
SOUTH AFRICA / JUDGMENT

SAMWU obo Nkanjeni v Acting Municipal Manager and Another (P309/15) [2015] ZALCPE 52 (13 October 2015)

[2015] ZALCPE 52

COURT

Labour Court Port Elizabeth

BEFORE

Lallie

CASE / FILE NUMBER

P309/15

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REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

Not Reportable

CASE NO: P 309/15

In the matter between

SAMWU obo S NKANJENI

Applicant

and

ACTING MUNICIPAL MANAGER

First Respondent

NELSON MANDELA BAY MUNICIPALITY

Second Respondent

Heard: 9 October 2015

Delivered: 13 October 2015

Summary: Damage that can possibly be caused by the suspension of the individual applicant to his reputation is not irreparable, it therefore does not warrant urgent relief.

Lallie J

[1] The individual applicant is employed by the second respondent as a Contacts Controller in the Budget and Treasury Directorate. The second respondent suspended the applicant from duty in September 2015 pursuant to allegations of misconduct which involve commercial

transactions with its service providers. On 7 September 2015, the Radio Algoa, a local radio station, reported the suspension of a number of officials of the second respondent in its news. The applicant was amongst the suspended officials. He launched this

urgent application on 10 September 2015, seeking an order reviewing and setting aside the first respondent's decision to suspend him. The application is opposed by the respondents.

[2] The applicant raised a point in limine that the first respondent was not properly appointed to act as the second respondent's City Manager when he suspended him. He therefore acted ultra vires rendering his suspension unlawful. Amongst the grounds on which the respondents mounted their attack on the applicant's case was lack of urgency. As the applicant approached this Court on grounds of urgency, the first hurdle he needs to clear is urgency. Rule 8 of the Rules for the Conduct of Proceedings in the Labour Court (the Rules), requires an applicant for urgent relief to file a founding affidavit which contains reasons for urgency and the necessity for urgent relief. The respondents submitted that the individual applicant failed to prove that he will suffer irreparable harm should this application not be granted.

[3] One of the requisites the applicant had to fulfil was a well-grounded apprehension of irreparable harm if this urgent application is refused and he ultimately succeeds in establishing his right. In an effort to fulfil the requirement, the individual applicant submitted that the suspension has caused irreparable harm to his integrity and right to dignity. It has a detrimental impact on him and prejudice his integrity and reputation as a leader in his church because it creates the impression that he has been suspended for fraud and corruption. The impression is based on announcements by the second respondent's new Executive Mayor in numerous public meetings and the media that corrupt officials would be suspended for fraud and corruption. The second respondent has wilfully made his suspension public by announcing it in the newspaper and on Radio Algoa.

[4] The respondents noted that the only harm the individual applicant complained of was the negative impact his suspension will have on his reputation in the eyes of members of his church. It submitted that a right thinking member of the community will realise that the suspension of an official does not imply that the official is necessarily guilty of misconduct. If members of the individual

applicant's church consider him guilty of fraud and corruption as a result of the suspension, their perception is premature and unreasonable.

- [5] I have considered the submissions and authority the parties sought to rely on, on the requisite of irreparable. In determining whether harm to reputation constitutes irreparable harm which justifies urgency I find the following dictum in *Mosiane v Tlokwe City Council*[1] apposite:

“[17] The reasons advanced by the applicant why urgent relief is sought relate to his reputation. This can hardly be a basis to approach this Court for relief on an urgent basis. All employees who get dismissed or suspended and believe that they are innocent, their reputations are tarnished by the dismissals or suspensions. They will eventually get an opportunity to be heard where the employer should justify the charges against them. Should they fail to do so, such employees will be reinstated with no loss of benefits.”

- [6] Irreparable harm is injury that cannot be remedied. It must be actual and not conjecture. Any harm which can be caused to the individual applicant's reputation in the eyes of members of his church can be remedied when the second respondent take a decision not to take disciplinary action against him on the basis that the allegations against him were without substance. It can further be remedied when he is exonerated from fraud and corruption. The perception by members of the applicant's church that he is involved in fraud and corruption is at this stage premature and unreasonable. But most importantly, any harm to the applicant's reputation, integrity and dignity which his suspension may possibly cause is not irreparable. The applicant has therefore not established the necessity for urgent relief.
- [7] The respondents sought a costs order against the applicant. I am not convinced that granting the order would be appropriate because the applicant did not act unreasonably in bringing this application.

- [8] In the premises the following order is made:

8.1 The application is struck from the roll for lack of urgency.

8.2 No order is made as to costs.

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Mr Van Rensburg of Wikus Van Rensburg Attorneys

For the Respondents: Advocate Le Roux

Instructed by Gray Moodliar Attorneys

- [1] [2009] 8 BLLR 772 (LC) at para 17

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