonation was filed on 18 February 2020 (the 2020 statement of claim).
- 4.9 The respondents then filed a statement of response on 27 February 2020 (the 2020 statement of response) which included a special plea relating to jurisdiction.
- [5] The respondents submit that they filed the statement of response "in the interest of not delaying the matter any further against the applicant as an unrepresented litigant and to avoid repeating issues that had been raised previously."
- [6] The plea refers to a portion of the 2020 statement of claim which it submits relates in substance to alleged unfair labour practices and/or claims founded in contract.
- [7] The relevant paragraphs of the 2020 statement of claim for the purposes of this application are set out below:
- "7.12 She receives unreasonable instructions such as to sign off 564 indigent applications within 2 (two) days She has two sections reporting to her and signing off of indigent applications is not her only function.
- 7.13 Another similar incident is that since she started at Stellenbosch Municipality in 2013 she was informed that she is would be responsible for pre-legal section and the indigent section. Two years later in 2015 Mr Jerome Petersen and Mr Peter Wagener informed her that she must take responsibility for check the work of Geodebt and manage them. She had done that for 2 years under duress without compensation and eventually consulted with the trade union on that issue. The union official informed her that she should stop taking

responsibility for an outsourced based company as they are not her responsibility according to her job description. Thereafter she was inundated with emails on why she is refusing to check the outsourced company's work. The trade union intervened and it stopped for a while only to start again which resulted the same process being followed repeatedly.

7.14 When she asked Mr Jerome Petersen if it is her duty to manage and check Geodebt work since they are an outsource company occupying an office in the building he responded that he was doing Ms Jacobs a favour. Mr Petersen did the checking of Geodebt's work however he filtered it down to her without any consultation or agreement to change of her employment conditions. Since 2017 she stopped checking Geodebt's work and she was never held to be insubordinate.

7.16 The unfair treatment towards her did not stop. She objected against her salary grade and T-level after she was up scaled from a T11 to T12 level without any monetary benefit. She then went to see Mr Treunich the Treasury Manager. She enquired from him how it was possible that she was up scaled without any monetary benefit. He told her she did receive her monetary benefit and that she was overpaid and now owes her employer. She requested further details pertaining a monetary benefit and owing the employer, however she received nothing to date. She received "back pay" on 25 January 2016 which was for her notch increase as she was still on her T11 salary scale at the time. He subordinate Mr. Glynn Sawyer acted in her absence at one time and he complained about his acting allowance to Mr Treunich in May 2016 and he informed Mr Sawyer that the Ms Jacobs salary was not adjusted yet (See annexure SJ 008)."

- [8] The applicant states in paragraph 8 of her affidavit that the legal issues arising from the facts set out in her 2020 Statement of Claim (including those in the paragraphs quoted above) are those in terms of section 6 of the EEA read with section 50 and 60 thereof. I am in complete agreement with the respondent that as far as the paragraphs quoted above are concerned, the legal issues arising therefrom have nothing to do with an unfair discrimination claim. In addition this Court has no jurisdiction to deal with facts giving rise to unfair labour practice

claims. Furthermore issues of breach of contract have not been pleaded and will not be entertained by the trial Court.

[9] The applicant has legal representation in the matter now before me, and reliance is placed on the **September**¹ matter in the Constitutional Court in submissions before me. The ratio in that case based on the facts and circumstances before it is irrelevant *in casu*. In that case the Court dealt with whether a claim referred as an unfair dismissal dispute to the CCMA could be heard as an unfair discrimination claim in the Labour Court. There is no authority that this Court has jurisdiction in relation to unfair labour practice disputes.

[10] This matter has been dealt with in what could be termed as an unconventional manner. The respondent has waived opposing the condonation application and the applicant has been given the latitude to amend and supplement her statement of claim on a number of occasions. She now has legal representation and as far as I am concerned the latitude which the Court is prepared to grant should end here. The trial court will deal solely with an unfair discrimination claim and the pre-trial minute that shall be filed pursuant to the order I will hand down shall not deal with the factual allegations contained in paragraphs 7.12; 7.13; 7.14 and 7.16 of the 2020 Statement of Claim.

[11] In the circumstances, I make the following order:

Order

1. The special plea is upheld;
2. The parties shall prepare and file a pre-trial minute within 15 days of this order;
3. The Pre-trial Minute shall deal with common cause and disputed facts with no reference to paragraphs 7.12; 7.13; 7.14 and 7.16 of the 2020 Statement of Claim.
4. The costs of this application stand over.

¹ *September and Others v CMI Business Enterprise CC* [2018] ZACC 4



H. Rabkin-Naicker

Judge of the Labour Court of South Africa

Representation:

For the Applicant: Melanie Thorne instructed by KM Adams Attorneys

Respondents: BCHC Attorneys