

SOUTH AFRICA / JUDGMENT

Langeni v SA Women & Mining Investment Holdings (Pty) Ltd (SAWIMIH) (D633/11) [2011] ZALCD 27 (29 July 2011)

[2011] ZALCD 27

COURT
Labour Court Durban

BEFORE
Francis

CASE / FILE NUMBER
D633/11

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IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)
CASE NO: D633/11

In the matter between: NOLUTHANDO LANGENI
.....Applicant
and
SOUTH AFRICAN WOMEN AND MINING
INVESTMENTS HOLDINGS (PTY) LTD (“SAWIMIH”)
.....Respondent

JUDGMENT

FRANCIS J

1. The applicant approached this Court on an urgent basis for the following relief:

“1. That the rules of the above Honourable Court relating to the forms and manner of service are hereby dispensed with and this matter is dealt with as one of urgency;

2. That the purported dismissal of the Applicant from her position as Chief Executive Officer of the Respondent is declared to be

invalid, unlawful and no legal force and effect; alternatively

3. That the purported dismissal of the Applicant be set aside pending compliance by the Respondent with the substantive and procedural requirements of law that would have application in regard to any enquiry into allegations of misconduct or that would have application to any termination on the basis of “no fault”;

4. That the Applicant is permitted to resume her duties as the Chief Executive Officer of the Respondent, such to include the

functions normally performed by the Applicant as well as the Applicant’s representation of the Respondent on the Board of

any other entity;

5. That, in the alternative to paragraphs 2, 3 and 4 above, such paragraphs operate as a rule nisi with interim effect pending the

return date thereof;

6. That the Respondent show cause on the day of 2011 as to why it should not be found to be in contempt of the Court order dated the 1st July 2011 under case number D554/2011; and

7. That the Respondent pay the costs of this application on the attorney and client scale.”

2. The application was instituted by the applicant on 21 July 2011 and was set down for a hearing on 25 July 2011. On 25 July 2011 the application was postponed to 28 July 2011 to enable the applicant to file a replying affidavit. The respondent had filed an answering affidavit on 25 July 2011. The parties were ordered to file heads or arguments which they duly did.

3. Mr Lawrence who appeared for the applicant informed the Court that the applicant was no longer proceeding with the prayer to hold the respondent in contempt of court since this would be dealt with in the proceedings that she had launched under case number D554/2011.

4. That the Applicant is permitted to resume her duties as the Chief Executive Officer of the Respondent, such to include the

functions normally performed by the Applicant as well as the Applicant’s representation of the Respondent on the Board of

any other entity;

5. That, in the alternative to paragraphs 2, 3 and 4 above, such paragraphs operate as a rule nisi with interim effect pending the

return date thereof;

6. That the Respondent show cause on the day of 2011 as to why it should not be found to be in contempt of the Court order dated the 1st July 2011 under case number D554/2011; and

7. That the Respondent pay the costs of this application on the attorney and client scale.”
2. The application was instituted by the applicant on 21 July 2011 and was set down for a hearing on 25 July 2011. On 25 July 2011 the application was postponed to 28 July 2011 to enable the applicant to file a replying affidavit. The respondent had filed an answering affidavit on 25 July 2011. The parties were ordered to file heads or arguments which they duly did.
3. Mr Lawrence who appeared for the applicant informed the Court that the applicant was no longer proceeding with the prayer to hold the respondent in contempt of court since this would be dealt with in the proceedings that she had launched under case number D554/2011.
4. The application was opposed by the respondent on several basis. It was contended that the applicant should have brought the

application earlier and could not approach this court on an urgent basis for the relief that she is seeking. It was further contended

that the applicant has adequate remedies available to her either in terms of her contract of employment and in terms of the Labour

Relations Act 66 of 1995 (the Act).

5. The applicant was employed by the respondent as the Chief Executive Officer (CEO).
6. The respondent is the South African Women and Mining Investment Holding (Pty) Ltd (“SAWIMIH”) and is an investment

holding company specifically created to empower black women and serve as a vehicle for them to invest and hold shares in the mining and energy sector of industry. The respondent exist side by side with a section 21 Company, the South African Women in Mining Association (SAWIMA) which was created around 1999 at the suggestion of the then National Minister of Minerals and Energy. The applicant is a director of SAWIMA and has been the chairperson of the local Kwazulu-Natal chapter thereof since 2006. The respondent was created in 2003 to operate in a similar environment to that of SAWIMA but to also enable women to invest privately in the mining and energy sector. From 2007 the applicant held a non-executive directorship in the respondent and in November 2009 she was requested to take up the position of CEO. She was employed by the respondent as the CEO and signed a contract of employment. Her date of employed is from 17 November 2009 to 28 February 2013.

4. The application was opposed by the respondent on several basis. It was contended that the applicant should have brought the

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7. The applicant was suspended on 21 June 2011. She challenged her suspension and on 1 July 2011 the court set aside her suspension. A board meeting was held by the respondent on 8 July 2011. The applicant availed herself for a telephone conference with the board on the same day. The board decided that her contract of employment should be summarily be terminated. She received a letter dated 11 July 2011 informing her that her fixed term contract was being terminated and that the respondent had elected to pay her notice and that her last working day would be 8 July 2011. She was also informed that the Board of Directors had unanimously decided to terminate her membership of the Board of Directors with effect from 8 July 2011.
8. The applicant instructed her attorneys to deal with the matter. Her attorney sent the respondent a letter on 13 July 2011 calling upon them to withdraw their letter of 11 July 2011 and to restore her to her position as CEO. Her attorney pointed out that the “no fault” termination was a disingenuous invention that was clearly and inextricable linked to the intentions that had surrounded her suspension as was apparent from the Board minutes of 23 June 2011. The respondent’s attorneys responded on 13 July 2011 denying any link between the suspension and the unprocedural dismissal and that it would resist any application that the applicant would bring.
9. The applicant instructed her attorney to launch these proceedings. The application was filed with this Court on 21 July

2011 and was set down for a hearing on 25 July 2011.

10. The applicant relies on the following grounds of urgency.
7. The applicant was suspended on 21 June 2011. She challenged her suspension and on 1 July 2011 the court set aside her suspension. A board meeting was held by the respondent on 8 July 2011. The applicant availed herself for a telephone conference with the board on the same day. The board decided that her contract of employment should be summarily be terminated. She received a letter dated 11 July 2011 informing her that her fixed term contract was being terminated and that the respondent had elected to pay her notice and that her last working day would be 8 July 2011. She was also informed that the Board of Directors had unanimously decided to terminate her membership of the Board of Directors with effect from 8 July 2001.
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2011 and was set down for a hearing on 25 July 2011.

10. The applicant relies on the following grounds of urgency.

“7.1 The grounds of urgency that prompted me to approach this Honourable Court after my suspension in June 2011 bear similar relevance in regard to the present application. 7.2 In this regard I submit that the wholly unlawful and calculated termination of my contract of employment has resulted in the affairs of the Respondent being left to a Board of non-Executive Directors who have no accountability as employees and who it is

abundantly clear are not beyond acting with complete and flagrant disregard to the law. 7.3 My dismissal without even the slightest token attendance to procedural safeguards imposed upon an employer by the Labour Relations Act has left the Respondent leaderless and prone to the same abuse that occurred prior to my appointment as Chief Executive Officer. 7.4 In my absence the shareholders will again fall prey to the maladministration that previously existed and which appear to have

re-emerged during and after my suspension and will I fear be perpetuated with greater intensity during this period after my dismissal. 7.5 In this regard the unlawful removal of my powers, as a Director of the Board and in contravention of the Companies Act reinforces my concerns about the mischievous intentions of the current Board and the risk that shareholders will be exposed to without my presence. 7.6 My continuing unlawful dismissal undermines my credibility and integrity with the Boards on which I sit, both in my personal capacity and as a representative of the Respondent.

“7.1 The grounds of urgency that prompted me to approach this Honourable Court after my suspension in June 2011 bear similar relevance in regard to the present application.

7.2 In this regard I submit that the wholly unlawful and calculated termination of my contract of employment has resulted in the affairs of the Respondent being left to a Board of non-Executive Directors who have no accountability as employees and who it is

abundantly clear are not beyond acting with complete and flagrant disregard to the law.

7.3 My dismissal without even the slightest token attendance to procedural safeguards imposed upon an employer by the Labour Relations Act has left the Respondent leaderless and prone to the same abuse that occurred prior to my appointment as Chief Executive Officer.

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re-emerged during and after my suspension and will I fear be perpetuated with greater intensity during this period after my dismissal.

7.5 In this regard the unlawful removal of my powers, as a Director of the Board and in contravention of the Companies Act reinforces my concerns about the mischievous intentions of the current Board and the risk that shareholders will be exposed to without my presence.

7.6 My continuing unlawful dismissal undermines my credibility and integrity with the Boards on which I sit, both in my personal

capacity and as a representative of the Respondent.

7.7 The longer such an unlawful dismissal endures the more difficult it will be to repair the damage done when I am eventually vindicated. 7.8 I have sought to avoid undue resort to this Honourable Court by having my attorneys first correspond with the Respondent and its attorneys so as to implore them to uplift the purported dismissal. 7.9 It was only after the intransigence of the Respondent that my attorneys sought to prepare the present application papers. 7.10 I was only able to secure a consultation with my attorneys about the basis of the present application on the 19th July 2011 as the Respondent's attorneys had only responded on Friday, the 15th July 2011.

11. Rule 8 of the Rules of this Court permits an applicant to bring an urgent application. It requires an applicant to set out the reasons for urgency and why urgent relief is necessary and why the requirements of the rules were not complied with.

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7.10 I was only able to secure a consultation with my attorneys about the basis of the present application on the 19th July 2011 as the Respondent's attorneys had only responded on Friday, the 15th July 2011.

11. Rule 8 of the Rules of this Court permits an applicant to bring an urgent application. It requires an applicant to set out the reasons for urgency and why urgent relief is necessary and why the requirements of the rules were not complied with.
12. It is common cause that the respondent invited the applicant to take part in a teleconference of a Board meeting on 8 July 2011 where a decision was taken to terminate her contract of employment. This was followed up by the respondent in a letter dated 11 July 2011 where the Board's decision was confirmed. The applicant approached her attorney but it is not stated when she did so. Her attorney sent the respondent a letter on 13 July 2011 challenging her dismissal. The respondent responded on the same day and pointed out that it stood by its decision and that any challenge that the applicant would bring would be opposed. The applicant's attorney sent a further letter on 14 July 2011 clarifying a few issues and pointed out that the applicant was considering approaching this Court on an urgent basis. The respondent responded on 15 July 2011. The applicant on 21 July 2011 launched these proceedings.
13. The applicant has given no explanation why after the respondent had made it clear to her on 13 July 2011 that it would challenge any court action that she wanted to bring, she did not proceed with the application. No explanation is given why again after 15 July 2011 after the respondent made its attitude known to her, she did not launch the application on 16 July 2011. No explanation is given why it took her another seven days to launch this application.
12. It is common cause that the respondent invited the applicant to take part in a teleconference of a Board meeting on 8 July 2011 where a decision was taken to terminate her contract of employment. This was followed up by the respondent in a letter dated 11 July 2011 where the Board's decision was confirmed. The applicant approached her attorney but it is not stated when she did so. Her attorney sent the respondent a letter on 13 July 2011 challenging her dismissal. The respondent responded on the same day and pointed out that it stood by its

decision and that any challenge that the applicant would bring would be opposed. The applicant's attorney sent a further letter on 14 July 2011 clarifying a few issues and pointed out that the applicant was considering approaching this Court on an urgent basis. The respondent responded on 15 July 2011. The applicant on 21 July 2011 launched these proceedings.

13. The applicant has given no explanation why after the respondent had made it clear to her on 13 July 2011 that it would challenge any court action that she wanted to bring, she did not proceed with the application. No explanation is given why again after 15 July 2011 after the respondent made its attitude known to her, she did not launch the application on 16 July 2011. No explanation is given why it took her another seven days to launch this application.
14. The applicant has brought this application on short notice to the respondent. It was also brought during the court recess. No special circumstances exist why this application should have been brought on an urgent basis. The grounds of urgency advanced by the applicant are hardly and grounds for urgency where this court would allow an applicant to be heard on an urgent basis. The applicant contended that the termination of her contract of employment has resulted in the affairs of the respondent being left to a Board of non-executive directors who have no accountability as employees and who may act unlawfully. In my view the responsibility for running a company such as the respondent vests on its Board of Directors which has a fiduciary duty to run the affairs of the company properly on behalf of the shareholders. Should it turn out that the directors of the company have failed to run the affairs of the respondent in an efficient and proper manner, the shareholders do have legal remedies against such a Board.
15. The applicant has contended that her dismissal has left the respondent leaderless and prone to abuse. Once again the shareholders do have legal remedies against the Board. In any event the chairperson of the Board has indicated that the affairs of the respondent are under control and that the Board has put in place all the necessary measures to ensure the smooth running of the respondent.
16. The applicant has failed to make out a proper case for this Court to grant her the relief that she is seeking on an urgent basis. It becomes unnecessary to consider the merits of the application.
17. The application stands to be struck from the roll for lack of urgency.
18. I do not believe that this is a matter where costs should be the result. I have taken into account how the applicant was treated by the respondent and as a mark of this court's displeasure make no order as to costs.
19. In the circumstances I make the following order: 19.1 The application is struck from the roll.

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19.1 The application is struck from the roll.

19.2 There is no order as to costs. FRANCIS J JUDGE OF THE LABOUR COURT OF SOUTH AFRICA
FOR APPLICANT : I LAWRENCE OF EDWARD NATHAN SONNENBERGS FOR RESPONDENT : P
ZILWA INSTRUCTED BY KWINANA & PARTNERS INC DATE OF HEARING : 25 AND 28 JULY 2011
DATE OF JUDGMENT : 29 JULY 2011

19.2 There is no order as to costs.

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

FOR APPLICANT : I LAWRENCE OF EDWARD NATHAN SONNENBERGS

FOR RESPONDENT : P ZILWA INSTRUCTED BY KWINANA & PARTNERS INC

DATE OF HEARING : 25 AND 28 JULY 2011

DATE OF JUDGMENT : 29 JULY 2011

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