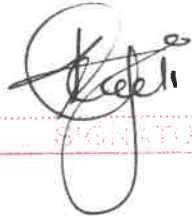


DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: ~~YES/NO.~~
(2) OF INTEREST TO OTHER JUDGES: ~~YES/NO.~~
(3) REVISED.

03/03/2023
DATE


SIGNATURE



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS 377/2020

In the matter between:

MOSES MASHOENE AND 53 OTHERS

Applicant

and

NELKA PLASTICS (PTY) LTD

Respondent

Heard: 17 February 2023

Delivered: 03 March 2023

(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 SAFLI. The date on which the judgment is delivered is deemed to be 03 March 2023.)

JUDGMENT

LALLIE, J

- [1] On 29 July 2020 PASA trade union, the applicant, referred a dispute to this court in an effort to obtain an order reinstating 54 individuals who worked for the respondent. In response to the statement of claim the respondent filed an

exception based on the applicant's failure to cite the applicant party properly. A further ground for the exception was that the statement of claim did not disclose a cause of action. On 19 February 2021 this court issued an order upholding the exception. The court further ordered the applicant to deliver a notice of amendment within 30 days. On 17 March 2021 the applicant filed a document purporting to comply with the order of 19 February 2020. In a judgment dated 13 October 2021 this court found that the document the applicant filed on 17 March 2021 purports to be an amendment and granted the respondent leave to respond to the document within 20 days as it deemed fit. The respondent responded in terms of the judgment by filing a notice to strike out the document filed by the applicant on 17 March 2021. It relied on two grounds, namely, the document does not state that it purports to amend the statement of claim and the portions it amends. A further ground is that the document does not identify any of the individual applicants.

[2] On 1 December 2021 the applicant filed the following response:

**RESPOND TO THE APPLICATION TO STRIKE OUT DOCUMENT DATED
17 MARCH 2021**

1. As per the Court Order dated 14 October 2021 the document served on 17 March 2021 purports to be an amendments pursuant to the Court Order of 19 February 2021.
2. As per the compliance order issued by the department of employment and labour dated 15 July 2019 the employer should have provided the employees with the record required for the employees to identify themselves.
3. As for the records provided all the names of the employees involved are provided for in the file.

**BASED ON THE ABOVE FACTS THE APPLICATION SHALL BE
DISMISSED AND JUSTICE TAKES ITS COURSE.**


[3] It was argued on behalf of the respondent that the document filed by the applicant on 17 March 2021 hereinafter referred to as the document should be struck out owing to the applicant's failure to comply with the order of 19 February 2021. It was further argued that the applicant's referral should be dismissed. The argument is based on paragraph 2 of the order which provides that the applicant's failure to serve a notice of amendment within 30 days would lead to the dismissal of the application. The counter argument advanced on behalf of the applicant was that in the judgment of 13 October 2021 it was found that they had complied with the order of 19 February 2021. It was further argued, based on the alleged compliance that this application should be dismissed.

[4] Amendment of pleadings is governed by Rule 12 of the Labour Court Rules read with Rule 28 of the Uniform Rules. In the order of 19 February 2021 the applicant is directed to serve a notice of amendment. The purpose of giving the notice is to inform the respondent of the intention to amend the statement of claim and to provide particulars of the amendment. Even when the most generous interpretation is given to the document the applicant filed, it lacks the required information. Of significance is that the order of 19 February 2021 was issued in order to afford the applicant an opportunity to cure the fatal flaws in its statement of claim. The applicant did not seize the opportunity. The consequences of the applicant's failure to deliver the notice of amendment are that its statement of claim that was found excipiable for lack of necessary averments to support a cause of action against the respondent in the order of 19 February 2021 remains excipiable. In keeping with the same order I have to accept the respondent's argument that the document filed by the applicant on 17 March 2021 stands to be struck out in that it does not comply with paragraph 2 of the order of 19 February 2021. The applicant's claim must, in the circumstances be dismissed.

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

1. The document delivered by the applicant dated 17 March 2021 is struck out.

2. The applicant's claim is dismissed.
3. There is no order as to costs.



Zolashe Lallie
Judge of the Labour Court of South Africa

Appearances:

For the applicant: M Mashoene

For the respondent: C. Bensch-Higgs Attorneys

LABOUR COURT