REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Reportable

Case no: JS 192 / 2014

In the matter between:

CANDY AND THE 95 **Applicants**

and

COCA COLA FORTUNE (PTY) LTD **Respondent**

Heard: **8 August 2014**

Delivered: **26 August 2014**

Summary: **Exception – non compliance with Rule 6 of the Court Rules – statement of case excipiable**

Practice and procedure – mandate of legal representative challenged – power fo attorney required – application of Rule 7 of the Uniform Rules of the High Court – principles applicable

Practice and procedure – brief of counsel by an attorney – what constitutes proper brief – counsel in effect acting on his own taking direct instructions from litigants

Practice and procedure – citation of individual applicants to statement of case – principles stated – proper identification and citation of individual applicants required

Costs – costs de *bonis propriis* against legal representative – principles stated – costs *de bonis propriis* awarded against counsel for applicants

Exception – exception upheld – entire statement of claim struck out

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JUDGMENT

SNYMAN, AJ

Introduction

[1] The matter that came before me on 8 August 2014 concerned exceptions raised by the respondent to the applicants' statement of claim referring a dispute to the Labour Court. In the end, and what I witnessed, was a prime example of how litigation should not be conducted. This kind of conduct by persons holding themselves out to be legal representatives, and then taking on cases for a large number of individuals, and which I have been tasked to consider in this matter, actually boggles the mind, and has to be addressed. I will attend to do this in this judgment, hopefully to serve as a warning to try and prevent a re-occurrence of such a sorry state of affairs in the future.

[2] In this matter, there was a referral of what seems to be an unfair dismissal dispute to the Labour Court in March 2014. The only citation that I could find of who exactly the applicants were, in this referral document, was simply that of "Candy and 95 others". This issue will be specifically addressed hereunder. The actual document constituting this referral was, however, described as a statement of claim and dated 10 March 2014.

[3] The respondent opposed this referral by way of two notices of irregular proceedings filed on 20 March 2014. The first notice raised a dispute of the mandate of the applicant parties' legal representative to act on behalf of the individual applicants and to bring these proceedings. The second notice raised the issue that the statement of claim did not comply with Rule 6 of the Labour Court rules and did not disclose a proper cause of action. The applicants were given 10 days to remove these causes of complaint.

[4] No response was forthcoming from the applicants to these notices of 20

March 2014 filed by the respondent and, consequently, the respondent on 3 April 2014, filed a further notice to remove a cause of complaint and setting out further particularly that formed the basis of the respondent's objections to the statement of claim. Specifically, the applicants were again called on in this notice to remove these causes of complaint within 10 days or a formal exception to the statement of claim would follow.

[5] Significantly, on 15 April 2014, the applicants then in response to the respondent's notice filed on 3 April 2014 filed two documents. The first document was headed 'certificate of outcome of dispute referred to conciliation' which attached the certificate of failure to settle issued by the CCMA and recorded that 'take further notice that the applicant may not remove the cause of complaint; the matter must be set down for trial.' (sic) The second document was headed 'Notice not to remove the cause of complaint' and in this document it was contended that the applicants had complied with the Labour Court Rules and it was recorded that the applicants had no intention to remove any cause of complaint as there was no basis for such complaints.

[6] On 8 May 2014, the respondent then filed an exception, in which is prayed that the applicants' claim be dismissed with costs, based on the causes of complaint raised and the fact that such causes of complaint had not been removed. It is this exception that has now come before me for determination.

Background facts

[7] The issues that I have to determine in the current proceedings make it unnecessary for me to decide the merits of any case of the applicants or whether they have any prospects of succeeding in their claim. The simple issue for determination is whether there is the applicants' claim has been properly placed before Court in the first place. If there is no dispute properly before Court, then there simply no claim to consider. I will assume, without deciding this issue, that that the individual applicants (whomever they may be) have a valid unfair dismissal dispute susceptible to be referred to the Labour Court, which assumption I base on the certificate of failure to settle issued by

the CCMA on 28 January 2014 and which formed part of the pleadings. The backgrounds facts set out hereunder will only relate to the prosecution of this claim, purportedly by these mentioned individual applicants reflected on this certificate to settle.

[8] Following the issuing of the certificate of failure to settle, application was made for a case number in the Labour Court. This application for a case number was dated 10 March 2014 and was signed by one Advocate R H Phale. Advocate Phale was also the very same legal representative purportedly representing the individual applicants when this matter was argued before me. What I find particularly concerning, considering the circumstances set out hereunder, is that the representative of the applicants in the case number application is recorded as being Advocate Phale, but then, in a clearly different colour ink, someone had added B W Mtsweni Attorneys. In any event, the address and contact particulars of the legal representative provided on this form is that of Advocate Phale, and not that of B W Mtsweni Attorneys.

[9] What followed directly on this application for a case number is a document described as a statement of claim. It is also dated 10 March 2014. I say it is described as a statement of claim because simply, and no matter how one may look at it, it is not a statement of claim. I highlight the following:

9.1 A statement of claim must contain a proper citation of the parties.[1] The sole citation of the applicants is 'Candy and the 95 were on an enquiry mission of their status of employment (Permanent basis)' (sic). The respondent is described as Coca-Cola Fortune (Polokwane) and the citation of the respondent reads:

> 'Any break in the chain of being creates chaos and upset the universe. It is of paramount importance to take into cognizance of the high unemployment statistics in South Africa. It is therefore advisable and of concern interest that the employer and employees be in the position to take meticulous care of the

[1] See Rule 6(1(b)(i) which reads: A document initiating proceedings, known as a 'statement of claim', may follow the form set out in Form 2 and must…. have a substantive part containing the following information: (i) The names, description and addresses of the parties…'

statistics in this country. As such any misunderstanding between the employer and the employees should not handled with pride and arrogance but consultation, mutual co-operation and understanding to strengthen the fragility and weaknesses of the working environment' (sic).

I simply cannot comprehend how this could constitute a citation of the respondent party of any kind. In addition, no addresses of the parties are provided. There is simply no basis at all that this description can serve to constitute a proper citation, even on the most generous consideration.

9.2 Added to the above, the individual applicants are not even identified. There is no name list of individual applicants. There is equally no indication of even who these 'Candy and 95 others' are. One does not even know who 'Candy' is.

9.3 The statement of claim equally had to contain a chronology of the material facts in sufficient particularity to enable the respondent to plead thereto.[2] A consideration of the purported statement of claim contains no such chronology. In fact, a reading of the document leaves me mystified as to what exactly the facts in this matter are. One simply cannot gather from the document what exactly forms the factual basis for the applicants' claim of unfair dismissal. What seems to the case is that some employees were dismissed on 12 November 2013 for discrimination and an unfair labour practice, other employees were dismissed for participation in an unprotected strike, whilst others were the victims of selective re-employment. Why and what factual basis all of this happened is impossible to fathom from what is contained in the statement of claim.

9.4 The confusion sown by the summary of facts is further compounded by the statement of legal issues provided by the applicants. What the applicants were required to do is to set out the legal issues that arise from the facts in a clear and concise manner so as to enable the

[2] Rule 6(1)(b)(ii).

respondent to plead thereto.[3] Instead, and what the document contains is the setting out of virtually any kind of cause of action one can think of. Some of the legal issues raised even defy comprehension. To illustrate, some of the legal issues raised are: (1) did the employer act substantively and procedurally fair (what the act that is supposed to be fair would be is not stated); (2) was there a mechanism or system of communication between employer and employee; (3) how many days' notice of dismissal was the employer supposed to give; (4) how many times did the employer give verbal and written warnings; (5) was there any disciplinary hearing undertaken; (6) the employer's conduct is inconsistent with the Constitution; (7) the employer infringed the equality clause in the Constitution and did not advance historically disadvantaged persons; (8) did the employer consider available alternatives prior to dismissal; (9) why was the employer only interested in the unprotected strike of 12 November 2013; (10) the employer was not interested in answering the employees' questions about employment status; (11) there was selective re-employment; (12) there was a legitimate expectation of permanent employment; and (13) after how long can employees provide a medical certificate. As stated, these are some examples. There are more.

9.5 As to the relief sought,[4] the applicants in the statement of claim do properly ask for reinstatement, but then also ask for the following: 'be put in the position they should have been had the management analytically and with thorough scrutiny became practical, transparent and consistent on its hiring and placement on permanent basis status practice (Permanent Basis)' (sic), whatever this may mean. What the Court is supposed to award in this regard is impossible to determine, let alone being susceptible to being properly answered to by the respondent.

9.6 The statement of claim must also be signed by the party to the

[3] Rule 6(1)(b)(iii).
[4] Rule 6(1)(b)(iv).

proceedings.[5] It is trite that signature by a party would include signature by such a party's duly appointed and mandated legal representative. *In casu*, the statement of claim is only signed by Advocate R H Phale from Phale Advocates and only his address is provided. There is no signature by anyone else.

9.6 The statement of claim contains no references as prescribed by Rule 6(1)(a)(iii) and (iv).[6]

[10] What is also included in the Court bundle before me and purportedly as part of the statement of claim is a letter by B W Mtsweni Attorneys dated 14 March 2014 recording, with reference to the current matter, that Advocate Phale must 'kindly assist our abovementioned clients in the matter'. The 'abovementioned clients' as recorded in the letter are again this unidentified 'Candy and 95 others'. This letter could only have been included in the Court bundle after the fact, and because of the respondent raising the issue of the validity of the instruction of Advocate Phale. In any event, the letter is dated 14 March 2014, whilst the application for a case number and the statement of claim was dated 10 March 2014. Whether this letter even constitutes a proper brief to Advocate Phale in the first place will be dealt with hereunder.

[11] In addition, I could actually find no indication in the Court file of any notice of appointment of B W Mtsweni Attorneys as attorneys of record. This would be important, considering the statement of claim itself contains no reference to such attorneys nor does it provide the address of such attorneys as the address for service of process in the legal proceedings. Added to this, the two answering documents filed by the applicants on 15 April 2014 to the complaints raised by the respondent, purport to have been signed by B W Mtshewi attorneys on behalf of the applicants, but the signature citation does not refer to such attorneys as the 'applicants' attorneys'.

[5] Rule 6(1)(c).
[6] Rule 6(1)(a)(iii) and (iv) read: 'A document initiating proceedings, known as a 'statement of claim'…. must- *(a)* have a heading containing the following information…. (iii) an address of the party delivering the document at which that party will accept notices and service of all documents in the proceedings; and (iv) a notice advising the other party that if that party intends opposing the matter, a response must be delivered in terms of subrule (3) within 10 days of service of the statement of claim, failing which the matter may be set down for default judgment and an order for costs may be granted against that party'.

[12] It is against the above background that I will now consider the three questions central to deciding whether the applicants' statement of claim is an irregular step, being: (1) does there exist a proper authority for the bringing of the case to Court; (2) are the individual applicants actually a party to the proceedings; and (3) has there been non compliance with Rule 6 to the extent of tainting the statement of claim with irregularity. A final issue to consider, in the context of authority issue, is whether Advocate Phala has in fact been properly briefed in this matter.

The issue of authority

[13] The Labour Court Rules do not have a specific rule dealing with the issue of the mandating (authority) of representatives to bring legal proceedings on behalf of litigants, and how this mandate can be challenged and must then be proven. The Uniform Rules of the High Court however does have such a provision, found in Rule 7(1), which provides:

> 'Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such a person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfies the court that he is authorised so to act….'

[14] In *Chemical Energy Paper Printing Wood and Allied Workers Union and Others v Express Payroll CC,*[7] the Court said:

> 'The question to be asked is whether rule 11(3), which reads: 'If a situation for which these rules do not provide arises in proceedings or contemplated proceedings, the court may adopt any procedure that it deems appropriate in the circumstance', be used to adopt the procedure for rule 7 (1) of the High Court Rules in the instant application?
>
> The answer has to be in the positive. Rule 11 was meant for exactly the situation that the present parties find themselves in. There is a demand for proof of first applicant's and its attorneys' authority to act on behalf of all the

[7] (2011) 32 *ILJ* 2959 (LC) at paras 25 – 26.

> applicants. It is common cause that the Labour Court Rules do not make provision for such proof. To cure such a 'lacuna' in the Labour Court Rules, nothing precludes the adoption of the Rules of the High Court.'

I fully agree with this reasoning. There are in fact several examples of the Labour Court applying the provisions of the Uniform Rules of the High Court in supplementing the Labour Court Rules.[8] I accordingly accept that the respondent properly invoked the provisions of Rule 7(1) of the Uniform Rules and as such, Advocate Phale had to show his authority to act on behalf of the applicants, as well as that of B W Mtsweni attorneys.

[15] In *South African Allied Workers' Union and Others v De Klerk NO and Others,*[9] the Court held as follows as to what is contemplated by Rule 7(1):

> 'The power of attorney contemplated by Rule 7 (1) is a power to take certain formal procedural steps, namely to issue process and to sign Court documentation such as summons or notice of motion on behalf of a litigant. It does not contemplate a general authority by one person to another to represent him in legal proceedings. There is a clear distinction to be drawn between an attorney being mandated in the form required by Rule 7 to issue formal Court process, and the general authority of one litigant to act in all respects on behalf of the others... Rule 7 (1) is, in essence, merely a means of achieving production of the ordinary power of attorney in order to establish the authority of an attorney to act for his client. It may be called for simply by notice and without an evidentiary challenge to such authority. Moreover, the authority of a litigant's attorney to represent him is not a fact which need be alleged in pleadings or established at a trial, whereas the authority of one litigant to launch proceedings on behalf of another clearly is.'

The point is simple. If an attorney brings process to Court and signs pleadings, it is accepted that the attorney has the necessary authority to do so. It however remains open for this authority to be challenged by way of simple notice. Once challenged, all the attorney needs to do is provide proof

[8] See for example the judgments of *Ganga v St John's Parish* (2014) 35 *ILJ* 1294 (LC) where High Court Rule 47 relating to security for costs was applied; *Eagleton and Others v You Asked Services (Pty) Ltd* (2009) 30 *ILJ* 320 (LC) where Rule 23 of the High Court Rules relating to exceptions was applied; and *Cisco Printing CC and Another v Sinclair* (1999) 20 *ILJ* 338 (LC) where High Court Rule 49(11) with regard to appeals was applied.
[9] 1990 (3) SA 425 (E) at 436F - 437B.

of authority by way of a power of attorney (or other acceptable form of proof) and that is the end of the issue without further evidence being required.[10]

[16] Rule 7(1) does not specifically prescribe a power of attorney to establish authority, and allows for other forms of proof, for example a confirmatory affidavit. In addition, any proof of authority obtained and then provided even after proceedings were instituted would ratify any lack of proof authority in initially instituting the proceedings. In *Gainsford and Others NNO v Hiab AB*,[11] the Court said:

> 'Rule 7 (1) does not prescribe the method of establishing authority where such authority is challenged. All the party whose authority is challenged has to do is to satisfy the Court that he has the necessary authority so to act, which authority can even be obtained after the action has been instituted or the defence filed.'

[17] The point is that Advocate Phale had ample opportunity, at any time before this matter was argued, to provide proof of authority. In the absence of powers of attorney *in casu*, the only other possible proof of authority is the letter of 14 March 2014 by B W Mtsweni attorneys, and Advocate Phale indeed contended this was sufficient to constitute proof of authority. In this regard, I again refer to the judgment of *South African Allied Workers' Union v De Klerk NO and Others*[12] where the Court said:

> '…. if regard is had to Rule 7 in its entirety, it is clear to me that, in spite of the omission of a reference to an attorney in subrule (1), the type of authority contemplated by Rule 7 means the special type of power which is given by a client to his attorney to authorise him to institute or defend legal proceedings on the client's behalf...'

The problem with the letter of 14 March 2014 then has to be that it is not given by a client to his or her attorney authorising the attorney to bring a case to the

[10] See *National Union of Metalworkers of SA obo members and others v Bell Equipment Co SA (Pty) Ltd* (2011) 32 *ILJ* 382 (LC) at para 8; *Cekeshe and Others v Premier, Eastern Cape, and Others* 1998 (4) SA 935 (TK) 950H-J; *ANC Umvoti Council Caucus and Others v Umvoti Municipality* 2010 (3) SA 31 (KZP) at para 28.
[11] 2000 (3) SA 635 (W) at 639J-640A.
[12] *South African Allied Workers' Union v De Klerk NO and Others* (*supra*) at 436E-F.

Labour Court. In fact, the letter is by an attorney to an advocate to assist clients. It cannot constitute proof of the kind of authority as contemplated by Rule 7(1).

[18] In *Steyn and Others NNO v Blockpave (Pty) Ltd,*[13] the Court dealt with the issue of proof of authority as contemplated by Rule 7(1) and criticised a document purporting to provide proof of such authority as follows:

> '…. To that effect a document headed 'Volmag om te litigeer' was served and filed on 10 September 2010, some nine weeks after the launch of the application. Once again, the document was only signed by the first applicant. Nowhere in the document is the respondent's name specified. Instead, there are repeated references to an unnamed company. In my view these are serious defects.'

[19] In the matter now before me, there are several difficulties. Firstly, and as I have said, there are no powers of attorney. I repeatedly asked Advocate Phale where the powers of attorney were, and despite initially conceding that there was no proof of authority, then changed his submission to the effect that the letter of B W Mthsweni of 14 March 2014 also properly served as proof of authority to act, which contention I have already touched on above. In addition to what I have already said in this regard, I further conclude that there is simply no merit in the suggestion that the letter of 14 March 2014 constitutes proof of authority because it does not even identify who these individual clients are that were supposed to have given authority. The simple line in the letter of 'Kindly assist our abovementioned clients in the matter' can by no stretch of the imagination be considered to constitute proof of a client authorising an attorney to bring a case on behalf of the client. In my view, and especially considering that the matter concerned a large number of individual applicants, a legitimate proof of authority to act had to entail the provision of a proper power of attorney or confirmatory affidavit by each applicant wishing to be a part of the proceedings, authorising B W Mthsweni attorneys to bring the Labour Court case on their behalf and declaring themselves as party to the case. Then, and in turn, B W Mtsweni attorneys had to properly brief

[13] 2011 (3) SA 528 (FB) at para 22.

Advocate Phale as counsel (I will specifically deal with the issue of the brief hereunder) to assist in the drafting of and then settling the statement of claim and further to appear in Court on behalf of the applicants.

[20] In the absence of powers of attorney or any alternative form of proof of authority as contemplated by Rule 7(1), the end result has to be that Advocate Phale has failed to establish the authority to act. That being the case, he has been unable to show that either he or B W Mtsweni attorneys, had the right to bring the current proceedings on behalf of the individual applicants to the Labour Court and therefore, by necessary consequence, to serve and file the statement of claim. As such, the statement of claim in itself has to be an irregular step.

[21] This then brings me to the issue of the brief of Advocate Phale. Once again, I asked Advocate Phale to explain to the Court what constituted a proper and legitimate brief by an attorney to an advocate. Advocate Phale explained that as far as he was concerned, the brief had to identify the matter the advocate was briefed with and set out the instruction that the advocate was required to fulfill. Advocate Phale conceded that the letter of 14 March 2014 did not comply with these requisites. According to Advocate Phale, that was however the fault of B W Mtsweni attorneys and not his fault, and this did not detract from the fact that he was still properly briefed.

[22] The fact of the matter is, no matter how one may look at it, that Advocate Phale was not properly briefed. The letter of 14 March 2014 simply does not constitute a brief. That is however not where the enquiry in the current matter ends. In my view, and as will be addressed hereunder, the conduct of Advocate Phale stretched far wider than simply being irregularly briefed by an attorney. For the reasons set out below, I have little doubt that Advocate Phale is actually practicing for his own account without being briefed by an attorney and the issue of whether the letter of 14 March 2014 constitutes a brief must be considered in that context.

[23] I intend to first set out the relevant legal principles. In *Society of Advocates of*

Natal v De Freitas and Another (Natal Law Society Intervening),[14] the Court said:

> '…. The Uniform Rules of Court reflect the division of functions in the legal profession between the attorney and the advocate. In this respect the Uniform Rules closely resemble the Rules of the Court of Holland. As was the case in Holland, many of the Rules predicate a practice whereby whenever there is an advocate acting in Court proceedings he is doing so on instructions from an attorney who is also performing certain functions in the proceedings. Their respective functions complement each other...'

The Court concluded:[15]

> '…. In my view, the rule in question that an advocate does not accept instructions from a client without the intervention of an attorney is a rule which reflects an existing practice of long standing and on the strength of which Court procedure has been arranged and on the strength of which the Legislature has made a distinction between the positions of advocate and attorney. This is in itself good reason for sustaining it. The rule is one which is justifiable in the interests of the legal profession and of the public. It is not unreasonable. It should be sustained.'

[24] From the outset in this Court, Mlambo J (as he then was) accepted the application of these same principles to the Labour Court in the judgment of *National Union of Metalworkers of SA and Others v Comark Holdings (Pty) Ltd*.[16] The Learned Judge had the following to say:[17]

> 'In s 213 legal practitioner is defined as follows: "Any person admitted to practise as an advocate or attorney in the Republic." In applying the provisions of the Act, in particular s161, I found it instructive to consider what was said in *Beyers v Pretoria Balieraad* 1966 (2) SA 593 (A). In a nutshell the Appellate Division reasoned that any person who was admitted to practise as an advocate had to be briefed by a practising attorney to represent members of the public...

[14] 1997 (4) SA 1134 (N) 1162A-D.
[15] Id at 1171B-D.
[16] (1997) 18 *ILJ* 516 (LC).
[17] Id at 517H-518D.

> It follows that my view is that in proceedings in this court advocates have to be briefed by practising attorneys to enjoy the right of audience in this court. Similarly, attorneys have to be practising attorneys under the jurisdiction of the law society in question. I have come across nothing to indicate that this view is not in line with what the Act envisages.'

[25] The authorities then equally provide guidance as to what conduct by an advocate would actually be considered to be conduct more akin to that of an attorney and could be considered to be tantamount to the advocate acting without brief of an attorney and taking instructions directly from the client. In *Society of Advocates of Natal*,[18] the Court considered the following factors in concluding that an advocate was acting without brief and taking instructions directly:

> '… *(a)* First respondent contravened the rule of practice that an advocate may not accept instructions from a client directly and without the intervention of an attorney. He acted for the defendant in the *Sirkoth* matter, signed the defendant's plea and engaged in correspondence with the plaintiff's attorney on behalf of the defendant... In all three these matters the first respondent had not been instructed by an attorney.
>
> *(b)* In signing and serving a notice of intention to defend in the action against Sirkoth, and in giving in the notice the address of his chambers as the address for service of process in the action, first respondent performed functions which are the functions of an attorney and not of an advocate…'

[26] Similarly, and in *General Council of the Bar of South Africa v Rösemann*,[19] the Court considered the following:

> '…. It is clear from the above that the respondent:
>
> *(a)* signed both summonses on behalf of the respective plaintiffs;
>
> *(b)* caused each of the summonses to be issued by the clerk of the court concerned;

[18] *Society of Advocates of Natal* (*supra*) at 1173 C-H.
[19] 2002 (1) SA 235 (C) at 241H-242B.

(c) in the Ivans matter, furnished the address from which he practises as the address for service on the plaintiff of further process in the action;

(d) in the Ramsauer matter, furnished his telephone number, presumably so that he could be contacted there by the defendant or by the clerk of the court, if necessary.

The respondent's explanation for this conduct, as I have said, is, first, that he performed each of these acts on 'brief' from the Pretoria attorney, which fact, he contends, exonerates him *per se*; secondly, and in any event, he denies that the work undertaken by him was work normally performed by an attorney ….'

The comparisons to the contentions raised by and conduct of Advocate Phale *in casu* are immediately apparent. The Court in *Rosemann* concluded as follows, in the light of the above considerations:[20]

'… It is not proper, in my view, for an attorney to shuffle off these functions onto the shoulders of an advocate by simply briefing the latter to attend to them on his own, nor can it be proper for counsel to accept such a brief. I hasten to add that there can, of course, be no objection to counsel being briefed to advise an attorney on how to deal with a specific problem which may have arisen in a particular matter… In such a case the advocate advises or assists the attorney concerned so that the latter can the better and more effectively perform his own functions. Counsel does not himself perform the attorney's functions, which remain, ultimately, the latter's responsibility. That is a far cry from the situation where the attorney divests himself of those functions, as it were, washes his hands of them, and passes them over to the advocate to perform in his stead without any further active participation by the attorney…'

The Court in *Rosemann* further said:[21]

'… Any responsible advocate knows, without having to ask, that certain work is normally performed by attorneys, and that it would be improper for him to accept a brief to do such work instead of the attorney, thereby relieving the attorney concerned of responsibility for it. If he was really in doubt, a perusal

[20] Id at 245A-E.
[21] Id at 246E-H.

> of the judgments in the decisions to which I have referred above… ought to have been amply sufficient to apprise the respondent of the impropriety of his conduct.'

The Court concluded:[22]

> 'I find further that signing and issuing summonses and notices of motion in the magistrate's court and furnishing an address for the service of process is work normally performed by, and is part of the normal functions of, an attorney. Whatever other crosses it may be the lot of counsel to bear from time to time during the course of his professional life, bearing such fardels as these is not one of them; moreover, an advocate may not permit himself to become an attorney's lackey or *factotum*.'

[27] With reference to the facts that I have set out above, it was Advocate Phale that applied for a case number. He was the one who signed the statement of claim. It is his address and telephone number that has been provided in the statement of claim as the representative who signed this document. There is no indication of any involvement in this matter by B W Mtsweni attorneys. There is equally no indication that anyone at B W Mtsweni attorneys was even consulted in this matter or that there is any arrangement for the payment of legal fees to such attorneys. In fact, such attorneys were not even in Court, which I find quite concerning, considering the issues raised by the respondent. There is no proper brief to Advocate Phale, and even if the letter of 14 March 2014 is considered as some or other a brief, it came after the statement of claim has been signed and the case number applied for by Advocate Phale himself. Clearly, the only conclusion that can properly be made is that when the statement of claim was drafted, signed and the case number was obtained, Advocate Phale was acting on the direct instructions of individual clients without brief from an attorney. A final point to make is that the letter if 14 March 2014 is in any event tantamount to a complete deferring all conduct in the litigation of this matter to Advocate Phale, which is precisely the kind of conduct taken issue with in the judgment of *Rosemann* and which kind of brief (if it was that) should never have been accepted by Advocate Phale.

[22] Id at 247H-J.

[28] I am therefore convinced that this is a case where Advocate Phale was acting for his own account and taking instructions directly from individual clients. The purported brief by B W Mtsweni attorneys is nothing more than an attempt to disguise this and a poor attempt at that. A further inference that can be drawn, especially considering the submissions made by Advocate Phale to me in Court with regard to his association with B W Mtsweni attorneys, is that there is some or other arrangement between Advocate Phale and these attorneys to lend him legitimacy for his conduct of practising for his own account and transacting directly with clients by way of what is nothing more than bogus briefs. This Court has once before dealt with such a situation in *Beets v Vessel Inspection Services.*[23] In the judgment of *Beets*, Waglay J (as he then was) dispensed a specific warning as to this kind of conduct, where the Learned Judge said:[24]

> 'Applicant has not said that he ever consulted any attorneys from Silver and Warren or that he was required, or not required to pay any fees for their services. Hinds is also silent about this very important issue. In fact, there is no indication whatsoever that Silver and Warren Attorneys had any idea about the case that it had briefed Coetzee to deal with. Although Hinds states that he briefed Coetzee with a bundle of documents, he does not say what these documents were or how he came to be in possession of these documents. From his affidavit it is clear that neither he nor any one from Silver and Warren consulted with the applicant. It also does not appear that there was any consultation with any person from Coetzee and Associates CC.
>
> Furthermore, Silver and Warren briefed Coetzee on the same day on which it was requested to act. Assuming that Silver and Warren was properly instructed and that it properly briefed Coetzee, why is it then that their name was not recorded as the address at which documents would be served in respect of this matter?
>
> Having regard to the above, what is clear is that this matter was in fact being dealt with by Coetzee and Associates CC together with Coetzee. Silver and Warren Attorneys were simply used, with their consent, to mislead this court into believing that the matter before this court is being handled by those

[23] (2002) 23 *ILJ* 1381 (LC).
[24] Id at paras 18 – 21.

> entitled to appear in this court. I say this, not only for reasons recorded above. If one has regard to the fax number recorded in applicant's statement of case, as a fax number at which it will accept service of documents, the fax number is that of Coetzee and Associates CC. Furthermore, the affidavit of service was attested to by the employees of Coetzee and Associates CC and faxed from their fax machine. There is nothing to indicate that Silver and Warren Attorneys exercised any control once they forwarded a brief cover to Coetzee. Nor were they aware of what had or was happening in the matter…
>
> Silver and Warren Attorneys, I am satisfied, were not really applicant's attorneys. What they did was lend their name to Coetzee and Associates CC and Coetzee so that these parties could jointly bring applicant's matter to this court under the guise that Silver and Warren Attorneys were the applicant's attorneys in this matter.'

[29] Advocate Phale did not heed this clear warning, dispensed some time ago nor did B W Mtsweni attorneys. What Advocate Phale in fact did was attempt to mislead this Court in accepting that he was properly briefed to appear in this matter by an attorney when that was never the case. Equally, Advocate Phale sought to mislead not only this Court but third parties such as the respondent, by concealing that he was, in reality, practicing for his own account taking instructions directly from individual clients. B W Mtsweni attorneys lent their name to this clear sham. I find all of this conduct to be entirely unacceptable.

[30] Therefore, and in addition, I conclude that in the absence of a proper and legitimate brief to fulfill the specific functions as an advocate, Advocate Phale equally had no authority to represent the individual applicants in Court in this matter.

<u>The issue of the individual applicants as parties</u>

[31] I will next turn to the issue of the individual applicants actually being parties to these proceedings. I again refer to what I have set out above to the effect that entire citation of the applicants is 'Candy and 95 others' and that is it. There is neither list of individual applicants nor any form of identification or description of even who these individuals are. The point is how would the respondent even know who to deal with and whether these individuals were even its

employees? In my view, it was essential for the individual applicants to be properly cited and described in this matter, especially as there was no trade union involved. This entails that the individual applicants must each be properly identified by name and be listed as individual applicants, either in the statement of claim or as an annexure thereto. Any individual applicant not so listed simply cannot be considered to properly be a party to the proceedings.

[32] In *Librapac CC v Moletsane NO and Others,*[25] the Court dealt with the situation of the proper citation and identification of individual litigating parties in legal proceedings under the LRA. The Court said the following:[26]

> 'The new Act 66 of 1995, has a number of provisions which indicate that greater clarity in respect of the parties is now required. There is good reason for this. A dispute comprises not only a set of averments and submissions relating to issues. It comprises also the persons who are parties to the dispute. Those who seek to be part of the dispute resolution possibilities H contained in the Act, must identify themselves and declare their participation.
>
> There are compelling practical considerations underlying this. Where, for instance, applicants are described merely as 'union A and X others', who are not otherwise properly identified as parties in the action, serious problems of *locus standi* emerge in the event of some individuals resigning from the union in the course of pre-litigation periods or, by way of further example, in the event of the union in its own right electing not to conduct the litigation to conclusion. That holds the potential of prejudice for the individuals concerned. It also contains potential prejudice for a respondent party, who may seek counter-relief against individuals or, ultimately, relief by way of costs against them.'

[33] This issue came before the Court again in *National Union of Mineworkers v Hernic Exploration (Pty) Ltd.*[27] The Court agreed with the reasoning set out in *Librapac* referred to above[28] and said:

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[25] (1998) 19 *ILJ* 1159 (LC).
[26] Id at paras 43 – 44.
[27] (2001) 22 *ILJ* 203 (LC).
[28] Id at para 42.

> 'The individual applicants should have been properly cited in the CCMA referral and in the referral to this court. The only party that was before the CCMA and before this court is the applicant trade union. The applicant trade union has not complied with the provisions of s 191(1) read with s 200 of the Act. All that was required of the applicant was a clear schedule containing each person's full names, his or her address, and a signature to record that person's wish to be party to the steps being taken. This is not an overly technical or legalistic obstacle.'[29]

[34] The judgment of the Labour Court in *Hernic* came before the Labour Appeal Court in *National Union of Mineworkers v Hernic Exploration (Pty) Ltd*[30] which I will refer to as the *Hernic* LAC judgment. Whilst the Court in the *Hernic* LAC judgment did overturn the judgment of the Labour Court, what still remains of importance and of application *in casu* is the basis on which the appeal was upheld and the Labour Court judgment overturned. The Court in the *Hernic* LAC judgment and because the trade union was an actual party to the proceedings, came to a different conclusion as to the interpretation and application of section 200[31] of the LRA, than the Labour Court did. The Court in the *Hernic* LAC judgment concluded that because the trade union was actually a party to the proceedings and acting on behalf of its members, the individual members need not be cited in the pleadings.[32] However and specifically, where it came to the ratio in *Librapac*, the LAC said:[33]

> '… the question that the court had to deal with in *Librapac* was not whether a trade union had a right to refer a dismissal dispute to the CCMA for conciliation or to the Labour Court for adjudication without citing the dismissed employees as co-applicants. What the court was called upon to consider in *Librapac* was a contention that not all the 23 employees in whose favour an arbitrator had made had been properly before the arbitrator. There it was not even a trade union that had referred the dispute to arbitration. There the referring party was reflected as having been 'Herbert Mdladlamba and

[29] Id at para 43.
[30] (2003) 24 *ILJ* 787 (LAC).
[31] Section 200(1) reads: 'A registered trade union or registered employers' organisation may act in any one or more of the following capacities in any dispute to which any of its members is a party- (a) in its own interest;(b) on behalf of any of its members;(c) in the interest of any of its members.'
[32] See para 39 of the judgment.
[33] Id at para 42.

> Others'. A list of 16 names with addresses of each person was given but only one of the employees had signed the referral form. These facts show that whatever remarks the court in that case made which the court a quo regarded as supporting its conclusion were not part of the ratio of the judgment and actually did not relate to the question which has been raised here.'

[35] Therefore, in my view, the *Hernic* LAC judgment determined the matter on a basis not applicable *in casu* because currently there is no trade union and thus section 200 does not apply. Furthermore, the *Hernic* LAC judgment actually sought to distinguish the *Librapac* judgment from the matter before it. In my view, there is nothing in the *Hernic* LAC judgment which contradicts the ratio in *Librapac*, where there is no trade union that is a party to the proceedings acting on behalf of its members and where section 200 thus does not find application. In my view, there is no reason why the ratio in *Librapac* cannot still apply in the absence of the application of section 200, which ratio I agree with. I conclude that in the statement of claim now before me, it was necessary that each of the individual applicants that were a party to the proceedings had to be identified and cited (thus listed), and in the absence of a power of attorney or other form of authority authorising one of the parties to sign on behalf of all others, each of such parties had to sign the statement of claim.[34] None of this happened.

[36] Accordingly, the individual applicants are simply not properly parties to the proceedings now before me. For this reason as well, the statement of claim constitutes an irregular step.

The issue of compliance with Rule 6

[37] In now dealing with the applicants' compliance with Rule 6, the respondent, as stated, filed an exception contending non compliance with this Rule on several grounds. In *Eagleton and Others v You Asked Services (Pty) Ltd*,[35] the Court said that

> '… in deciding the exception, the factual allegations in the statement of claim

[34] A similar approach was followed in *Chemical Energy Paper Printing Wood and Allied Workers Union and Others v Express Payroll CC* (2011) 32 *ILJ* 2959 (LC) at paras 29 – 30 and 36.
[35] (2009) 30 *ILJ* 320 (LC) at para 17.

must be taken as correct and no extrinsic evidence should be taken into account except, where applicable, the documents attached to the statement of claim.'

The Court in *Eagleton*[36] quoted with approval the following passage in *Erasmus* Superior Court Practice:

'An exception is a legal objection to the opponent's pleading. It complains of a defect inherent in the pleading; admitting for the moment that all the allegations in a summons or plea are true, it asserts that even with such admission the pleading does not disclose either a cause of action or a defence, as the case may be. It follows that where an exception is taken, the Court must look at the pleading excepted to as it stands: no facts outside those stated in the pleading can be brought into issue and no reference may be made to any other document…

The object of an exception is to dispose of the case or a portion thereof in an expeditious manner, or to protect a party against an embarrassment which is so serious as to merit the costs even of an exception…

An exception that a pleading is vague or embarrassing will not be allowed unless the excipient will be seriously prejudiced if the offending allegations were not expunged. The effect of this is that the exception can be taken only if the vagueness relates to the cause of action. ….

The test applicable in deciding exceptions based on vagueness and embarrassment arising out of a lack of particularity can be summed up as follows:

(a) In each case the Court is obliged first of all to consider whether the pleading does lack particularity to an extent amounting to vagueness. Where a statement is vague it is either meaningless or capable of more than one meaning.

(b) If there is vagueness in this sense, the Court is then obliged to undertake a quantitative analysis of such embarrassment as the excipient can show is caused to him or her by the vagueness complained of.

[36] Id at para 14.

(c) In each case an ad hoc ruling must be made as to whether the embarrassment is so serious as to cause prejudice to the excipient if he or she is compelled to plead the pleading in the form to which he or she objects. A point may be of the utmost importance in one case, and the omission thereof may give rise to vagueness and embarrassment, but the same point may in another case be only a minor detail.

(d) The ultimate test as to whether or not the exception should be upheld is whether the excipient is prejudiced…

The plaintiff cannot, in answering to the exception, rely on the fact that, apart from the allegations in the summons, the defendant of his or her own knowledge knows what case he/she is required to meet. …. It must be borne in mind that the summons is for the information of the court as well as of the plaintiff.'

[38] In applying the above principles applicable to the deciding of exceptions in the Labour Court environment, the purpose of a statement of claim must be considered. In its simplest terms, the statement of case must at least inform the respondent party what the pertinent facts are on which the applicant will rely on in the case, and further, what the cause of action is that the applicant will pursue as founded on these facts. That must be done in sufficient particularity so as to enable the respondent to provide a proper answer to these facts and the related cause of action. The statement of claim and the answering statement thereto is not just for the benefit of the parties. It also serves the Court, in that the issues in dispute are properly determined and other possible alternative causes of action are eliminated from having to be considered by the Court. A proper statement of claim and answering statement is an imperative to the fundamental requirement of expeditious resolution of employment disputes in terms of the LRA. As the Court said in *Harmse v City of Cape Town*:[37]

'The statement of claim serves a dual purpose. The one purpose is to bring a respondent before the court to respond to the claims made of and against it

[37] (2003) 24 *ILJ* 1130 (LC) at paras 6 – 7.

> and the second purpose of a statement of claim is to inform the respondent of the material facts and the legal issues arising from those facts upon which applicant will rely to succeed in its claims.
>
> The material facts and the legal issues must be sufficiently detailed to enable the respondent to respond, that is, that the respondent must be informed of the nature or essence of the dispute with sufficient factual and legal particularity so that it knows what it is that the applicant is relying upon to succeed in its claim.'

[39] The first and most immediate problem with the statement of claim is that the applicants seek to rely upon multiple and in fact contradictory, causes of action. The details of these different causes of action have been set out above. This in itself renders the statement of claim excipiable[38].

[40] It must also be considered that the Labour Court Rules[39] place particular emphasis on the pre-trial proceedings and pre-trial minute, which is a further opportunity where the facts relied on by the parties can be properly recorded (which includes a determination of which facts are in dispute and which are common cause) and the legal issues determined and specified. As was said in *Harmse*:[40]

> '… The pretrial conference provides an occasion for the detail or texture of the factual dispute to begin to take shape. In terms of rule 6(4)*(b)* the parties in the pretrial conference must attempt to reach consensus on facts that are common cause, facts that are in dispute, the issues that the court is J required to decide and the precise relief claimed.
>
> Accordingly the rules of this court anticipate that the relief claimed might not have been precisely pleaded in the statement of claim filed. The rules of this court further anticipate that the factual matters at issue will be dealt with more fully and precisely in the pretrail conference. The rules therefore anticipate that the parties at the pretrial conference will have dealt in much more detail not only with the factual matters but also the legal issues.'

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[38] See *Eagleton* (*supra*) at para 24.
[39] Rule 6(4) as read with the Provisions of Clause 10.4 of the Practice Manual, 2013.
[40] *Harmse v City of Cape Town* (*supra*) at paras 8 – 9; see also *Davidson and Others v Wingprop (Pty) Ltd* (2010) 31 *ILJ* 605 (LC) at para 31.

[40] Whilst I fully agree with the above sentiments expressed by the Court in *Harmse*, there however are instances where no pre-trial conference could remedy what is simply a completely irregular statement of claim. There must at least be a proper factual basis made out in the statement of claim upon which to found a cause of action, in the first place. To simply allow a statement of claim which does not even establish such a foundation to stand simply so the applicant can then try and remedy this at pre-trial stage is clearly putting the cart before the horse. It is also important to consider that it is principally the answering statement following the statement of claim that then determines which pertinent facts relevant to the claim are in dispute, and which are common cause. This holds even more true where the applicant party is actually forewarned and given the opportunity to remedy shortcomings but elects not to do so. As the Court held in *De Klerk v Cape Union Mart International (Pty) Ltd*:[41]

> 'In the current case, the respondent's attorneys provided the applicant with the opportunity to cure the defects raised in the intended exceptions. Although the applicant addressed some of those, others remain. It would serve little purpose to try to address those exceptions, which are legal and not factual in nature, at a pretrial conference before they are dealt with in these proceedings.'

[41] When I then consider the summary of facts as contained in the statement of claim *in casu*, there is simply no proper factual foundation made out of any kind of case, let alone as foundation for the multiple and contradictory causes of action raised. It is difficult to even fathom what the case is all about and how it arose. To call the summary of facts vague and embarrassing is an understatement. There is simply no manner in which the respondent can properly answer these allegations. It is equally of no assistance to the Court. Added to this is the fact that the statement of claim does not contain the pre-requisite contents prescribed by Rule 6(1)(a) and in fact does not even call on the respondent to answer, as it is supposed to do.

[42] The respondent gave the applicants multiple opportunities to remedy all to the

[41] (2012) 33 *ILJ* 2887 (LC) at para 22.

above defects. The answer from Advocate Phale (I have no doubt the individual applicants knew nothing of this) was a stubborn insistence that there is nothing wrong with the statement of claim when it should have been patently obvious that this was not the case.

[43] The defective nature of the statement of claim is such that it simply cannot be remedied at pre-trial stage. The fundamental problem is that the respondent is unable to establish exactly what case is it has to meet and plead to this case. It is actually the basic articulation of the two opposing cases in the pleadings that enables proper pre-trial proceedings to happen. It follows that the current statement of claim does not properly bring the litigation process even out of the starting blocks. It equally follows that the respondent would certainly be materially prejudiced if the statement of claim is allowed to stand and it must then try and divine some or other answer thereto.

[44] In the circumstances, I have little hesitation in coming to the conclusion that the statement of claim as a whole is vague and embarrassing to the extent that the respondent's exception must be sustained.

Costs

[45] This then only leaves the issue of costs. Now, and immediately, and having found there was no proof that the individual applicants mandated Advocate Phale to being these proceedings and that the individual applicants were not properly cited as parties, it would simply not be competent for me to make a costs order against the individual applicants. Considering the issues in this matter, I then asked Advocate Phale to address me on why he should not be ordered to personally pay the costs of these proceedings *de bonis propriis*. Advocate Phale could provide no satisfactory reason why this should not be the case other than suggesting it was all the attorneys' fault and a *de bonis propriis* costs order should be made against them.

[46] I find the conduct of Advocate Phale in this case deplorable. He was in fact *de facto* acting as the attorney and then seeks to pass the blame onto an attorney that had no involvement in the matter at all. Advocate Phale had ample opportunity to regularise the situation before this matter came to Court

for hearing, once the respondent had specifically brought all the difficulties to his attention. All Advocate Phale needed to do was properly refer the individuals to an attorney who could properly take instructions, obtain a mandate, brief Advocate Phale and then he in conjunction with the attorney could attend to remedy the patently defective statement of claim. Advocate Phale deliberately decided to push forward with the matter as it stood and in the face of several clear warnings. Should he now personally be saddled with the legal costs in this matter, he was the author of his own prejudice.

[47] In terms of Section 162(3) of the LRA, 'the Labour Court may order costs against a party to the dispute or against any person who represented that party in those proceedings before the Court.' Clearly this would include the power to make a costs award *de boniis propriis* against a representative. In *Moloi and Another v Euijen and Another,*[42] the Court said that 'costs de bonis propriis are awarded against legal practitioners in cases which involve delinquencies such as dishonesty, willfulness or negligence in a serious degree.' Factors for consideration referred to in *Moloi* were whether the representative acted dishonestly in his dealings with the Court, whether he indulged in contemptuous conduct, whether he perpetrated fraud on the Court, whether he misled or placed false evidence before the Court and whether his conduct smacked of willfulness or negligence to a serious degree. The Court in *Indwe Risk Services (Pty) Ltd v Van Zyl: In re Van Zyl v Indwe Risk Services (Pty) Ltd*[43] said that '… where the court is of the view that there is a want of bona fides or where the representative had acted negligently or even unreasonably…', the Court would consider awarding costs against such a representative.

[48] Similarly, in *SA Liquor Traders' Association and Others v Chairperson, Gauteng Liquor Board and Others*,[44] the Court held:

> 'An order of costs *de bonis propriis* is made against attorneys where a court is satisfied that there has been negligence in a serious degree which warrants an order of costs being made as a mark of the court's displeasure. An

[42] (1999) 20 *ILJ* 2829 (LAC) at para 27.
[43] (2010) 31 *ILJ* 956 (LC) at para 39.
[44] 2009 (1) SA 565 (CC) at para 54.

attorney is an officer of the court and owes a court an appropriate level of professionalism and courtesy.'

[49] And in *Molepo v Passenger Rail Authority of SA*,[45] the Court said:

> 'The Supreme Court of Appeal stated, in *Vassen v Law Society of the Cape of Good Hope* 1998 (4) SA 532 (SCA) at 538G, that being 'an attorney, as any other officer of the Court, is an honourable profession which demands complete honesty, reliability and integrity from its members'. This sentiment was echoed in *S v Nyoka* [2009] JOL 24504 (ECG) where the court reminded practitioners in para 33 that:
>
> > "Attorneys should have a high regard for truthfulness, be incorruptible and have a high sense of honour and integrity. They are an integral part of the administration of justice and people should be able to trust them, especially where trust moneys are involved."
>
> Pleadings should not be a fabrication and legal practitioners have a duty to the court, not only to their clients, and must not misrepresent facts to the court…'

I fully agree with the above reasoning, but hasten to add that the same standards must obviously equally apply to counsel that is engaged in a particular matter and appears in Court in such matter.

[50] If the conduct of Advocate Phale is measured against the above principles and standards, his conduct in my view clearly ticks all the boxes when it comes to justifying an order of costs *de bonis propris* against him. Advocate Phale appeared in Court without a brief. He actually conducted the work of an attorney and directly took instructions from individual clients and then sought to mislead the Court about this. It was equally clear that Advocate Phale drafted the statement of claim, a fact which he dishonestly sought to disavow in Court. The statement of claim itself is a product of ineptitude. Finally, and despite being specifically warned by the respondent, Advocate Phale stuck to his guns, which in my view is simply grossly negligent conduct. Finally, Advocate Phale's conduct with regard to his brief (and in the end the absence

[45] (2014) 35 *ILJ* 1605 (LC) at paras 20 – 21.

thereof) is clearly unprofessional. In *Langa and Others v Active Packaging (Pty) Ltd*[46] the Court gave a costs order *de bonis propriis* against counsel who was solely responsible for an appeal not proceeding and where such counsel showed indifference towards making proper arrangements to appear at the appeal. Similarly and *in casu*, Advocate Phale is solely responsible for the state of affairs I am faced with, and must equally be held accountable for costs.

[51] I, accordingly, find that it would be appropriate to make a costs order *de bonis propriis* against Advocate Phale. The only reason why I do not order such costs on a punitive scale is because Advocate Prinsloo, representing the respondent, did not ask for it.

Conclusion

[52] The respondent's exceptions raised must therefore be upheld. I thus conclude that the statement of claim, in its entirety, constitutes an irregular step. As such, it must equally be struck out in its entirety. There is simply nothing in the statement of claim that can be allowed to stand.

[53] Advocate Prinsloo for the respondent has asked for the application to be dismissed. However, considering what I have set out above in this judgment and in particular having regard to the fact that I have found that it has not even been proven that the individual applicants mandated these proceedings or are properly parties to the proceedings, it is not appropriate to finally close the door on these applicants who may still want to properly pursue their case. One can only hope that such a case, if it has merit, finds its way into the hands of a proper legal representative to institute and pursue on their behalf. I will accordingly not accede to the prayer by the respondent that the application be dismissed.

Order

[54] In the premises, I make the following order:

[46] (2001) 22 *ILJ* 397 (LAC) at para 6.

1. The respondent's exceptions are upheld.

2. The applicants' statement of claim dated 10 March 2014 is struck out in its entirety.

3. The applicants' counsel, Advocate R H Phale, is ordered to personally pay the costs of this entire matter *de bonis propriis*.

4. This judgment is to be forwarded by the Registrar to the Law Society of the Northern Provinces so as to investigate the issue of the involvement of B W Mtsweni attorneys in an attempt to mislead this Court in the wrongful conduct referred to above.

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Snyman, AJ

Acting Judge of the Labour Court

APPEARANCES:

For the Applicants:	Advocate R H Phale
Instructed by:	B W Mtsweni Attorneys
For the Respondent:	Advocate C Prinsloo
Instructed by:	Erasmus Scheepers Attorneys