
SOUTH AFRICA / JUDGMENT

Benn v South African Diamond And Precious Metals Regulator (J2401/14) [2014] ZALCJHB 424 (21 October 2014) [2014] ZALCJHB 424

COURT

Labour Court Johannesburg

BEFORE

Nkutha-Nkontwana

CASE / FILE NUMBER

J2401/14

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REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: J 2401/14

In the matter between:

CONRAD DINTWE BENN

Applicant

and

SOUTH AFRICAN DIAMOND AND PRECIOUS

METALS REGULATOR

Respondent

Heard: 16 October 2014

Delivered: 21 October 2014

Summary: Urgent application- Applicant seeking court's intervention to have some information from employer - applicant failing to forward his request to chairperson of the disciplinary hearing - applicant having alternative dispute route to vindicate his dispute –application dismissed with costs

Nkutha-Nkontwana AJ

Introduction

[1] This is an urgent application in terms of which the applicant seeks an order directing the respondent to furnish him with the following information and/or further particulars:

1.1 The forensic images of EQ1 and/or AD1 format that have been taken from the devices of all the GDV's specified in section 5 of the Cyanre interim report dated 7 August 2014.

1.2 The depiction of the digital media servers, files and devices from which the information was retrieved by its expert by reflecting the device or software from which the documents in respondent's bundle were retrieved, e.g. laptop, cell phone, outlook, gmail etc.

[2] The applicant has been charged for misconduct and his disciplinary hearing is set down for 27 to 30 October 2014. In essence, therefore, the applicant seeks to compel the respondent to provide him with the above information in order to allow him to prepare for the said disciplinary hearing.

Urgency

[3] Before dealing with the substantive issues, I have to satisfy myself on whether the applicant has made out a case to be heard on urgent basis.

[4] In re: Several Matters on the Urgent Court Roll,[1] Wepener J, referred with approval to East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others [2012] JOL 28244 (GSJ) at paras 6-7 where Notshe AJ held that:

'[6] The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.

[7] It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his case in that regard.'

[5] In the present application, the applicant is clearly informed of his redress in due course and the extensiveness thereof. In that regard, he states in paragraph 90 of the founding affidavit:

'I have been advised that I am entitled to request the Chairman of the disciplinary hearing to furnish me with documentation/information.

However, if the Chairperson declines to do so (and I mean no disrespect whatsoever to the chairperson), the enquiry will continue

and I may be found guilty as a result of not having access to the information. If I am found guilty and dismissed from the Respondent's

employment, the result will be that I will be deprived from conducting investigations which I need to prove my defence. I will be dismissed from my employment and left with a claim for unfair dismissal...'

[6] The essence of the applicant's case is based on his anticipation that the chairperson of the disciplinary hearing in due course may refuse his request for the information and, as such, this Court must intervene. However, even if he is denied the information and is subsequently dismissed, he has a substantial redress in the dispute resolution machinery of the LRA, which he is patently apprised of.

[7] This applicant's request should have been canvassed with the chairperson at the sitting of the disciplinary hearing instead of to clogging the Court's busy urgent roll.

Conclusion

[8] I am not convinced that this matter is urgent and this application accordingly stands to fail on this ground alone. There is no reason why costs should not follow the results.

Order

[9] In the circumstances, I make the following order:

1. The application is struck off the roll for lack of urgency.
2. The applicant must pay the respondent's costs.

Nkutha-Nkontwana AJ

Judge of the Labour Court of South Africa

APPEARANCES:

FOR THE APPLICANT: Advocate W J Kaplan and EW Bank

Instructed by Du Rant Du Toit Pelser Attorneys

FOR THE FIRST RESPONDENT: Mr D Washer

Instructed by Edward Nathan

[1] [2012] 4 All SA 570 (GSJ) at para 7. .

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