

SOUTH AFRICA / JUDGMENT

Mamatu v Centlec (SOC) Ltd. and Others (3055/2025) [2025] ZAFSHC 203 (1 July 2025)

[2025] ZAFSHC 203

COURT

Free State High Court, Bloemfontein

BEFORE

Molitsokane

CASE / FILE NUMBER

3055/2025

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Not reportable

Case no: 3055/2025

In

the matter between:

LELE
JOEL MAMATU
APPLICANT
And
CENTLEC
SOC LTD
FIRST
RESPONDENT
MALEFANE
SEKOBOTO N. O
SECOND
RESPONDENT
CENTLEC
BOARD OF DIRECTORS
THIRD
RESPONDENT
MANGAUNG
METROPOLITAN MUNICIPALITY
FOURTH
RESPONDENT

TSELISO

LEBA

FIFTH

RESPONDENT

Neutral

citation: Mamatu v Centlec (SOC)

Ltd. and Others (3055/2025) [2025]

ZAFSHC 203 (1 July 2025)

Coram:

Molitssoane J

Heard:

20 June 2025

Delivered:

1 July 2025

Summary:

Urgent interdict – noncompliance with Uniform Rule 4(1) – concurrent jurisdiction of the high court with the labour court where

the dispute relates to employment contract.

ORDER

1.

That the applicant's non-compliance with the rules relating to time periods, form and

service for bringing the application is

condoned and that the matter be heard as urgent in terms of Rule

6(12)(a) of the Uniform

Rules.

2.

That pending the determination of the relief sought in PART B hereof, the First and Second

Respondents are hereby:

2.1

Interdicted and/or prevented from processing the purported resignation by Applicant.

2.2

Interdicted and/or restrained and/or prevented from effecting and or carrying out the purported resignation

by Applicant.

2.3

Interdicting the Respondents from barring the Applicant from accessing the premises of Centlec Soc Ltd

and his workstation or

office.

2.4

Directing the First and Second Respondents to reinstate the Applicant forthwith to his position and

retain his package.

3.

The relief sought in paragraphs 2.1 to 2.4 above shall operate as interim orders with immediate

effect and shall continue to do so

pending the finalization of the review proceedings in PART B thereof.

4.

The Applicant is ordered to institute the review application within 14 days from the date of this order, failing which this interim order shall lapse.

5.

The costs of this application shall be determined in the main application.

JUDGMENT

Molitsoane J

Introduction:

- [1] This is an application for an urgent interdictory relief in which the applicant seeks an order;
- (a) interdicting the first and second respondents from processing the purported resignation of the applicant; (b) preventing them from effecting or carrying out the purported resignation; (c) restraining the first and second respondents from barring the applicant access to the premises of the first respondent; (d) directing the first and second respondents to reinstate the applicant forthwith to his position and retain his package, pending a review application to be brought. For convenience the parties will be referred to by name or title. The third and fourth respondent do not oppose this application.
- [2] As a starting point I hold a view that a proper case has been made for the matter to be adjudicated on an urgent basis. In cases of this nature, rule 6(12)(b) requires to requirements, namely, the applicant must set out the circumstances relating to urgency, and the reasons why the applicant would not be afforded substantial redress at the hearing in due course. It is not in dispute that at the time of this application the applicant had either resigned or forced to resign. Whatever the reason, he can no longer access a salary from Centlec. It is also not in dispute that he is not healthy and requires treatment and consequently his medical aid premiums to be paid. If he were to wait for the suit to proceed in the normal course that would be to his prejudice. I am satisfied that he has made a case for urgency.
- [3] The facts of this case are largely common cause or are not seriously in dispute save for the issue of whether the applicant had resigned from his position with Centlec. As it will become apparent later in this issue, the issue of the purported resignation is not an issue for consideration by this court in these Part A of the proceedings. That is the issue squarely to be raised in Part B of the proceedings.
- [4] The applicant took up a position as General Manager: Marketing and Communication at Centlec, after he was transferred from Mangaung municipality. On 06 June 2025 certain events took place during a meeting between the applicant, the Chief Executive Officer (the CEO) and the Chief Financial Officer (the CFO) of Centlec, one Ms. Williams. On the version

of the applicant the respondent produced a document allegedly written by the applicant. The document purported to be a letter of resignation by the applicant. The applicant avers that the said document was not written by him and denounce any knowledge and association with it. According to the applicant, this letter was produced by the CEO and he instructed the applicant to sign it. The applicant says he noted that the letter bore his name but was unsigned. He refused to sign it.

- [5] On the version of the CEO, he says that during the said meeting the applicant produced a letter from his file and asked the second respondent to sign it. According to the CEO it was a resignation letter written by the applicant. He says on more than one occasion, he asked the applicant if indeed he wanted to resign. The CEO further avers that he accepted the resignation letter by the applicant. He categorically denies producing the letter as averred by the applicant. What is clear is that on this aspect of whether the letter emanated from the applicant or the CEO and importantly whether the applicant resigned or was forced to resign, there is a serious dispute of fact which cannot be resolved in motion proceedings. The correct forum to deal with this dispute would be the review court seating in part B of the application. Much was said by the CEO in his affidavit about how the applicant has in the past written letters without signing them, but that does not detract from the fact that the dispute remains and that dispute cannot be resolved in these proceedings.
- [6] What the applicant seeks in this Part A of the application is simply an interim interdict. It is trite law that an applicant in an application for an interim interdict must satisfy the following requirements: (a) a clear right, alternatively prima facie right even though open to some doubt; (b) a well-grounded apprehension of irreparable harm if the interim relief is not granted;
- (c) the balance of convenience in granting interim relief;
 - (d) lack of an alternative satisfactory remedy.
- [7] It would seem to me that this application is opposed on the following grounds, that:
- (a) there has been non compliance with Uniform Rule 4(1) in effecting service of the application on the respondents.
 - (b) this court lacks jurisdiction as the dispute between the parties is a labour matter and only the labour court has jurisdiction to adjudicate this dispute.
 - (c) the applicant has failed to exhaust internal remedies.
 - (d) the applicant has failed to comply with the provisions of Uniform Rules 16(A).
 - (e) the third and fourth respondents had been misjoined.

- [8] Before dealing with the points raised by the respondents, it is necessary to allude to the fact that the applicant assails the authority of the CEO to defend these proceedings. I will later deal with this attack of lack of authority later in the judgment. I will deal with the issues raised by him in the affidavit assuming that he was authorized to defend the application.
- [9] Uniform Rule 4(1) provides that any document initiating application proceedings shall be effected by the sheriff and it further sets out the manner in which the sheriff must effect the service. It is not in dispute that the application before me was not served on the respondents in the manner prescribed by the rules. It should, however, be noted that this application is brought on an urgent basis. Rule 6(12)(a) provides as follows:

‘In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter as such time and place and in such matter and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as it deems fit.’

Rule 6(12)(a) gives the court the discretion to relax non-compliance with the rules in certain circumstances. The said rule also allows the court to dispense with the service as envisaged in Rule 4 (1). Except for complaining about non-compliance with rule 4(1), no prejudice was alleged and proven by the respondents. I am satisfied that the respondents are before court and were able to file opposing papers and participate in the proceedings without any hindrance. I exercised my discretion to allow non-compliance with rule 4(1) on the question of service. This point in limine must fail.

- [10] The CEO submits that the dispute relates to a labour issue and only the labour court has exclusive jurisdiction. It is clear from the evidence presented that the case for the applicant relates to alleged unlawful termination of an employment contract. The counsel for the applicant referred this court to the case of *Baloyi v Public Protector and Others*:^[1]

‘Matters “concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term a term of that contract, are expressly noted in section 77(3) of the Employment Act as falling within the concurrent jurisdiction of the High Court and the Labour Court. The question whether contractual claims arising from employment contracts fall within the concurrent jurisdiction of the High Court and the Labour Court has not explicitly arisen before this Court.’

I agree with the sentiments expressed in *Baloyi* and hold that this court has jurisdiction to entertain this dispute. In my view the issue before me is contractual in nature and has everything to do with the alleged termination of the agreement of employment. This point in limine must also fail.

- [11] The respondent contends that the applicant failed to exercise internal remedies. In his founding affidavit the applicant alleges that the second respondent informed him to clear everything from office and he immediately instructed security personnel to escort him out of the work premises. I should not be understood to say that I believe the applicant, what I

simply illustrate is that on the version of the applicant he was chased out of the premises. How, if those allegations were anything to go by, be expected of the applicant to exhaust any internal remedies within Centlec. While pursuing internal remedies his salary would have been stopped. That issue can also rightly be dealt with in the review application.

- [12] With regard to non-compliance of Rule 16A, I am unable to understand the contention of the respondents. The applicant in this case raises no constitutional issue. His cause of action is based on a contractual relationship he has with Centlec. Not much needs to be said on this aspect as the respondents have failed to show that a constitutional issue was implicated. By way of an illustration, if an accused alleges that the State is delaying finalization of his trial, and alleges that his fair trial rights are adversely affected as set out in s35 of the Constitution, does it mean that such an accused must file a rule 16A notice. I disagree. This point in limine must also fail.
- [13] The respondents also raise issues of misjoinder of the Board and the Municipality. During the hearing of this application counsel for the respondents alluded to the fact that the Board of Centlec had written to the instructing attorneys of the respondents indicating that they did not want to be involved in the dispute before this court. This begs serious question whether the CEO has the necessary authority to oppose this application. The CEO, in the face of the attack of his authority does not allege that he is authorized by the board to act in these proceedings. He refers this court to a document which he avers grant him the general authority to defend any case against Centlec. Counsel for the applicant gives a different interpretation to the said document allegedly giving authority to the CEO. It has to be noted that the CEO accounts to the Board. Litigation involves

money. It is expensive. The litigation may in some cases also lead to a claim for damages. Somehow, the Board has to be involved if it has the interests of Centlec at heart. The CEO does not account to himself. If the Board does not want to be involved in the dispute between him and the applicant, one wonders to whom he would account to about this matter.

- [14] Section 66 (1) of the Companies Act 71 of 2008 provides that '[t]he business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.'

In this case, it is clear that the Board is not involved in the litigation brought by the applicant. It is thus anomalous that the CEO can claim that he is authorized to act for Centlec when the Board which is statutorily obligated to manage the business of Centlec refuses to be drawn into the fray.

- [15] I have considered the facts averred by the applicant together with those averred by the CEO which are not in dispute. I have also taken into account the inherent probabilities in the versions of both these parties. In my view, should the interim order not be granted, the prejudice would be great to the applicant. The balance of convenience tilt the scale in favor of granting an interim order.

[16] The granting of an order of costs lies in the discretion of the court. Because of the serious dispute about whether the applicant has resigned or not, I believe it would be in the interests of justice that the court seized with Part B should deal with the issue of costs after listening to all the evidence. In my view the application must succeed.

[17] I accordingly make the following order:

1 That the applicant's non-compliance with the rules relating to time periods, form and service for bringing the application is condoned and that the matter be heard as urgent in terms of Rule 6(12)(a) of the Uniform Rules.

2 That pending the determination of the relief sought in PART B hereof, the First and Second Respondents are hereby:

3 The relief sought in paragraphs 2.1 to 2.4 above shall operate as an interim order with immediate effect and shall continue to do so pending the finalization of the review proceedings in PART B thereof.

4 Granting the Applicant leave to file supplementary affidavits in respect of the relief sought by it under PART B by a date to be determined by this Court.

5 Costs shall be costs in the main application.

P.E. MOLITSOANE, J

Appearances: For the applicant: S Ngombane Instructed by: Machini Motlounng Attorneys Inc. Bloemfontein Instructed by: For the Defendant: L Bomela Instructed by: Mohobo Attorneys Bloemfontein.

[1] Baloyi v Public Protector and Others [2020] ZACC 27: 2021 (2) BCLR 101 (CC) para 47.

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