

LESOTHO / JUDGMENT

Mathabo Lephoto V PS- Office of the Prime Minister & 4 Others (CIV/APN/0219/2022) [2023] LSHC 257 (2 August 2023)

[2023] LSHC 257

COURT

High Court

CASE / FILE NUMBER

CIV/APN/0219/2022

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IN THE HIGH COURT OF LESOTHO

CIV/APN/0219/2022

HELD AT MASERU

In the matter between:-

‘MATHABO LIPHOTO

APPLICANT

V

PS-OFFICE OF THE PRIME MINISTER

1ST RESPONDENT

DCE-DISASTER MANAGEMENT

AUTHORITY

PS-PUBLIC SERVICE

PUBLIC SERVICE COMMISSION

THE ATTORNEY GENERAL

2ND RESPONDENT

3RD RESPONDENT

4TH RESPONDENT

5TH RESPONDENT

CORAM

DATE OF HEARD

:

;

M. P. RALEBESE, J

09TH FEBRUARY 2023

DATE OF JUDGMENT :

2ND AUGUST 2023

SUMMARY

Review premised on procedural unfairness and failure to give reasons – What constitutes a decision in a multi-staged decision- Failure to give reasons to be linked to a recognised ground of review.

Mandamus – Requirements – Clear right to be a legally recognised right - Alternative sufficient remedy.

ANNOTATION

CITED CASES:

LESOTHO

Khajoe Makoala v Masechaba Makoala C of A (CIV) 04/2009

Mangoejane v Mangoejane (C of A (CIV) 43 of 2017) [2018] LSCA 15 (7 December 2018).

Matela v Principal Chief of Makhoakhoa and
CIV/APN/319/2000

the Attorney General

Mohaleroe v Lesotho Public Motor Transport Co. (Pty) Ltd and Another (C of A
(CIV/16/10

National Executive Committee of The Lesotho National Olympic Committee and
Others v Morolong (C of A (CIV) No. 26 of 2001) (NULL) [2002] LSHC 10 (12
April 2002).

Roma Taxi Association v Officer Commanding Roma Police C of A (civ) 20 of 2015

SOUTH AFRICA

Buffalo City Municipality vs Gauss and Another 2005 (4) SA 498

Chairman Board of Tariffs and Trade v Brenco Inc 2001(4)SA 511

Henri Viljoen (Pty) Ltd v Awerbuch Brothers 1953 (2) SA 151 (O) at 167H

Jeffery v President, South African Medical and Dental Council 1987 (1) SA 234

Lipschitz v Watrus NO 1980 (1) SA 662 (T)

Minister of Law and Order, Bophuthatswana and Another v Committee for the
Church Summit Bophuthatswana and Others 1994(3) SA 89

National Transport Commission v Chetty's Motor Transport (Pty) Ltd 1972 (3) SA
726 CA)

Oskil Properties Pty Ltd v Chairman of the Rent Control Board 1985 (2) SA 234

Shakot Investments (Pty) Ltd v Town Council of the Borough of Stanger 1976 (2)
SA 701 (D)

OTHER JURISDICTIONS

BOOKS

Cora Hoexter, Administrative Law in South Africa. 2nd Edition, Juta & Co.

Schiwikkard et al, Principles of Evidence. 1997 Juta & Co.

STATUTES

1993 Constitution of Lesotho

High Court Rules Legal Notice No. 9 of 1980

Public Service Codes of Good Practice Legal Notice 194 of 2008

Public Service Regulations Legal Notice No.78 of 2008

JUDGMENT

Ralebese, J

Introduction

- [1] The applicant is the Senior Economic Office in the office of the Prime Minister and she approached the court seeking the following substantive prayers:
- (a) That the decision of the 2nd respondent (Deputy Chief Executive -Disaster Management Authority) to withdraw the lateral transfer of the applicant as Senior Economic Planner from the Office of the Prime Minister to Disaster Management Authority be reviewed and set aside as irregular.
 - (b) That the 1st, 2nd and 3rd respondents be directed to effect the lateral transfer of the applicant from the Office of the Prime Minister to the Disaster Management Authority in the post of Senior Economic Planner.
 - (c) Directing the respondents to pay the costs.
- [2] The gist of the applicant's case is that the conduct of the 2nd respondent to cancel or withdraw her lateral transfer was irregular grossly unfair and unjust as it was done without consulting her and giving her an opportunity to be heard on why her transfer could not be withdrawn. The applicant further contends that the "respondents" failed to give the reasons to withdraw or cancel her transfer.
- [3] In support of the mandatory interdict that she has sought, the applicant contended that her request for lateral transfer seemed to be going well and it had received positive endorsements and concurrences from the Minister in the Office of the Prime Minister and the Principal Secretary for the Ministry of Public Service. She averred that the decision of the 2nd respondent to unilaterally withdraw her transfer without first affording her an opportunity to be heard had deprived her of an opportunity to gain promotion to the position of the Chief Economic Planner in an unspecified department, but presumably, in the Disaster Management Authority.
- [4] The background to this case is that on 30th November 2021, the applicant wrote a letter to the Principal Secretary Public Service (3rd respondent) under the first signature (u.f.s) of the Principal Secretary Cabinet (1st respondent) requesting a lateral transfer from the Prime Minister's Office to the similarly graded position of Senior Economic Planner in the Disaster Management Authority.
- [5] On 28th January 2022, the 2nd respondent wrote a letter to the 3rd respondent requesting the approval of the lateral transfer of the applicant to the Disaster Management Authority. On 11th February 2022, following some internal endorsements of the applicant's request, the 2nd respondent wrote to the 3rd respondent indicating that she was withdrawing her earlier

concurrence to the applicant's request for transfer (annexure "DMA 2" to the answering affidavit). The 2nd respondent indicated in that letter that she felt that she had made an uninformed decision when she concurred to receive the applicant on transfer.

- [6] On 10th March 2022, the 3rd respondent wrote to the 2nd respondent indicating that her request for the transfer of the applicant from the Prime Minister's office to a vacant position of Senior Economic Planner in the Disaster Management Authority had been revoked as the 2nd respondent had requested. This is the latter that the applicant attached to her founding papers as constituting the impugned decision of the 2nd respondent to cancel or withdraw her lateral transfer. This document without a doubt did not, and could not constitute the decision of the 2nd respondent as it was not authored by the 2nd respondent, nor did it reflect any decision whatsoever made by the 2nd respondent. While this could be a ground for this court to conclude that the applicant's founding papers did not particularise the facts founding the cause of action and therefore that the cause of action was not perceivable¹, the anomaly was cured by the respondents' answering affidavit 1 *Matela v Principal Chief of Makhoakhoa and the Attorney General CIV/APN/319/2000* to which was attached the letter authored by the 2nd respondent in which she withdrew her earlier consent to the applicant's transfer (annexure "DMA 2").
- [7] This application has been opposed in the merits by the respondents as represented by the Attorney General and they have even raised an in limine point of non-joinder. Further Affidavit
- [8] Before dealing with the issues in this case, I should first address the procedure that was adopted by the applicant wherein, following the filing of her replying affidavit on 31st August 2022, she again filed a "supplementary replying affidavit" on 15th September 2022 without the leave of court and contrary to Rule 8(12) of the High Court Rules². Rule 8(12) provides that a party may not file any further affidavit unless permitted to do so by the court at its discretion. It is clear from the reading of this Rule that the applicant ought to have applied for leave of this court justifying the need to file an additional replying affidavit. The applicant made no such attempt either prior to filing the additional affidavit or at the hearing of the matter.
- [9] While the court may, in terms of Rule 59, condone non-compliance with the Rules, it can do so if that is in the interests of justice and on good cause shown by a party who has flouted the Rules. The applicant did not seek condonation for adopting a procedure that is contrary to Rule 8(12). The court is in the dark why she could not place the information in the additional replying affidavit earlier before the court and how the additional information could best serve the interests ² High Court Rules Legal Notice No. 9 of 1980 of justice in this case. No basis has been established by the applicant for the court to exercise its discretion to condone the non-compliance. The additional replying affidavit is therefore struck from the record. Non-Joinder

- [10] The respondents raised a point of non-joinder and they contended that the position to which the applicant had sought to be transferred, had been advertised, some candidates had applied, three of whom had been shortlisted, and their names had been forwarded to the Public Service Commission to prepare for the interviews. The respondents submitted that the applicant ought to have joined these three shortlisted candidates and that her failure to join them was tantamount to giving the applicant an unfair advantage over those shortlisted candidates. The respondents prayed that upon the court upholding the point, it should dismiss the application with costs at a higher scale.
- [11] It should be pointed out from the outset that non-joinder is a dilatory and not a total defence. If the court finds that an essential party who has a direct and substantial interest in the outcome of the proceedings has not been joined, it should not necessarily dismiss the application, but can, depending on the circumstances of a case, postpone the matter and order that a party that has not been joined be given notice of the proceedings subject to an appropriate order as to costs³.
- [12] Going back to the issue, the question is whether the three candidates ought to have been joined. A party should be joined to the proceedings where such party 3 Khajoe Makoala v Masechaba Makoala C of A (CIV) 04/2009 has a direct and substantial legal interest in the issues involved and in the outcome of the proceedings in the sense that an order to be made by the court, cannot be enforced without prejudicing such party⁴. In *Henri Viljoen (Pty) Ltd v Awerbuch Brothers*⁵ it was pointed out that the legal interest in the subject matter of the action refers to the interest which could be prejudicially affected by the judgment or an interest in the right which is the subject matter of the litigation, and it is not merely an indirect interest.
- [13] In order to determine whether the three candidates had the requisite substantial legal interest in the outcome of these proceedings, the court should refer to the reliefs sought by the applicant to determine the subject matter in this case. The applicant has sought a review of the 2nd respondent's withdrawal of consent to her request for transfer. She has further sought a mandatory interdict that the respondents be directed to effect her lateral transfer. The subject matter in this case, or the issue without which this application would not have been instituted is the withdrawal of the concurrence to the applicant's request for lateral transfer. Undoubtedly, the three candidates shortlisted for the position in issue had no direct and substantial interest in this subject matter which is an internal matter between the applicant and her employers. The subject matter did not at all directly and substantially affect the rights of the three candidates who were yet to be interviewed for the position and could be appointed or not be appointed to the position. The candidates had no direct or substantial interest whatsoever in the outcome of the review of the withdrawal or the interdict sought by the applicant. Any judgment of the court thereby can be enforced without directly prejudicing the candidates who, at the time of institution of the case, remained the applicants 4 *Mangoejane v Mangoejane* (C of A (CIV) 43 of 2017) [2018] LSCA 15 (7 December 2018). 5 *Henri Viljoen (Pty) Ltd v Awerbuch Brothers* 1953 (2) SA 151 (O) at 167H

for the position. Any interest that the candidates could have in the outcome of the case, if any, would be remote and indirect to qualify them to be joined in these proceedings.

- [14] Even if the candidates could be given notice of the proceedings, they would not be in the position to oppose the reliefs that the applicant has sought as the reliefs have no direct bearing on their interest. Furthermore, even if the applicant could have wanted to join the three candidates in these proceedings, she would have had the challenge to identify them and to know where and how they could be served as their details (and the recruitment issues) were not matters of public knowledge. The non-joinder objection is therefore without merit, and it is dismissed. The issues in the Merits
- [15] The applicant has sought a review of the 2nd respondent's conduct to unilaterally withdraw her transfer without first affording her an opportunity to be heard. The question for determination by this court is whether the applicant has established that there is a reviewable decision of the 2nd respondent, and if she has, whether she has established the alleged unprocedural fairness on the part of the 2nd respondent.
- [16] She has further sought a review of the decision of the respondents for failure to give the reasons for their decision. The issue in this regard is whether there is any decision of the respondents that is reviewable on the ground of failure to give the reasons thereof.
- [17] The applicant has further sought a mandamus that the 1st, 2nd and 3rd respondents be directed to affect her lateral transfer. The issue to be determined by the court in that regard is whether the applicant is entitled to the mandamus that she has sought. Review – Audi alteram partem
- [18] Judicial review of administrative decisions is generally concerned with (1) whether the decision maker had the power to make the decision and whether relevant matters were considered in making the decision (legality); (2) the fairness of the process by which the decision was reached (procedural fairness);
- (3) the substance of the decision itself (rationality/ reasonableness); and (4) whether the decision was reached in violation of procedural or substantive expectations (legitimate expectation)⁶.
- [19] The first consideration in a case for judicial review of an administrative decision is whether there is a reviewable decision. In the instant case, the question is whether the alleged withdrawal by the 2nd respondent of the applicant's request for transfer qualifies as a decision that is subject to review.
- [20] The 2nd respondent wrote the Savingram dated 28th January 2022 in which she endorsed the lateral transfer of the applicant, and she later wrote the Savingram dated 11th February 2022 wherein she withdrew that consent. When she wrote these two letters, she was, probably acting pursuant to section 32 of the Public Service Regulations⁷ which provides as follows in relevant portions: 6 Roma Taxi Association v Officer Commanding Roma Police C of A (civ) 20 of 2015 7 Public Service Regulations Legal Notice No.78 of 2008 The Principal Secretary

may transfer officers within the “32. (1) Public Service with the concurrence of the Minister and in consultation with the Head of Department of the receiving ministry/department/agency; The Head of Department may transfer a public officer within the (2) ministry/department or agency; (3) In instances where the transfer is to another ministry, department or agency, the Head of Department shall consult with the Head of Department of the receiving Ministry, who shall also seek the concurrence of the relevant minister, and such transfer shall be authorized by the Principal Secretary.”

- [21] While the applicant had applied for transfer within the same Ministry, but to a different department or agency, it appears that her transfer was treated as the one within the Public Service in terms of section 32(1) as quoted above. The applicant addressed her request for transfer to the 3rd respondent (Principal Secretary – Public Service) implying that she also understood her transfer to be the one within the Public Service. It follows therefore that the 2nd respondent wrote the Savingram of 28th January 2022 in her capacity as the Head of Department of the receiving department or agency. Similarly, when the 2nd respondent wrote the Savingram of 11th February 2022, she was still acting pursuant to the same provision.
- [22] It is apparent from the reading of section 32 of the Public Service Regulations that the decision to transfer a public officer is a multi-staged decision that involves several actors. Section 32 (1) requires that before the Principal Secretary⁸, who is the final decision maker can make a decision to 8 The Principal Secretary is defined as the Principal Secretary for the Ministry of Public Service in section 2 of the Public Service Regulations. transfer a public officer, there should be a concurrence of the Minister of Public Service⁹ and consultation with the Head of Department of the receiving ministry/ department/agency.
- [23] The fundamental principle in multi-staged decisions is that a decision within the hierarchy of multi-staged processes will be subject to review if it has a practical and direct legal effect on the existing rights of the applicant or if the applicant has been prejudicially and adversely affected by the decision in issue¹⁰. Depending on the circumstances of each case, a decision that is part of a preliminary process in a multi-staged decision may qualify as a decision and subject to review or it may not.
- [24] When the 2nd respondent wrote the impugned withdrawal it was in an advisory role as the Head of Department of the receiving department or agency, to the final decision maker being the 3rd respondent. Even though the 2nd respondent’s withdrawal of the consent was negative in effect, it did not have a direct, practical legal effect on the applicant since the power to make the final decision was reposed with the 3rd respondent. The 3rd respondent could regard the 2nd respondent’s withdrawal of the consent and the grounds thereof or ignore it depending on the details that the 3rd respondent had sought upon consultation with the 2nd respondent. The withdrawal did not have a direct legal effect on the applicant as it did not have a final effect on the applicant’s transfer request. The withdrawal constituted a preliminary consultative process. It is my finding 9 Minister is not defined in the Public Service Regulations but is defined in the Public Service Act No.1 of 2005 as the

Minister responsible for Public Service. 10 Buffalo City Municipality vs Gauss and Another 2005 (4) SA 498 at 505 therefore that it did not qualify as a decision that is subject to review within the context of section 119 (1) of the Constitution of Lesotho¹¹.

- [25] Even if the withdrawal could be said to be a decision, the question would be whether it was a decision in respect of which the 2nd respondent was expected to have acted fairly towards the applicant by affording her a hearing.
- [26] The first consideration in trying to answer the foregoing question is the legal relationship of the 2nd respondent and the applicant at that material time when the withdrawal was made, being the time when the cause of action arose. This is because the requirements of audi alteram partem principle are contextual and relative, and the position of the applicant vis a vis the decision maker is one of the crucial considerations.¹² At the material time when the 2nd respondent wrote the impugned withdrawal in the consultative capacity as the Head of Department of the receiving department/ agency, there was no legally relevant relationship between her and the applicant that could have obliged the 2nd respondent to give the applicant a hearing. Even if the 2nd respondent could wish to give the applicant a hearing before withdrawing her consent, she would not even know how to contact her as they had no legal relationship whatsoever. The applicant's request for transfer was neither directed nor copied to the 2nd respondent and she came to know about it when she was consulted as the Head of Department of the receiving department/agency. Furthermore, the consent of the 2nd respondent as well as the impugned withdrawal of the consent were neither directed nor copied to the applicant. This goes further to prove that no relevant legal relationship ¹¹ 1993 Constitution of Lesotho ¹² Chairman Board of Tariffs and Trade v Brenco Inc 2001(4)SA 511 at para 19. existed between the applicant and the 2nd respondent that could create a platform and an obligation for the latter to afford the applicant a hearing.
- [27] Furthermore, and premised on the reasoning that the impugned withdrawal did not have the final and direct effect on the applicant's interests, the 2nd respondent had no duty to afford the applicant a hearing. Review - Failure to give reasons
- [28] It is the applicant's case further that "the respondents" failed to give reasons for the withdrawal/cancellation of her transfer. The court has noted that there is no specific prayer for review of the decision of "the respondents" based on this ground in the notice of motion. The allegation appears in the body of the founding affidavit in general terms unsupported by any facts or evidence whatsoever. The applicant has not indicted who, amongst the respondents, she accuses of failure to give the reasons. She has also not indicated whether at the time that she instituted the application, any of the respondents had communicated to her any decision (without reasons) withdrawing or cancelling her transfer. The Savingram of the 2nd respondent dated 10th March 2022, which is directed to the 3rd respondent, and which the applicant attached to her founding papers as constituting the impugned decision was not copied to the applicant, and she has not disclosed how she got hold of that communication. Annexure "DMA 2" was similarly not copied to the applicant. There is no proof in the founding papers that any of the respondents had already made a final decision

to withdraw or cancel the applicant's request for transfer and that such decision had been communicated to the applicant by any of the respondents without the reasons supporting such a decision. As can be discerned from the foregoing analysis, the applicant has failed to plead and state any facts or evidence with sufficient particularity to disclose a cause of action and this court should, on this ground alone dismiss the applicant's submission. As stated in *Matela v Principal Chief of Makhoakhoa and the Attorney General*¹³ "Where there is lack of clarity, courts should be reluctant to dimly perceive a cause of action where it is not perceivable - lest they be taken on a wild goose chase and only to find after several years that there never was a cause of action. An issue for the court's determination requires definition at the beginning of court proceedings." [29] Furthermore, failure to give reasons for an administrative decision is not per se a standalone ground for review in our jurisdiction and within the common law context. Failure to give reasons should be weighed by the court together with all other factors surrounding the case for the court to decide whether it constitutes a justifiable ground for review¹⁴. Failure to give reasons should always be linked to one of the established grounds of review. In the instant case, apart from the fact that there is no proof of any decision, the applicant has not alleged any facts that could assist the court to determine whether the alleged failure to give reasons constitutes a justifiable ground for review and whether it can be linked to any of the recognised grounds for review. In *National Transport Commission v Chetty's Motor Transport*¹⁵ failure to give reasons was linked to illegality; In *Oskil Properties Pty Ltd v Chairman of the Rent Control Board*¹⁶ failure to give reasons was linked to unreasonableness or irregularity while it was linked to procedural unfairness in *Jeffery v President, South African Medical and 13 Supra* 14 Cora Hoexter, *Administrative Law in South Africa*, 2nd Edition, Juta & Co, at page 466-467 15 *National Transport Commission v Chetty's Motor Transport (Pty) Ltd* 1972 (3) SA 726 CA) 16 *Oskil Properties Pty Ltd v Chairman of the Rent Control Board* 1985 (2) SA 234 Dental Council¹⁷. The alleged failure by the respondents to give reasons for a decision that has not even been proven is without merit and it should be dismissed. Mandamus

- [30] The applicant has also sought a mandamus to the effect that the 1st, 2nd and 3rd respondents be directed to affect her lateral transfer. It is worth noting that even though the applicant sought this mandamus in the notice of motion, her counsel did not make any submissions whatsoever to pursue that remedy either in the written or oral submissions. The requirements for a successful claim for mandamus, which is a form of a mandatory interdict are: a clear right; an injury actually committed or reasonably apprehended; and the absence of an alternative remedy. A mandatory order such as that sought by the applicant can only be granted if all the requirements for an interdict have been established.¹⁸
- [31] The applicant avers that she had an established clear right in as much as she ought to have been consulted before the decision was made to withdraw her transfer. She says she had a right to equal opportunity to grow and advance in her career which opportunity was unjustly taken away from her. She further avers that her request for lateral transfer seemed to be going well and it had received positive endorsements and concurrences from the

Minister in the Office of the Prime Minister and the Principal Secretary for the Ministry of Public Service but for the 2nd respondent's withdrawal of the consent to her transfer. 17 *Jeffery v President, South African Medical and Dental Council* 1987 (1) SA 234 18 *Lipschitz v Wattrus* NO 1980 (1) SA 662 (T) at 673

- [32] Before dealing with the merits of the interdict, I should first deal with annexure ML6 that the applicant attached to her replying affidavit as proof that her request for lateral transfer had been approved by the 3rd respondent. In motion proceedings, the applicant stands and falls by her founding papers. It is to the founding affidavit that the court should look to determine what the applicant's case is, hence, the requirement that the applicant should allege the issues, facts and evidence on which her case is premised in the founding papers.¹⁹ The applicant annexed the document which she alleged to be the proof that the 3rd respondent had approved her transfer in the replying affidavit (ML6). This document was crucial as it was meant to found the applicant's claim for a mandamus. It therefore ought to have been pleaded as part of the founding papers. By introducing this document for the first time in the replying stage, the applicant denied the respondents an opportunity to proffer an answer to its contents and to comment on its authenticity. This is more so when the applicant has not disclosed the source of the document or how she obtained it. Since the document was neither addressed nor copied to the applicant, and it was authored by other people who have not admitted its contents, it is inadmissible as hearsay evidence in as much as its authenticity has not been established²⁰. The applicant has further failed to proffer an explanation why the document could not be attached to the founding papers. The document is therefore struck out and it shall not be considered in the determination of the applicant's claim for a mandamus.
- [33] The clear right that forms the subject matter for an interdict should be a legal right that is enforceable in law. The applicant should establish on a balance of 19 *National Executive Committee of The Lesotho National Olympic Committee and Others v Morolong* (C of A (CIV) No. 26 of 2001) (NULL) [2002] LSHC 10 (12 April 2002). ²⁰*Schiwikkard et al, Principles of Evidence*. 1997 Juta & Co at page 260 and 263. probabilities the facts and evidence that prove the existence of a legal right that vests in her in terms of either the substantive or statutory law²¹.
- [34] The applicant applied for a lateral transfer to a vacant position in the Disaster Management Authority. Her request was subject to approval by the 3rd respondent in terms of Section 32 of the Public Service Regulations. This Court does not know what factors the 3rd respondent would consider in approving or disapproving the applicant's request. The applicant has thus failed to establish that she had met the criteria entitling her to be transferred to the Disaster Management Authority. This means that she failed to establish an enforceable clear right to be transferred entitling her to a mandatory interdict that she has sought. In the absence of a clear right established on the balance of probabilities, a mandamus cannot be granted.

- [35] An interdict is a discretionary and extraordinary relief that can only be granted upon proof that the applicant has no other alternative remedy which can satisfactorily safeguard her rights or interests²². In the instant case, the applicant being dissatisfied with the way her request for transfer had been handled by her employers, could have resorted to the grievance procedure provided for in the Grievance Code as embodied in the Public Service Codes of Good Practice²³. A grievance is defined in that Code as “...a feeling of dissatisfaction or injustice which a public officer encounters in the workplace and is formally brought to the attention of the employer.” The Code outlines the procedural steps and appeal ²¹ Minister of Law and Order, Bophuthatswana and Another v Committee for the Church Summit Bophuthatswana and Others 1994(3) SA 89 at 98 ²² Masstores (Pty) Ltd v Pick N Pay Retailers (Pty) Ltd 2017 (1) SA 613 (CC) at 634 ²³ Public Service Codes of Good Practice Legal Notice 194 of 2008 processes entailed whenever a public officer has lodged a grievance. This process would adequately address the applicant’s concern regarding her transfer request.
- [36] In the absence of a clear right and considering that the applicant had another alternative remedy that could have satisfactorily safeguarded her interests, the court needs not even evaluate whether there was an injury actually committed or reasonably apprehended as such injury would be dependent on an established clear right.

Disposition

- [37] The impugned withdrawal was a preliminary process in a multi-staged decision that had no direct consequential effect on the applicant. The applicant has thus failed to discharge the burden of establishing that the impugned withdrawal qualified as a decision within the context of section 119 of the Constitution and therefore subject to review. Even if the withdrawal could qualify as a decision, it was not one where the applicant was entitled to a hearing before it was made, firstly because there was no legally relevant relationship between the applicant and the 2nd respondent and secondly because the withdrawal had no direct and immediate consequential impact on the applicant’s interest regarding his request for a transfer.
- [38] There is no proof that any of the respondents had communicated the impugned withdrawal to the applicant without the reasons thereof. The alleged failure to give reasons for the withdrawal cannot, on its own, without being linked to a recognised ground of review qualify as the ground for review of any administrative decision.
- [39] The applicant has further failed to establish that she had a legally recognised and enforceable clear right to be transferred entitling her to a mandamus. She had an alternative remedy that could have adequately addressed her complaint regarding how her request for a transfer had been handled by her employers. She could have lodged a grievance in terms of the Grievance Code as embodied in the Public Service Codes of Good Practice. The applicant has thus failed to discharge the burden of proving that she is entitled to a mandatory interdict that she has sought.

[40] The application is therefore dismissed in its entirety with costs.

Ralebese J. Judge For the applicant: Advocate Chuene For the respondents: Advocate Phatšoane
20

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