

SOUTH AFRICA / JUDGMENT

# PAWU obo Netshikhudini v CCMA and Others (J 1171/2022) [2022] ZALCJHB 258; (2022) 43 ILJ 2812 (LC) (21 September 2022)

[2022] ZALCJHB 258

## COURT

Labour Court Johannesburg

## BEFORE

Van Niekerk

## CASE / FILE NUMBER

J 1171/2022

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## Source record

THE LABOUR COURT OF  
SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J

1171/2022

In the matter

between:

PAWUSA  
obo FULUFHELO NETSHIKHUDINI  
Applicant  
And  
CCMA  
First Respondent  
MR  
CAMERON N.O.  
First Respondent A  
SASOL  
Second Respondent  
FLEET  
GROBLER  
N.O.  
Third Respondent  
CSG  
RESOURCING (PTY) LTD  
Fourth Respondent  
MAHLANGU  
T N.O.  
Fifth Respondent  
FEMPOWER

PERSONNEL (PTY) LTD

Sixth Respondent

BEN

BEKKER

N.O.

Seventh Respondent

MBALI

TSIKI

Eight Respondent

Heard: 21

September 2022

Delivered: 21

September 2022

(This judgement

was handed down electronically by circulation to the parties'

legal representatives, by email, publication

on the Labour Court's

website and released to SAFLI. The date on which the judgment is

delivered is deemed to be 21 September

2022.)

## JUDGMENT

VAN NIEKERK, J

- [1] In SA Post Office v Minya (2021) 42 ILJ 141 (LC), my colleague Tlhotlhemaje J said the following (footnotes omitted)
- [1] There is a misconception prevailing amongst employees aggrieved with minute details of internal disciplinary enquiries, that when the Labour Appeal Court (LAC) in Booyesen v Minister of Safety and Security and Others held that this Court had jurisdiction to intervene in such internal enquiries, this meant that the Court is ordinarily the first port of call to deal with such internal grievances. This is despite the fact that the LAC had specifically stated that such intervention would only be called for where exceptional circumstances are demonstrated, such as where a grave injustice would result.
- [2] From a plethora of such cases that are routinely brought on an urgent basis, it has become increasingly apparent that this Court is more often than not, called upon to micro-manage these internal proceedings, and that every little complaint about internal disciplinary proceedings, whether real or perceived, has by default, become an 'exceptional circumstance'. It has long been stated that the powers of this Court under the Labour Relations Act (LRA) do not include the micro-management of workplace discipline or every dispute arising out of the workplace. This is so in that the prerogative to maintain discipline remains that of the employer, and further since the framework of the LRA is such that it is dispute specific.

- [3] Equally worrisome with these applications, is that more often than not, no legal basis is pleaded for this Court to assume jurisdiction, other than flippant and out of context references to terms such as ‘unlawful’, ‘invalid’, ‘legality’, ‘void’, ‘unconstitutional’, and in some instances, ‘unfairness’, with the hope that relief will be granted. These phrases as thrown into the mix are often deemed to be panacea and a magic wand to every complaint arising from internal disciplinary proceedings, with the hope that those proceedings will be wished away.
- [4] The facts of this case are symptomatic of the misconception mentioned above, and to say that Court has reached a point beyond exasperation with such cases on its urgent roll is truly an understatement. More often than not, in instances where the applicant parties are not legally qualified or legally represented, this court, being one of equity, tends to adopt a more lenient approach. However, where the parties are legally represented, the court has to draw a line in the sand.
- [2] Despite this admonition and warning, applications to intervene in internal disciplinary matters continue to populate the urgent roll. The present case is no exception.
- [3] The applicant seeks urgent relief in a two-part application. In the first part, the subject of the present proceedings, the applicant seeks to interdict the second and fifth respondent’s from suspending him, and to interdict the sixth and seventh respondents from ‘acting on behalf of the first respondent and/or also on their own’ from proceeding with the disciplinary hearing that is scheduled to proceed on 22 September
2022. The first respondent is the CCMA, and it is not clear on what basis the sixth and seventh respondents are contended to be acting on the CCMA’s behalf. Part B of the notice of motion is equally unclear, but it would seem that the applicant seeks in the main application to review and set aside decisions taken by the first respondent, the CCMA, in relation to a dispute in which he sought the CCMA’s urgent intervention. The relief in part A of the notice of motion is sought pending the hearing of part B.
- [4] I will accept, if only because the disciplinary hearing that the applicant seeks to interdict is to commence within less than 24 hours, it already having been postponed three times, that the application is urgent.
- [5] The requirements for interim relief are a clear right or a prima facie right established though open to some doubt; irreparable harm if the interdict is not granted; the balance of convenience must favour the granting of interim relief; and the absence of any alternative remedy available to the applicant (see *Setlogelo v Setlogelo* 1914 AD 221). *Setlogelo* was the subject of more recent commentary and application by the Constitutional Court in *National Treasury and others v Urban Tolling Alliance and others* 2012 (6) SA 223 (CC), where the court said:

Under the Setlogelo test, the prima facie right claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. The requirements for a final interdict are well-established. An applicant seeking final relief must establish a clear right; an injury actually committed or reasonably apprehended (in the form of an actual or threatened unlawful infringement of the clear right that the applicant asserts); and the absence of similar protection by any other ordinary remedy.

- [6] The disciplinary hearing is to be conducted by an independent counsel from the Johannesburg Bar, appointed by the sixth respondent, the applicant's employer.
- [7] When the matter was argued, the applicant's representative, a union official, raised two main points in relation to the pending disciplinary hearing, which he submitted placed the dispute in the category of exceptional for the purposes of the rule established by Booysen. The first is what is contended to be the sixth respondent's

refusal to allow representation by a union official at the hearing; the second is a complaint concerning access to information.

- [8] The applicant's representative was unable to proffer a satisfactory explanation as to why these complaints ought not properly to be raised by the applicant before the chair of the disciplinary hearing. The sixth respondent has contended that in terms of the applicable policy, the applicant has no right to be represented at a disciplinary hearing, and that any documentation not in the applicant's position and which he contends ought properly to be produced so as to enable him to protect his interests, is a matter that ought properly to be raised at the hearing.
- [9] I agree with the sixth respondent's submissions, at least to the extent that these are matters that ought properly to be raised with the chairperson, by the applicant. There is no need for this court, in Tlhotlhlamajé J's words, to micromanage the disciplinary hearing, even less as the applicant has not produced any evidence to place the present dispute in the category of the exceptional. Put another way, there is no right, even on a prima facie basis, to the relief sought and the applicant in any event has an adequate alternative remedy in the form of a right to claim unfair dismissal should he contest the fairness of the procedure adopted at his disciplinary hearing.
- [10] There are a number of other reasons why the application ought to be refused. The right to a fair procedure established by the LRA, as elaborated by the code of good practice. The code envisages that an employee who is accused of misconduct is afforded an opportunity, in an informal setting, to respond to the employer's allegations. The Act does not envisage, as the applicant appears to contend, an elaborate court-like hearing at which the rules applicable in a court of law necessarily apply (see *Avril Elizabeth Home for the Mentally Handicapped v Commission for Conciliation, Mediation & Arbitration & others* (2006) 27 ILJ 1644 (LC)).

- [11] Further, there is no apparent nexus between the interim relief sought in terms of part A of the present application, and part B. As I have indicated, part B appears to comprise an application to review and set aside certain decisions taken by the CCMA, when the applicant, it would appear, sought urgent intervention in respect of his dispute. That dispute concerned an unfair labour practice, and in particular, a dispute about the applicant's suspension. I fail to appreciate how it can be said that an interdict ought to be granted by way of interim relief in respect of a disciplinary hearing for alleged misconduct, pending the outcome of a review of a decision by the CCMA not to intervene urgently in a dispute about a suspension.
- [12] For the above reasons, I am not persuaded that the applicant has made out a case for interim relief. The application thus stands to be dismissed.
- [13] The second and third respondents, and the sixth, seventh and eighth respondents who were separately represented at the hearing, sought an order for costs. The court has a broad discretion in terms of section 162 of the LRA to make orders for costs according to the requirements of the law and fairness. While the court is ordinarily reticent to make orders for costs against individuals who in good faith seek to pursue their grievances against their employers, an order for costs against the union, who acts on the applicant's behalf in these proceedings, is justified in the present circumstances. First, the

papers are incoherent to the point of being incomprehensible. The applicant has cited the second respondent for no apparent reason.

Indeed, no relief is sought against the second respondent. Further, the citation of the national director of the CCMA is entirely

gratuitous, as is the citation of the third respondent (the CEO of the second respondent), and the seventh respondent (an employee of the sixth respondent). This court has previously made clear that union officials who seek to represent members before the court will be held to the same standards, professionally and ethically, as those legal representatives who enjoy right of appearance. As I have indicated, the warnings given to practitioners in relation to applications such as the present could not have been expressed in more clear terms. The applicant's representative understood the risk he was running by seeking intervention in the disciplinary

hearing and there is no reason why those respondents who opposed the application should have to bear the costs of their opposition in the face of the union's folly. There is also no reason why costs should not be awarded on a punitive scale. That was the order in SAPO, and there's no reason why a similar order should not be granted in the present instance. The present proceedings amount to nothing less than an abuse of this court's process. Finally, to the extent that the respondent's complaint that they had been brought to court on three separate occasions over three days on account of the applicant's failure properly to comply with the rules in relation to the sitdown of urgent applications, there is not sufficient evidence for me at this stage to hold the union official concerned personally accountable, and I will give him the benefit of the doubt. Having said that, there is no reason why the union ought not to be liable for the costs of these

proceedings, excluding any attendance at court on 19 and 20 September 2022.

I make the following order:

1. The application is dismissed, with costs to be paid by PAWUSA on the scale as between attorney and client, such costs to exclude the costs of any attendance at court on 19 and 20 September 2022.

André van Niekerk

Judge of the Labour Court of South Africa

Appearances:

For the applicant:

Union official

For the second and third respondents: D Pretorius, Fluxmans Inc.

For the sixth, seventh and eighth respondents: Adv Bava, Instructed by Hunts (Inc Borkums) Attorneys.

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Prepared on 14 October 2026 · Esheria