

**IN THE LABOUR COURT OF SOUTH AFRICA**

**HELD AT JOHANNESBURG**

**CASE NO: J2069/99**

In the matter between:

Applicant

and

First Respondent

Second

Respondent

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**JUDGMENT**

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**LANDMAN J:**

1. On 26 June 2000 I handed down an order which referred a voluminous application brought by Ms Botha against her employer, represented by the Minister of Foreign Affairs and her Director-General, to trial. I ordered that Ms Botha file a statement of case as contemplated by rule 6(1) of the Rules of the Labour Court within 10 days of the order. Thereafter the time periods provided for the filing of a response and the further proceedings would be regulated by rule 6.
2. Ms Botha's attorneys filed a statement of case consisting of some forty one pages on 19 July. The statement of case is preceded by a preamble which sets out truncated reasons for her failure to comply with the order timeously and prays for condonation of the late filing of the statement of case. One hundred and twelve pages of documentation were attached to the statement as annexures.
3. On 3 August application was filed for default judgment. This application was removed from the roll and re-enrolled

for 16 August 2000. On 8 August the respondent applied in terms of rule 11 for an order setting aside the whole application on the grounds that it was irregular. The irregularity relied upon is that Ms Botha has failed to apply for condonation for her failure to comply with the terms of the order. In addition application is made to strike out the statement of claim and for the dismissal of the application for default judgment. Leave to file a statement of response is sought in the alternative in the event of the court refusing respondents' main relief. The applications were answered and in one instance a replying affidavit was filed. The matter was postponed on 16 August because it was on the unopposed roll and came before me on 3 October.

4.I accept that Ms Botha's failure to comply with the time limits set out in the order was occasioned by the court's file going astray so that the order was only transmitted to the parties on 30 June. It was attended to by Ms Botha's attorney on 5 July. The correct procedure, as was done in this case, was to request the consent of the other party to an extension of time. The consent of the other party would not be decisive but is such a powerful consideration that the party in default could proceed on the assumption that the court would grant condonation if it was raised. Cf **Pilcher and Conways (Pty) Ltd v Van Heerden** 1964(1) SA 179 (O) at 181D-E. Reciting the history of the matter in a preamble to the statement of case would be a practical and cost effective way to bring facts to the court's attention. However, where the opposing party declines its consent or, as here, allegedly does not respond, the defaulting party must file a formal application for condonation. See **Krugel v Minister of Police** 1981 (1) SA 765 (T). Ms Botha has filed an application for condonation after the challenge was made and it serves its purpose. The late filing of the statement of case is condoned.

5.I proceed to consider the application to strike out the statement of case. A statement of case, termed a document for purposes of the rules, is in the nature of a pleading. Its purpose is similar to that of a pleading. Innes CJ in **Robinson v Randfontein Estates GM Co Ltd** 1925 AD 173 at 198 stated: "The object of pleadings is to define the issues..." Harms **Civil Procedure in the Civil Courts** J1 opines that:

"Generally speaking a pleading is a document which sets out the facts upon which the legal relief a party claims is based. It is for this reason that the rule require that every pleading must contain a clear and concise statement of the facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, and it must contain sufficient particularity to enable the opposite party to reply thereto.

The object of a pleading is to state in clear and concise terms the facts upon which party relies to enable each side to come to trial prepared to meet the case of the other and to enable the court to isolate the issue it is to adjudicate upon."

6. The rules of the Labour Court provide that an applicant must set out in the statement “a clear and concise statement of the material facts, in chronological order, on which the party relies, which statement must be sufficiently particular to enable any opposing party to reply to the document.” See rule 6(b)(ii). A balance is required between a recitation of the bare facts and an overwhelming mass of facts. The rule is premised on the assumption that pleaders will display a certain amount of skill and judgment. Of course allowance will be made for the unsophisticated litigant.
7. Following on the statement of material facts there must be a clear and concise statement of the legal issues that flow from the material facts. See rule 6(b)(iii). The legal issues would include the pleading of all the essential elements of the applicant’s cause of action.
8. Ms Botha’s statement of case does not assist the respondents in pleading to her case. They would have to search diligently and possibly in vain for the main plank of her case among a forest of assorted trees. Her statement of case is a good guide to the evidence which she will presumably present but it serves to obfuscate the central facts and the issues.
9. The legal conclusions, set out in her statement of case, are in the nature of arguments which may be addressed after the trial. They do not set out clearly and concisely the elements of her cause of action. Nor do they adequately draw conclusions of law from the facts.
10. The rules require a schedule listing of the documents that are relevant to the claim. See rule 6(1)(e). The list of documents constitutes prima facie discovery for purposes of the trial. See rule 6(9). The actual inspection and copying of the documents is usually disposed of at the pre-trial conference. See rule 6(4). Where these informal and cost- efficient mechanisms prove insufficient the court will rule on the question of discovery. It is unobjectionable for a pleader to attach copies of the documents to the statement of case. It is a matter of style. It is a different matter where the statement of case incorporates the annexures by reference. This is usually unhelpful and confuses an affidavit or affirmation with a pleading. Indeed it is the nub of the submissions by Mr Tokota, who appeared for the respondents, that notwithstanding that the application was referred to trial Ms Botha’s representatives have substantially reproduced her affidavit as a pleading.
11. In the premises I am of the opinion that the statement of case does not comply with rule 6 and the practice of

pleading in this court. The applicant is granted 15 court days to file an amended statement of claim. Thereafter the respondent may file a statement of response within the time period contemplated in the rules of this court.

12. The respondents' apply for their costs including the costs of 8 and 16 August. In considering an order for costs I must be guided by the law and equity. I take note that the initial response of the respondents, when confronted by the statement of case, was a reasonable one i.e. allow us an opportunity to plead (although it was subsequently decided, correctly, to apply to strike out the statement of case). This approach was rebuffed and led to the present proceedings. There is no reason why they should not be awarded their costs and I order the applicant to pay them.

SIGNED AT DATED AT BRAAMFONTEIN THIS 5<sup>TH</sup> DAY OF OCTOBER 2000.

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A A Landman  
Judge of the Labour Court

3 October 2000

: 5 October 2000

Adv. P. C. Van der Byl SC instructed by Wilsenach, Van Wyk Attorneys

ent: Adv. B. R. Tokota instructed by the State Attorney