

SOUTH AFRICA / JUDGMENT

Koopman v PRASA Metrorail and Others (C1229/2018) [2018] ZALCJHB 422 (27 December 2018) [2018] ZALCJHB 422

COURT

Labour Court Johannesburg

BEFORE

Tlhotlhamajane

CASE / FILE NUMBER

C1229/2018

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG/CAPE TOWN

Not reportable

Case No: C1229/2018

In the matter between:

KAREL
KOOPMAN Applicant
and
PRASA
METRORAIL First
Respondent
L QANGULE (PRESIDING
OFFICER) Second
Respondent
VUSI SWARTBOOI
(INITIATOR) Third
Respondent
C NICHOLAS (ER
SPECIALIST) Fourth
Respondent
THISO (SAPS, WOODSTOCK POLICE
STATION) Fifth
Respondent
Heard: 18 and 20 December 2018
Delivered: 27 December 2018

JUDGMENT

TLHOTLHALEMAJE, J

- [1] The applicant is employed by the first respondent (Prasa Metrorail), and is currently undergoing a disciplinary enquiry that commenced on 6 August 2018 into allegations of misconduct.
- [2] The ongoing disciplinary enquiry has been plagued by various postponements occasioned by numerous preliminary points raised by the applicant; the applicant being sick on the date of the scheduled enquiry; the unavailability of the chairperson; the withdrawal of the applicant's representative; and the firing of his representatives by the applicant. The enquiry having been a stop/start affair, was due to commence on 18 December 2018 after the employer had closed its case.
- [3] Before the commencement of the enquiry on 18 December 2018, the applicant, who had by then filed this urgent ex parte application before the Court, arrived at the employer's premises, not to attend the enquiry but to ostensibly serve them with his urgent application. The applicant was then advised that rather than rushing to Court, he should wait for the finalisation of the enquiry as scheduled. He nonetheless persisted with his application at the Court.
- [4] The hearing was held via teleconferencing on 18 December 2018 in the absence of Prasa Metrorail. Out of concern with the manner of service (notwithstanding the fact that the application was brought ex parte), and further in the light of the incomprehensible papers before the Court, the matter was postponed to 20 December 2018
- to enable the applicant to effect proper service and to amend his papers.
- [5] It is not clear what the Applicant informed Prasa Metrorail as to what had transpired over the teleconferencing. But from the answering papers, it appeared that after the matter was postponed, he went back to the employer's premises, and informed its representatives that the Court had inter alia said to him that he (applicant) would be reinstated into his normal duties. This is obviously untruthful, and I fail to appreciate the reason the applicant would have been told that he would be reinstated in his position, when it is common cause that he still remains an employee of Prasa Metrorail, other than the fact that pending the ongoing disciplinary enquiry, he was simply removed from his normal duties. He still attends work daily and continues to receive his salary.
- [6] The applicant initially approached this Court by way of ex parte during recess in 18 December 2018 to seek a variety of orders. Obviously the nature of the application given the types of relief he seeks is an irregular step. In summary however, he appears to complain about the conduct of the Chairperson of the enquiry on 6 August 2018 and the ruling issued to continue with the matter; the fact that the hearing took longer than the thirty day period; the alleged failure by Prasa Metrorail to notify witnesses; his suspension which had

continued for more than thirty days; the production of video recordings; that he be permitted to 'search' for video camera and footage relied on; and that Prasa Metrorail be restrained from making use of the video camera footage.

- [7] The tragic events that led to the removal of the applicant from his normal duties and the disciplinary enquiry are essentially as follows;

7.1 The applicant is employed as a Metro train guard and his duties include ensuring that passengers embark and disembark safely from trains and the stations, and further to ensure that it is safe for a train to depart from the platform.

7.2 On 2 June 2018, the applicant was a guard on duty on the train. A female passenger, who the applicant alleged was inebriated disembarked from a train at Woodstock station and squatted on the edge of the platform which is an area demarcated as a danger zone, in order to relieve herself. As the passenger attempted to stand up upon relieving herself, she leaned forward in an attempt to stand up and was hit by the train as it moved out of the platform. She fell off onto the tracks and under the wheels of the train.

7.3 As the guard on duty, the applicant would have been expected to sit in the last carriage of the train, step out or at least lean out of the carriage in order to observe and view the entire platform area to ensure that it was safe for the train to depart. The video footage produced at the disciplinary enquiry showed that the applicant had not done what was required of him prior to the fatal accident, and could accordingly not apply the requisite safety and emergency procedures.

7.4 Internal processes were followed leading to the applicant's removal from his normal duties and the subsequent disciplinary enquiry, which as already indicated, has been a start/stop affair.

- [8] The applicant's application, which was brought during the recess on an urgent and on an ex parte basis is clearly a gross abuse of the Court's process, particularly when regard is had to the fact that he set it down on the date that the internal disciplinary enquiry was due to continue. This application therefore ought to be dismissed rather than being struck off from the roll on the following grounds;

8.1 The application was not served on all the respondents cited.

8.2 There is no basis for this matter to be treated as urgent as correctly pointed out on behalf of the respondents, in view of the fact that the disciplinary enquiry has been on-going having commenced on 6 August 2018, and was due to resume on the date that the applicant approached the court on an urgent basis.

8.3 The requirements of urgency in this Court as contemplated in Rule 8 of its Rules are well known[1]. No attempt was made to comply with the provisions of Rule 7 (3) in bringing this application, and one struggles to comprehend what the applicant's case is all about, as he had not set out that case in chronological order or sufficient particularity.

8.4 No basis has been laid out in the founding papers as to the reason the matter is urgent. The applicant's only concern is that the enquiry is taking long to be finalised and that as a consequence, he will lose his position or licence to work on the trains. At the same time however, it escapes the applicant's mind that he is partly to blame for the protracted nature of the enquiry, as he had at that enquiry, raised pointless preliminary issues. Other than this self-serving reason proffered for the urgency, it further escapes the applicant's mind that a tragedy took place whilst he was on duty, that the allegations against him are serious in the extreme, and that there is a need to complete the disciplinary enquiry to establish his culpability in this tragedy.

8.5 As also appears from the answering papers, the applicant was provided with a copy of the video footage relied on in the disciplinary enquiry. All the preliminary points that he kept raising were dealt with, and to the extent that he was still aggrieved, all he had to do was continue with the enquiry and wait for the outcome.

8.6 This Court does not as a rule, intervene in on-going internal disciplinary proceedings unless there are exceptional circumstances that require its intervention, such as that a grave injustice would occur[2]. In *Jiba v Minister: Department of Justice and Constitutional Development and others*[3] this Court pertinently held that:

'Although the court has jurisdiction to entertain an application to intervene in uncompleted disciplinary proceedings, it ought not to do so unless the circumstances are truly exceptional. Urgent applications to review and set aside preliminary rulings made during the course of a disciplinary enquiry or to challenge the validity of the institution of the proceedings ought to be discouraged. These are matters best dealt with in arbitration proceedings consequent on any allegation of unfair dismissal, and if necessary, by this court in review proceedings under s 145.'

8.7 From the founding papers, and other than the issue of a loss of a licence, there is nothing truly exceptional in this case that requires the intervention of this Court. Even if the Court looked for any, no basis was laid for any claim to a clear right. Worst still, it has been said in this court that where there are alternative remedies available, the Court should not come to an applicant's assistance. In this case, the applicant indeed has immediate available remedies, which include subjecting himself to the on-going disciplinary enquiry as already scheduled for 21 January 2019, and if unsatisfied, to lodge an internal appeal, and if still not satisfied, to approach the relevant bargaining council or the CCMA.

[9] In the light of the above, it is concluded that no case has been made out for the urgency claimed, which in any event is self-created.

Furthermore, no basis has been laid for the relief, incompetent as it is, for the court to grant. Given the gross nature of the abuse of this court's processes and the unnecessary costs the first respondent was compelled to incur in order to oppose this clearly frivolous and vexatious application, there is no reason based on either the law or requirements of fairness, that militates against a cost order being granted. Accordingly, the following order is made;

Order:

1. The applicants' application is dismissed.
2. The applicant is ordered to pay the first respondent's costs, inclusive of the costs occasioned by the employment of counsel.

Edwin Tlhotlhalemaje

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicants: In Person

For the First, Third and Fourth Respondents: DC Joubert SC

Instructed by: Werksmans Attorneys

[1] 8 Urgent relief

- (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.

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 - (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.

[2]See *Booyesen v Minister of Safety and Security and Others*

[2011] 1 BLLR 83 (LAC), (2011) 32 ILJ 112 (LAC) at para 36; Trustees for the time being of the National Bioinformatics Network Trust v Jacobson and others [2009] 8 BLLR 833 (LC) [2009] at para 3; Ngobeni v Passenger Rail Agency of SA Corporate Real Estate Solutions and others (2016) 37 ILJ 1704 (LC)

[3]

[2005] ZALC 15; [2009] 10 BLLR 989 (LC), (2010) 31 ILJ 112 (LC) at para 17.

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