

SOUTH AFRICA / JUDGMENT

Independent Development Trust v Commission for Conciliation, Mediation and Arbitration and Another (2025/031003) [2025] ZALCJHB 114 (16 March 2025)

[2025] ZALCJHB 114**COURT**

Labour Court Johannesburg

BEFORE

Tlhotlhemaje

CASE / FILE NUMBER

2025/031003

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Source record**IN THE LABOUR COURT OF
SOUTH AFRICA, JOHANNESBURG****Not Reportable****Case No: 2025 - 031003****In the matter between:****INDEPENDENT
DEVELOPMENT TRUST
Applicant
and
COMMISSION FOR
CONCILIATION, MEDIATION
AND
ARBITRATION****First respondent
SOLIDARITY obo MEYER
WAP****Second Respondents****Heard: 11 March 2025****Delivered: This****judgment was handed down electronically by circulation to the
parties' legal representatives by email and publication
on the Labour****Court's website. The date for the hand-down is deemed to be on
16 March 2025**

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

- [1] In this opposed urgent application, the applicant (IDT), seeks an order interdicting the first and second respondents from continuing with the arbitration proceedings before the (Commission for Conciliation, Mediation and Arbitration (CCMA)), scheduled for 12 and 13 March 2025 under case number GATW 660-24, pending the determination of a review application.

Background:

- [2] The background material leading to this application is largely common cause. IDT had employed the employee and member of Solidarity, (Mr Meyer), as a security officer. Meyer was dismissed in November 2023 following a disciplinary enquiry into allegations of misconduct. An unfair dismissal dispute was subsequently referred to the CCMA, and when attempts at conciliation failed, the matter was set-down for arbitration on 17 July 2024.
- [3] At the arbitration proceedings, IDT made an application to be legally represented. Following written submissions made by the parties, Commissioner Skhosana had issued a ruling on 22 July 2024, and denied IDT a right of legal representation. Although the ruling is dated 22 July 2024, it was sent to the parties on 30 July 2024. IDT had some five months thereafter on 14 February 2025,

launched an application under Case Number: 2025-020337, to review and set aside the ruling.

- [4] This application was launched on 3 March 2025, which Solidarity had promptly opposed. The basis of the opposition is that the application lacks urgency and that the requirements for the relief sought were not met.

Urgency and whether the requirements for relief sought were met:

- [5] The Court may at its discretion under Rule 38 of the Rules of this Court, relax or shorten the strict formal rules relating to time for service, and treat an application as urgent. In such applications, the applicant is required to first, set forth explicitly in the founding papers, the circumstances which it avers renders the matter urgent, and second, to explicitly advance the reasons why it claims that it could not be afforded substantial redress if the matter was brought to Court by way of an ordinary non-urgent procedure.
- [6] Whether the applicant will be able to obtain substantial redress in due course is dependent on the facts and particular circumstances of each case[1]. Of equal importance is that urgent relief may be refused in circumstances where the matter has become urgent owing to dilatoriness on the part of the applicant. This is so in that the primary objective of

approaching a Court on an urgent basis is to prevent any form of harm or prejudice from occurring[2]. Equally so, urgent relief will be refused where on the facts, it is apparent that arising from the applicant's dilatoriness, the urgency claimed is self-created.

[7] Against the above principles, the invariable conclusion to be reached in this case is that the background to this application points to a classic case of self-created urgency. I say so for the following reasons;

7.1 IDT as can be gleaned from the founding affidavit under the rubric of 'urgency'[3], submitted that if the CCMA proceedings were not interdicted, the matter would proceed as scheduled resulting in prejudice to it in that it would have been denied legal representation, whereas Meyer would be legally represented at those proceedings.

7.2 IDT had alleged that both parties were legally represented at the internal disciplinary enquiry, a contention denied by Solidarity. The basis of this contention was that Meyer's representative at the arbitration proceedings, (Mr Johannes Jurgens de Kock, and deponent to the answering affidavit), was an admitted attorney, which made him ineligible to represent a party at those proceedings under Rule 25 of the CCMA Rules, unless granted permission by a commissioner. De Kock is however a Union Official, and IDT contends that it only became aware of the fact that de Kock was an attorney when the dispute was before the CCMA.

7.3 IDT's reasoning as above in claiming urgency cannot come to its assistance. The nub of the above contentions goes to its grounds of review of Commissioner Skhosana's ruling but has nothing to do with urgency. To further buttress the point, in the answering affidavit, de Kock specifically pointed out that he is an official of Solidarity. For the purposes of representation at the CCMA, and in his capacity as a union official, it is irrelevant whether he was a legal practitioner prior to being a union official. If, however he is currently a practicing attorney and registered under the Legal Practice Council Rules, and simultaneously masquerading as a Union Official, that is a different matter which this Court need not be burdened with at this stage.

7.4 If ever there was any urgency in this matter based on IDT's contentions, this arose immediately upon the issuing of Commissioner Skhosana's ruling on 30 July 2024 and prior to the CCMA setting the matter down for arbitration. The ruling on legal representation meant that the CCMA and Commissioner Skhosana were effectively functus officio in respect of that issue. It therefore follows that any attempts by IDT to have further proceedings before the CCMA postponed based on the fact that it was aggrieved by that ruling, would have been in vain. It did not need Solidarity nor the CCMA to advise IDT that in the absence of a Court order, the arbitration hearing would proceed once scheduled by the CCMA.

7.5 To further demonstrate any lack of haste on the part of IDT, it was not in dispute that subsequent to the ruling on legal representation having been issued, the parties had concluded a pre-arbitration minute on 30 August 2024. The CCMA had subsequently issued a notice on 5 November 2024, setting the matter down for 5 – 6 December 2024. Those proceedings were postponed on account of IDT's

representative being indisposed. However, at no point between the issuing of the ruling and the rescheduling of the matter before the CCMA, did IDT indicate any intention not to proceed with the matter based on that ruling.

7.6 The CCMA had issued a further notice setting the matter down for 12 – 13 March 2025. It is common cause that after IDT failed to get Solidarity's consent to postpone the scheduled proceedings, it had on 14 February 2025, launched an application to review the ruling, and had some three days later on 17 February 2025, launched an application to postpone the CCMA proceedings based on having lodged the review application. The application for a postponement was refused on 27 February 2025.

7.7 IDT's attempts at relying on the date of the refusal of the postponement as having triggered urgency are clearly self-serving and unsustainable. The flurry of applications in the light of the notice of set-down, i.e., the review application which was in any event out of time; the ill-conceived application for a postponement before the CCMA, and this urgent application, was merely a chain of events in an attempt to make this application look urgent, when it was not. This was so in that IDT effectively took

over a period of seven months since the ruling on legal representation was issued, before it could act on that ruling by approaching this Court on an urgent basis. This Court should be reluctant to come to the assistance of a party seeking relief when it had throughout the alleged harm to it, been supine.

[8] Other than the clearly self-created nature of the urgency claimed, IDT has not demonstrated the basis upon which it should be concluded that it will not obtain substantial redress in due course. There was nothing said about this issue under the rubric of urgency in the founding affidavit. The mere fact that in the absence of urgent relief the hearing before the CCMA will proceed without IDT being legally represented does not imply that substantial relief cannot be obtained in due course. This is so in that should

IDT be aggrieved with the ultimate award to be issued, nothing prevents it from obtaining redress in review proceedings it may

launch.

[9] In the light of the urgency in this case being clearly self-created, the consequences thereof would be to strike this matter off the roll. To do so however would merely imply that it will find itself back on the ordinary roll, and it is my view that the merits of this matter ought to be disposed of. This is based on my view that IDT has equally failed to meet the requirements of the relief it seeks.

[10] It is trite that for interim relief to be granted, an applicant must demonstrate a prima facie right, a well-grounded apprehension of irreparable harm if the relief is not granted, that the balance of convenience favours the applicant, and the absence of other satisfactory remedies.

- [11] Against the above requirements to be met, aligned to the nature of the application before the Court is section 158(1B) of the LRA, which provides that the court may not review any decision or ruling made during conciliation or arbitration before the issue in dispute has been finally determined by the CCMA or bargaining council, unless the Court is of the opinion that it is just and equitable to do so. Effectively, an applicant must demonstrate exceptional circumstances by placing compelling factors before the Court, that will call for its intervention.
- [12] It has long been reiterated in *Ngobeni v PRASA CRES and others*[4] that there are at least two reasons why the Court should be slow in intervening in on-going arbitration proceedings. The first was a policy related reason in that routine interventions would undermine the informal nature of the system of dispute resolution established by the Labour Relations Act[5] (LRA). The second reason was that to permit reviews on a piece-meal basis would frustrate the expeditious resolution of labour disputes. It was further held that justice would be advanced rather than frustrated by permitting CCMA arbitration proceedings to run the course without intervention by this Court[6]. These principles are apposite in this case.
- [13] IDT had correctly referred to *Booyesen v Minister of Safety & Security & others*[7] in pointing out that this Court has jurisdiction to intervene in such cases. The LAC had however stressed that it is within the discretion of the Court having regard to the facts of each case, whether the intervention was warranted, taking into account whether a failure to intervene would lead to grave injustice or whether justice might be attained by other means.
- [14] The facts of this case do not come close to being exceptional nor would IDT suffer a grave injustice should the court refuse to intervene, and where justice will be attained by review proceedings should it be aggrieved by the outcome of the arbitration proceedings. IDT would still be in a position to present its case of misconduct against Meyer and justify the fairness of his dismissal before an arbitrator. On the other hand, it is Meyer who will suffer an injustice in having to wait for the finalisation of the review application, in the light of his dismissal having taken place in November 2023.
- [15] It further follows from the above conclusions in the light of the right asserted by IDT, that Rule 25 of the CCMA does not create a right for it to be legally represented before the CCMA. I have already dealt with the position of de Kock in *Solidarity* and his capacity at the arbitration hearing. In the absence of anything barring him from acting in his capacity as a Union Official, his qualifications do not make him a legal practitioner for the purposes of proceedings before the CCMA. The mere fact that de Kock is alleged to be a legal practitioner without more, does not give rise to a right that IDT be granted legal representation.
- [16] Equally so, IDT cannot speak of a well-grounded apprehension of irreparable harm if the relief is not granted. IDT's contention that it currently lacks any other personnel in its employee relations unit to manage the arbitration, as the unit's manager has been subpoenaed to testify by *Solidarity*, cannot be a basis for seeking this court's intervention. It

is startling that an entity such as IDT can complain about lack of personnel to handle cases before the CCMA. Furthermore, the mere fact that the manager that was to handle the matter at arbitration was subpoenaed in the same proceedings does not imply that he is barred from representing IDT. Such a scenario might not be ideal, but it is however not uncommon at the CCMA. In such instances, it is for the Commissioner to manage that process fairly without prejudice to the rights of the parties to a fair trial. Thus, if IDT is concerned about the availability of that manager to represent it at arbitration, that concern is misplaced.

[17] Furthermore, the balance of convenience cannot favour IDT where it had been supine since the impugned ruling was issued. It delayed the bringing of the review application and caused delays in the arbitration proceedings with no less than two requests for a postponement. On the opposite end, it is Meyer who continues to suffer extreme prejudice as a result of further delays in the finalisation of the dispute, more particularly should the court grant the relief sought. Fairness dictates that he should be entitled to a speedy resolution of the matter. In the end, IDT cannot further allege any absence of other satisfactory remedies at this stage, because the dispute before the CCMA still must be determined.

[18] It follows in the light of the above that this application lacked merits, and ought to therefore be dismissed. Further in the light of the facts of this case and representation on behalf of Meyer in these proceedings, the requirements of law and fairness dictate that no award of costs be made.

[19] Accordingly, the following order is made;

Order:

1. The applicant's urgent application is dismissed.
2. There is no order as to costs.

Edwin Tlhotlhemaje

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv. O Mulaudzi, instructed by Nompumelelo Hadebe Incorporated,

For the Second Respondent: Ms. K Van Wyk of Solidarity.

[1] See East Rock Trading 7 (Pty) Limited and another v Eagle Valley Granite (Pty) Limited and others

(2012) JOL 28244 (GSJ) at para 6 and 7; See also *Export Development Canada and Another v Westdawn Investments Proprietary and Others* [2018] ZAGPJHC 60; [2018] 2 All SA 783 (GJ) at para 11; and *Mogalakwena Local Municipality v The Provincial Executive Council, Limpopo and others*

(2014) JOL 32103 (GP) at para 63 – 64, where it was held; “It seems to me that when urgency is an issue the primary investigation should be to determine whether the applicant will be afforded

substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent. Once such prejudice is established, other factors come into consideration. These factors include (but are not limited to): Whether the respondents can adequately present their cases in the time available between notice of the application to them and the actual hearing, other prejudice to the respondent’s and the administration of justice, the strength of the case made by the applicant and any delay by the applicant in asserting its rights. This last factor is often called, usually by counsel acting for respondents, self-created urgency.”

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[2] See *Golding v HCI Managerial Services (Pty) Ltd and others*

[2015] 1 BLLR 91 (LC) at para 24; *Ntozini and Others v African National Congress and Others* (18798/2018) [2018] ZAGPJHC 415 (25 June 2018) at para 11.

[3] Para 27 -28 of the Founding Affidavit

[4]

[2016] 8 BLLR 799 (LC).

[5] Act 66 of 1995, as amended.

[6] At para [13].

[7]

[2010] ZALAC 21; [2011] 1 BLLR 83 (LAC) ; (2011) 32 ILJ 112 (LAC) at para 36.

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