

SOUTH AFRICA / JUDGMENT

Mokoroane v Department of Justice Correctional Services (J2421/17) [2017] ZALCJHB 379 (17 October 2017) [2017] ZALCJHB 379

COURT

Labour Court Johannesburg

BEFORE

B Witcher

CASE / FILE NUMBER

J2421/17

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case no: J2421-17

In

the matter between:

BOBO
JOSEPH MOKOROANE
Applicant
and
DEPARTMNT
OF JUSTICE
CORRECTIONAL
SERVICES
Respondent

Heard: 17 October 2017

Delivered: 17 October 2017
EX TEMPORE

JUDGMENT

WHITCHER, J:

[1] On 17 October 2017 I dismissed this urgent application for the following

reasons.

- [2] The applicant was suspended three months prior to him launching this application on an urgent basis. He has failed in his papers to establish why in this circumstance he is entitled to approach this court on an urgent basis.
- [3] The applicant has alternative remedies, namely a referral of an unfair labour practice to the relevant bargaining council.
- [4] He is also entitled to make representation to the disciplinary chairperson of the disciplinary on any aspect of the hearing or charges he deems to be unfair.
- [5] The fact that the applicant uses the word “unlawful” to describe the conduct of the respondent does not mean that these

alternative remedies are irrelevant or that the applicant is entitled to just approach this court anytime and not observe the rule that urgent applications must be brought urgently.

- [6] The applicant has failed to establish that a right has been clearly violated. He was given an opportunity to make representation on the suspension, but chose not to for dubious reasons.
- [7] Recently, in the matter *Lesiba v Department of Justice*[1] which was also based on claims of unlawful disciplinary action and was also an attempt to interdict same and claim declaratory relief on an urgent basis, Van Niekerk J held as follows:
- [5] This court has stated on numerous occasions that it will intervene in incomplete internal hearings in only the most exceptional circumstances. In *Magoda v DG Rural Development and Land Reform* (J1876/17, 28 August 2017), Myburgh AJ recently said the following (footnotes included in square brackets):

Eight years ago, Francis J identified that a worrying trend was developing in this court where the urgent roll is being clogged up with applications to interdict disciplinary enquiries from taking place.[2] [*Mosiane v Tlokwe City Council*

[2009] 8 BLLR 772 (LC) at para 15.] In the years that followed, this court repeatedly echoed these sentiments.[3] [See *Jiba v Minister of Justice and Constitutional Development & others*

[2005] ZALC 15; [2009] 10 BLLR 989 (LC) at para 17; *SA Municipal Workers Union on behalf of Members v Kopanong Local Municipality*

(2014) 35 ILJ 1378 (LC) at para 33; South African Municipal Workers' Union obo Dlamini and others v Mogale City Local Municipality and another

[2014] 12 BLLR 1236 (LC) at para 45; Zondo & another v Uthukela District Municipality & another

(2015) 36 ILJ 502 (LC) at para 45; Ravhura v Zungu NO & others

(2015) 36 ILJ 1615 (LC) at para 15; Association of Mineworkers & Construction Union & others v Northam Platinum Ltd & another

(2016) 37 ILJ 2840 (LC) at para 41.] But practitioners have not taken heed of this, with Van Niekerk J having commented last year that "[t]he urgent roll in this court has become increasingly and regrettably populated by applications in which intervention is sought, in one way or another, in workplace disciplinary hearings".[4] [Ngobeni v Passenger Rail Agency of SA Corporate Real Estate Solutions & others

(2016) 37 ILJ 1704 (LC) at para 14.] This case adds to what is a significant challenge to the capacity and resources of this court.

[6] It would appear that despite these admonitions, parties continue to bring urgent applications to secure interventions in incomplete domestic disciplinary hearings. The present application is no more than an urgent appeal against the ruling by the chair of the disciplinary hearing dismissing his preliminary point. I have my doubts as to whether this court has jurisdiction to grant the order sought. Unlike Magoda, the applicant in the present instance has not even sought to frame the application as one in respect of which the court is empowered to hear in terms of the enabling provisions of s 157 and s 158 of the LRA. It should be emphasised that the jurisdiction to address

substantive and procedural shortcomings in the exercise of workplace discipline lies in the hands of an arbitrator.

[7] There is simply no basis on which the application ought to be entertained. To do so would undermine the statutory purpose underlying dispute resolution under the LRA. Workplace discipline remains regulated by the code of practice and preliminary points or to be dealt with in the ordinary course of the exercise of workplace discipline, as they were in the present instance. If these rulings become the subject of dispute, these are matters that ought to be dealt with if necessary during the course of an arbitration under the auspices of the CCMA were bargaining council having jurisdiction. This court exercises a supervisory jurisdiction by way of its power to review rulings and awards made by arbitrators. That system is

entirely undermined when parties seek this court's intervention, as a forum of first instance, effectively to micro-manage workplace disciplinary hearings.

[8] For the above reasons, the application stands to be dismissed. The applicant must answer to the merits of the charges brought against him. Had the application been opposed, I would have had no hesitation in granting an order for costs on a punitive scale. In order to

emphasise the seriousness of the admonitions to which Myburgh AJ referred and what appears to be an indifference to them, perhaps the time has come for practitioners who file applications such as the present to be invited to make submissions as to why an order should not be granted that they forfeit their fees.

[8] Finally, this court has in previous judgments held that collective agreements are peremptory. Accordingly, a declaratory application to this effect is not necessary.

Order

[9] In the premises, the following order is made:

1. The application is dismissed with no order as to costs.

B. Whitcher

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant:

In person

For the Respondent:

M W Dlamini,

Instructed by:

State Attorney, Johannesburg

[1] (J2262/17) [2017] ZALCJHB 365 (4 October 2017)

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