

SOUTH AFRICA / JUDGMENT

Chauke v Pan African Languages Board (2023-066564) [2025] ZAGPPHC 179 (18 February 2025) [2025] ZAGPPHC 179

COURT

North Gauteng High Court, Pretoria

BEFORE

Lenyai

CASE / FILE NUMBER

2023-066564

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE

NO: 2023-066564

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED.

DATE

18/02/2025

LENYAI J

In

the matter of:

MIKATEKO

FLOYD CHAUKE

Applicant

And

PAN AFRICAN LANGUAGES

BOARD

Respondent

Delivered: This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 14:00 on 18 February 2025.

JUDGMENT

LENYAI J

[1] This is an application wherein the applicant seeks the following orders;

1.1 That the respondent was prohibited from terminating the applicant's employment before the appointment of the new Board;

1.2 That the applicant's employment was not validly terminated;

1.3 That such termination of the applicant's employment contract is declared invalid and of no force or effect and is set aside;

1.4 That the status quo ante between the parties is restored;

1.5 That the employment contract is restored from the date of termination;

1.6 That the respondent is ordered and directed to pay the applicant's salary from the date of termination;

1.7 Ordering the respondent to pay the costs of this application;

[2] The applicant avers that he was employed by the respondent as a Senior Clerk. On 31st May 2016, an article appeared in the issue of the Sowetan Newspaper in which instances of maladministration were published. Soon thereafter the respondent launched an investigation to identify the source of the information.

[3] The applicant submits that the respondent suspected him to be the source of the leak, placed him on suspension pending the investigation and disciplinary hearing. The applicant further submits that before the disciplinary hearing could sit, he approached this division of the High Court seeking an order interdicting the disciplinary hearing. The basis of the request for the interdict was that the information that was published in the Sowetan implicated the CEO at the time, a certain Mr Monareng who had charged the applicant with leaking information.

- [4] The applicant submits that he brought an application to interdict the respondent in terms of Section 4(4) of the Pan South African Language Board Act, 59 of 1995 because Mr Monareng was conflicted in the matter. The matter was heard on the 21st October 2016 and the judgment was delivered on the 13th March 2017. The legal representative of the applicant submitted that although the interdict was refused, the court made certain findings which were in his favour.
- [5] The applicant avers that it was stated in the judgment that “...Section 4(4) prohibits the second respondent from conducting an investigation or rendering assistance with regard thereto, if he has a pecuniary or other interest which might preclude him from exercising, carrying out or performing his duties and functions in a fair, unbiased and proper manner. The second respondent clearly does have such an interest as he is the person in respect of whom the allegations were made in the Sowetan newspaper.”
- [6] The applicants further contends that the court prohibited that the recommendation of the chairperson of the disciplinary hearing should be directed to the second respondent and should be directed to the new Board when appointed. This simply meant that Mr Monareng was barred and prohibited from accepting and implementing the recommendation from the chairperson of the disciplinary hearing.
- [7] The applicant contends that the respondent accepted the judgment and did not challenge it by way of an appeal and ought to have complied with the judgment.
- [8] The applicant contends that the new Board was appointed some three years after his employment was terminated by Mr Monareng. His termination was premature as the new Board was not yet appointed by the time his employment was terminated.
- [9] The applicant avers that before he pursued this matter in the High Court, he had pursued his rights in the Labour Forums and had failed.
- [10] The applicant contends that there is a judgment of this court prohibiting termination of his employment before a new Board was appointed and he is therefore entitled to the relief sought in the notice of motion.
- [11] The respondent opposes this matter and raises several points in limine, which it contends are dispositive of the matter.
- [12] The first point in limine is with regard to the Judgment of Judge Louw under case number 77058/2016. The respondents contends that the applicant bases his case on the judgment of Judge Louw. The applicant’s urgent application before Judge Louw to stay the hearing of the disciplinary hearing was dismissed and there is no judgement in the applicant’s favour. If there was such a decision in his favour, the applicant should have gone for an application for contempt of court.

- [13] In my reading of the Louw Judgement that the applicant relies on so heavily, it is crystal clear that the actions of Mr Monareng were not found to have contravened the provisions of section 4(4) of the Pan South African Language Board Act and the urgent application was dismissed.
- [14] The remarks made by my brother in the body of his judgment are obiter, put simply, they were made in passing and are of no force or effect. In my view, the applicant is unfortunately relying on a judgement that was not in his favour and on this point alone the relieve sought by the applicant in this matter stands to be dismissed.
- [15] The second point in limine that the respondent raised is the fact that the applicant failed to establish a cause of action. The respondent avers that the applicant in his founding affidavit submits that the purpose of the application is to seek an order declaring the termination of his employment contract unlawful and invalid and further seeks the setting aside of the termination.
- [16] The respondent submits that the applicant's claim as pleaded, and the nature of the relief sought in the form of specific performance, is founded in the law of contract. The respondent further submits that the applicant has not attached the contract to his founding affidavit. The alleged contractual right pleaded by the applicant of the respondent being prohibited from terminating his employment before the appointment of the new Board, is thus not able to be found in the written contract either expressly or by implication, as the contract was not produced. The respondent submits that the applicant's case must fail for not being able to make out a case for the relief sought.
- [17] The respondent avers that the applicant in his replying affidavit, denied reliance on a cause of action founded on a contract and for the first time indicated that his cause of action is non-compliance with a Court Order.
- [18] It is trite that an applicant must make out his case in his founding affidavit and may not utilise a replying affidavit to make out a case that was not properly anticipated in the founding affidavit.
- [19] The principle of fairness dictates that a respondent in a matter should be given a fair opportunity to deal with and properly address the case that is brought against it, him or her and "... Most important of all, adherence to the principle ensures that disputes between litigants are resolved in terms of a procedure which is just, orderly and well recognized." This was held in the matter of Union Finance Holdings Ltd v I S Mirk Office Machines II (Pty) Ltd 2001 4 SA 842 (W) at 847J - 848E.
- [20] I am of the view that the applicant should not be permitted to make out his case in the replying affidavit as this is not fair on the respondents as it amounts to an ambush.

[21] Furthermore, I have already ruled above at para 14, that the applicant is relying on a judgment that was not granted in his favour. The application of the applicant stands to be dismissed.

[22] Under the circumstances I make the following order:

1. The application is dismissed with costs

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances

Counsel for Applicant : Adv Z Feni Instructed by

: Makhafola & Verster Incorporated Counsel for the Respondents : Adv Navsa Instructed by

: Bowman Gilfillan Date of hearing : 28 August 2024 Date of Judgement

: 18 February 2025

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