

SOUTH AFRICA / JUDGMENT

# Baloyi and Others v Passenger Rail Agency of South Africa (J158/21)

## [2021] ZALCJHB 26 (3 March 2021)

[2021] ZALCJHB 26

## COURT

Labour Court Johannesburg

## BEFORE

Mahosi

## CASE / FILE NUMBER

J158/21

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

no: J158/21

In

the matter between:

MXANGU

DENNIS BALOYI AND 119 OTHERS Applicants

and

PASSENGER

RAIL AGENCY OF SOUTH AFRICA First

Respondent

ROYAL

SECURITY SERVICES (PTY) LTD

Second Respondent

Heard:

24 February 2021 (Virtual Hearing)

Delivered:

In view of the measures implemented as a result of the Covid-19 outbreak, this judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be 03 March 2021

**JUDGMENT**

MAHOSI. J

**Introduction**

- [1] This is an unopposed urgent application in terms of which the applicants seek an order to interdict and restrain the first respondent from implementing the employment of security personnel and from giving effect to any employment agreement with any of the appointed personnel to occupy the positions held by applicants pending the finalisation of the arbitration proceeding to be held at the Commission for Conciliation, Mediation and Arbitration (CCMA) under case number GAJB 23394-20.
- [2] Alternatively, the applicants seek an order to direct the first respondent to make available security personnel positions similar to those they occupy upon the decision of the CCMA deeming them employees of the first respondent.

Brief

**background**

- [3] The applicants are employed by the second respondent as protection personnel to service the first respondent.
- [4] On 13 November 2020, the applicants referred a dispute to the CCMA in terms of section 198D of the Labour Relations Act (LRA)[1]. Subsequent to the referral, the applicants learned that the first respondent placed an advertisement for the positions of security personnel. The closing date of the advertisement was 19 November 2020.
- [5] This prompted the applicants to instruct their attorneys of record on 13 November 2020 to seek a written undertaking from the first respondent that it would not recruit candidates for the positions currently held by them. The undertaking was to be furnished before 19 November 2020, but to date it has not been furnished. In the absence of the undertaking, the applicants approached this Court for its urgent intervention.

Urgency

- [6] Rule 8(2) of the Rules for the Conduct of Proceedings in the Labour Court (the Rules), which governs urgent applications, provides as follows:

‘(1) A party that applies for urgent relief must file an application that complies with the requirements of rules 7(1), 7(2), 7(3) and, if applicable, 7(7).

(2) The affidavit in support of the application must also contain-

(a) the reasons for urgency and why urgent relief is necessary;

- (b) the reasons why the requirements of the rules were not complied with, if that is the case; and
- (c) if a party brings an application in a shorter period than that provided for in terms of section 68(2) of the Act, the party must provide reasons why a shorter period of notice should be permitted.’

[7] In *Jiba v Minister of Justice and Constitutional Development and Others*[2], this Court considered rule 8 and stated as follows:

‘Rule 8 of the rules of this Court require a party seeking urgent relief to set out the reasons for urgency and why urgent relief is necessary. It is trite law that there are degrees of urgency. And the degree to which the ordinary applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self-created when seeking a deviation from the rules.’

- [8] In the current matter, the urgency was triggered by the first respondent’s decision to advertise the posts of the security personnel which only came to the attention of the applicants on 13 November 2020. This application was launched on 16 February 2021.
- [9] The reason attributed to the delay in bringing this application was that subsequent to the first respondent’s failure to provide a written undertaking on 19 November 2020, the applicant’s attorneys were approached by Mr Peta, who was acting on behalf of the first respondent, who made an undertaking to facilitate the issue internally. This was followed by several attempts to resolve the dispute and another correspondence was addressed to the first respondent on 28 January 2021. The applicants were allegedly advised telephonically to wait for two more weeks to allow the first respondent’s executives from the corporate departments to resolve the dispute.
- [10] The applicants submitted that it was only after 15 February 2021 that they realised that the dispute would not be resolved. They then instructed their attorneys of record to proceed with the urgent application.
- [11] It is the applicant’s further submission that the matter is urgent because by the time their dispute is finally arbitrated, there might no longer be positions available for them and as a result, they may be faced with the difficulty of the first respondent pleading that appointments were already concluded.
- [12] It is trite that urgency must not be self-created by an applicant as a consequence of the applicant not having brought the application at the first available opportunity. In other words, the more immediate the action by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. However, the longer it takes for the applicant from the date of the event giving rise to the proceedings, the more urgency is diminished. In short, the applicant must come to Court immediately or risk failing on urgency.

- [13] In applying the aforesaid principles relating to urgency to the facts of this matter, I have no hesitation in concluding that the urgency is self-created. The applicants became aware that the posts were advertised on 13 November 2020 and sought an undertaking from the first respondent before the end of 19 November 2020. The undertaking was not forthcoming. Instead of bringing an urgent application, they submit that their attorneys was approached by Mr Peta who made some undertakings. However, the applicants fail to disclose the position held by Mr Peta at the first respondent and the date on which their attorneys were approached. Further to that, no confirmatory affidavit was filed by the applicants' attorneys.
- [14] The applicants further submit that prior to the correspondence dated 28 January 2021, they made attempts to resolve the dispute. However, no details surrounding those attempts were disclosed.
- [15] This Court has on numerous occasions held that a party that approaches this Court on an urgent basis for an interdict "at his leisure" must be denied relief.[3] The reason attributed for the delay in bringing this application is not reasonable as the applicants in this matter have always been well represented by their attorneys of record. There was therefore, no reason for this application to be brought more two months after it became apparent that it ought to have been. For this reason alone, this application ought to be struck off the roll for lack of urgency.
- [16] Accordingly, the following order is made:

#### Order

1. The application is struck off the roll for lack of urgency.
2. There is no order as to costs.

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D. Mahosi

Judge of the Labour Court of South Africa

#### Appearances:

For the Applicants: Advocate Sebopa

Instructed by:

T Faku Incorporated Attorneys

[1] Act 66 of 1995, as amended.

[2] (2010) 31 ILJ 112 (LC) at para 18.

[3] See: Ecolab (Pty) Ltd v Thoabala and Another (2017) 38 ILJ 2741 (LC).

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