

SOUTH AFRICA / JUDGMENT

Motsoeneng v Gauteng Department of Health (2023-77447) [2024] ZAGPJHC 315 (27 March 2024) [2024] ZAGPJHC 315

COURT

South Gauteng High Court, Johannesburg

BEFORE

Moorcroft

CASE / FILE NUMBER

2023-77447

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IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2023 – 77447

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO

In the application by

MOTSOENENG, RAHAB MATSETSA Applicant

And

GAUTENG DEPARTMENT OF HEALTH Respondent

in re the matter between

VAAL UNIVERSITY OF TECHNOLOGY First

Respondent

SOUTH AFRICAN NURSING COUNCIL Second

Respondent

GAUTENG DEPARTMENT OF HEALTH Third

Respondent

JUDGEMENT

MOORCROFT AJ:

Summary

Urgent application to extend interim order made on 17 August 2023 – order not extended as the period of community service in the order has been completed

Exclusive jurisdiction of Labour Court – section 157 of the Labour Relations Act 66 of 1995

Order

[1] In this matter I make the following order:

1. The application is dismissed;
2. The applicant is ordered to pay the costs of the application.

[2] The reasons for the order follow below.

[3] This is a judgement in the urgent court. The applicant seeks an order that a previous order of this court granted on 17 August 2023 by Crutchfield J be extended to allow the applicant to be employed as a professional nurse by the respondent pending the finalisation of a review application between the applicant, the Vaal University of Technology, the South African Nursing Council, and the Gauteng Department of Health. The applicant also seeks an order that pending the final determination of the review, the respondent be directed to reinstate the applicant to her employment in the capacity of professional nurse with the employment conditions common to such employment.

In terms of the order made on 17 August 2023 the main application (part B) was postponed sine die, the costs were reserved, and it was ordered that pending the final determination of the main application the Gauteng Department of Health (then the third respondent, now the only respondent in this application) was directed to permit the applicant to continue with her one-year community service in the capacity of professional nurse.

[4] It is common cause that the respondent complied with this order and that the one-year community service expired at the end of December 2023, and that the applicant continued to work for the respondent in January and February 2024. She was paid a salary but her full-time employment was not formalised. There is a dispute about whether the salary was paid in full.

[5] The community service cannot be extended and the order of 17 August 2023 can therefore similarly not be extended.

The applicant knew that the order of 17 August 2023 would lapse and did lapse at the end of December 2023 and if so advised should have approached the court in the ordinary course for an order.. When the order was granted in August 2023 it was clearly envisaged that it would be a short - term order and would terminate at the end of the one-year community service that commenced in January 2023.

- [6] The respondent has now terminated the services of the applicant, hence this application. There are disputes and questions have been raised about the academic qualifications of the applicant The respondent is reticent to employ her pending the final

determination

of her academic qualifications and the question whether she qualifies for appointment. As indicated below the dispute about the employment status of the applicant is a matter to be resolved before the Commission for Conciliation, Mediation and Arbitration and the Labour Court.

- [7] It is not possible for this court to find that the applicant is indeed a professional nurse or entitled to registration as such by the South African Nursing Council. The parties entitled and to determine her academic status, her qualifications and her compliance with registration requirements are the second and third respondents in the main application, the Vaal University of Technology and the Gauteng Department of Health. These parties have a direct interest in any application to reinstate the applicant to the position of professional nurse and the failure to join them to this application constitutes, in my view, a non-joinder.
- [8] The present dispute falls foursquare within the ambit of the Labour Relations Act 66 of 1995. Section 157 (1) and (2) of the Labour Relations Act 66 of 1995 reads as follows:

157 Jurisdiction of Labour Court

- (1) Subject to the Constitution and section 173, and except where this Act provides otherwise, the Labour Court has exclusive

jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labour Court.

- (2) The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental

right entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from-

- (a) employment and from labour relations;
- (b) any dispute over the constitutionality of any executive or administrative act or conduct, or any threatened executive or administrative act or conduct, by the State in its capacity as an employer; and

(c) the application of any law for the administration of which the Minister is responsible.

[9] The orders sought by the applicant in this urgent application[1] are aimed at reinstating the applicant as an employee in the capacity of a professional nurse.. The Labour Relations Act contains extensive provisions that govern legal aspects of the employer/employee relationship, such as a guarantee of freedom of association,[2] collective bargaining,[3] and, most importantly in the present matter, dispute resolution.[4]

The Act provides for the establishment of the Commission for Conciliation, Mediation and Arbitration (CCMA)[5] and the Labour Court.[6] The applicant has the machinery created by the Labour Relations Act at her disposal to deal with unfair dismissal disputes before the CCMA. This is not the matter for the High Court to pronounce upon as the CCMA was created specifically to deal with labour

- related disputes and the Labour Court has jurisdiction in terms of section 157 (1) of the Labour Relations Act.

[11] For the reasons as set out above I make the order in paragraph 1.

MOORCROFT AJ

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 27 March 2024

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INSTRUCTED BY: MBA

INC

DATE OF ARGUMENT: 26

MARCH 2024

DATE OF JUDGMENT: 27

MARCH 2024

- [1] The review application is not before me and this judgment does not pronounce on or affect the review application.
 - [2] Chapter II.
 - [3] Chapter III.
 - [4] Chapter VII.
 - [5] Section 112.
 - [6] Section 151.
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Prepared on 13 October 2026 · Esheria