

SOUTH AFRICA / JUDGMENT

Bambeni v Democratic Alliance (2019/12874) [2022] ZAGPJHC 413 (15 June 2022) [2022] ZAGPJHC 413

COURT

South Gauteng High Court, Johannesburg

BEFORE

Manoim

CASE / FILE NUMBER

2019/12874

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NUMBER: 2019/12874

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED.

15 JUNE 2022

In the matter between:

THINA BAMBENI

Applicant

and

DEMOCRATIC ALLIANCE

Respondent

WRITTEN REASONS – APPLICATION FOR LEAVE TO APPEAL

MANOIM J

- [1] The applicant Ms Bambeni applies for leave to appeal my decision of 23 November 2011 in which I dismissed her application for relief and discharged two interim orders.

- [2] I also awarded costs to the respondent (the 'DA').
- [3] Her first ground of appeal is that I unduly restricted her grounds of appeal by limiting it to the five factors referred to in paragraph 5 of my decision. However, as counsel for the respondent, Mr Olivier, points out these are the five points that Ms Bambeni raised herself in a draft order she has prepared for the hearing. (See case lines 074-11).
- [4] I was reminded by Mr Olivier that at the hearing I had asked Ms Bambeni whether she was confining herself to these grounds and she confirmed she was.
- [5] She now states that this was not the case, and as she put it a "draft is just a 'draft'; moreover, she argued she is entitled to a less rigid approach from the court because unlike the respondent she represents herself. This point is unpersuasive for several

reasons.

- [6] First, although she represents herself Ms Bambeni is an attorney, not a layperson.
- [7] The purpose of the clarity sought was to define the issues in what was up till then protracted litigation. Its purpose was not to deny her any relief she believed she was entitled to.
- [8] Having made these concessions, it is not for her to revive them now. Nor is it clear what these issues are in any event.
- [9] Finally, the DA points out it had in any event met her other issues in its papers and had answers to them.
- [10] Her second complaint is that I focussed on the decisions of subordinate disciplinary structures of the DA and not the senior one.
- [11] This is not correct. The basis of the decision is whether at common law she was able to show that the DA had not conformed with its constitution at any stage of the proceedings. This point is relevant to all the disciplinary structures she was subjected to. She has not shown this was not the case.
- [12] The DA constitution and sexual harassment policy have on these papers been followed. It is entitled to institute disciplinary proceedings for laying a false complaint of sexual harassment and it is entitled to suspend a member if it follows its own due process, which on the papers, it has.
- [13] In any event leave to appeal on the suspension relief is now moot. Ms Bambeni is no longer a member of her party's Ekurhuleni caucus.
- [14] Moreover, although the main disciplinary process has not taken place this is only because of this pending application for leave to appeal which suspended that process. It will still happen if leave to appeal is denied and Ms Bambeni will still have an opportunity to challenge her expulsion and refute the suggestion that her claim was false.

[15] I am satisfied that no other court would come to another conclusion under section 17(1)(a)(i) of the Superior Courts Act.

[16] I am also satisfied that Ms Bambeni does not meet the additional requirement of section 17(1)(c) as the appeal does not dispose of all the issues between the parties and would not lead to a just conclusion of the real issues between the parties.

[17] This is because Ms Bambeni as I stated earlier, has the opportunity to raise her issues at the forthcoming disciplinary hearing which unlike those before, is of a final and not an interim nature and if not getting satisfaction there, she can, if she so believes she has grounds to do so, a right to review such proceedings.

[18] For these reasons:

1. Leave to appeal is denied; and
2. Costs are awarded to the respondent.

This judgment (written reasons) was handed down electronically by circulation to the parties' and/or the parties' representatives by email and by being uploaded to Case Lines. The date and time for hand-down is deemed to be 10h00 on 15 June 2022.

N MANOIM

Judge of the High Court

Gauteng Local Division, Johannesburg

Heard:

13 June 2022

Judgment:

13 June 2022

Written

Reasons:

15 June 2022

Appearances:

For Applicant: [In Person]

For Respondent: Adv P Olivier

Instructed by: Minde Schapiro and Smith Inc.

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