

SOUTH AFRICA / JUDGMENT

Sibanyoni v Speaker of City of Mbombela (2025/0209203) [2025] ZALCJHB 195 (22 May 2025)

[2025] ZALCJHB 195

COURT

Labour Court Johannesburg

BEFORE

Daniels

CASE / FILE NUMBER

2025/0209203

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THE

LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

NOT REPORTABLE

Case

No: 2025-0209203

In

the matter between:

DELIGHT

NTOMBIFUTHI SIBANYONI

Applicant

and

SPEAKER

OF THE CITY OF MBOMBELA

First Respondent

MAYOR

OF THE CITY OF MBOMBELA

Second Respondent

CITY

MANAGER: CITY OF MBOMBELA

Third Respondent

COUNCIL

OF THE CITY OF MBOMBELA

Fourth Respondent

ACTING

CHIEF FINANCIAL OFFICER

Fifth Respondent

MEC

FOR CORPORATE GOVERNANCE, HUMAN

Sixth Respondent
SETTLEMENTS
AND TRADITIONAL AFFAIRS, MPUMALANGA

Heard: 26 February 2025
Delivered: 22 May 2025
Summary: Application for urgent final relief. Application struck for lack of urgency.

JUDGMENT

DANIELS J

Introduction

[1] This is an application for urgent final relief. The applicant seeks the following relief:

1.1 An order condoning non compliance with the forms and rules applicable, and hearing the matter on an urgent basis;

1.2 An order declaring that the resolution of the fourth respondent, on 31 January 2025, to extend the precautionary suspension of the applicant, is unlawful;

1.3 An order interdicting the fourth respondent and its officials from preventing the applicant from accessing her office and resuming her duties;

1.4 Ordering the first to third respondents, as well as each member of the fourth respondent, to pay costs personally and on a punitive scale.

Background

facts

[2] The facts may be summarized as follows:

2.1 The applicant is the chief financial officer of the City of Mbombela.

2.2 On 30 July 2024, the City of Mbombela (“the City”) decided to investigate whether the applicant had committed various acts of serious misconduct. The City resolved to place her on special leave pending the outcome of the investigation. The applicant challenged the lawfulness of this conduct, on an urgent basis. My brother, Tlhotlhaemaje J, found that the resolution was unlawful and set it aside.

2.3 On 3 September 2024, the third respondent presented the investigation report to the Council.

2.4 On 19 September 2024, the City resolved to place the applicant on precautionary suspension, and issued a notice advising her of this.

2.5 The applicant brought a further urgent application, in this court, under case number 104660-2024, to declare the suspension unlawful. The matter was argued on 25 September 2024. Judgment has yet to be handed down.

2.6 Clause 14.3 of the applicant's employment contract states: "If the employee is suspended as a precautionary measure, the employer must hold a disciplinary hearing within sixty (60) days, provided that the chairperson of the hearing may extend such period, failing which the suspension shall terminate and the employee shall return to duty."

2.7 The sixty day period, contemplated in clause 14.3 of the employment contract, was not extended, and lapsed on 19 November

2024. Despite this, the applicant took no steps to tender her services.

2.8 On 21 November 2024, the City issued a notice to the applicant advising her of the various charges she faced. The applicant was informed her disciplinary hearing would commence on 2 December 2024.

2.9 On 2 December, no charges were read to the applicant by the evidence leader and no witnesses were called. Instead, the applicant sought a postponement. The City states that the applicant sought a postponement to allow her an opportunity to bring an application for the recusal of the chairperson. The applicant admits that she indicated her intent to bring an application for the recusal of the chairperson. However, she says, the other reason for the postponement was the pending judgment of this court. In any event, the parties agreed to postpone the hearing to 20 January 2025.

2.10 Regulation 6(6)(a) of the Local Government: Disciplinary Regulations for Senior Managers^[1] provides: "If a senior manager is suspended, a disciplinary hearing must commence within three months after the date of suspension, failing which the suspension will automatically lapse." Regulation 6(6)(b) states that the period of three months may not be extended by the Council.

2.11 It is common cause that the three months period, contemplated by Regulation 6(6), lapsed on 20 December. However, the applicant took no steps to tender her services to the City.

2.12 On 17 January 2025, the applicant's attorneys addressed a letter to the Council's attorneys advising that her suspension had lapsed and further advising that she would report for duty on 22 January 2025.

2.13 On 18 January 2025, the Council's attorneys addressed a letter to the applicant's attorneys and advised her not to report for duty failing which she would be escorted from the premises by security.

2.14 On 22 January 2025, despite the request from the Council, the applicant reported for duty. She was accompanied by her attorney and her VIP protectors. She managed to access her office but was unable to access the IT platform. The third respondent requested that she vacate the premises.

2.15 On 23 January 2025, the applicant again reported for duty. This time she was accompanied by her attorney, her VIP protectors, and members of the public who supported her. The media arrived to interview her, as did members of the South African Police Services. The applicant was arrested and detained for trespassing.

2.16 On 31 January 2025, the Council adopted a resolution that the applicant's suspension remained in force. In effect, the applicant contends, Council extended her suspension in breach of Regulation 6(6).

2.17 On 17 February 2025, the applicant's attorneys filed an urgent application with this court and enrolled it for hearing on 26 February 2025.

Jurisdiction

[3] The second to fourth respondents, who oppose the application, contend that the court has no jurisdiction to hear and determine the dispute. The applicant relies on section 157(2) and 158(1) of the LRA. She challenges her suspension on the basis of its unlawfulness, not its unfairness. Section 158(1)(h) of the LRA provides that the Labour Court may review any decision taken or any act performed by the State in its capacity as employer, on such grounds permissible in law. This requires no debate. It is settled law that this court has jurisdiction to review and set aside decisions of presiding officers of disciplinary hearings where the employer is the State.[2]

Urgency

[4] It is clear from the authorities[3] that a party seeking urgent relief must sufficiently, and in detail, set out the circumstances which render the matter urgent, and the reasons why it is said that substantial redress cannot be obtained at a hearing in due course. A bald allegation that constitutional rights are being infringed does not render a matter urgent.

[5] The degree to which the ordinary applicable rules should be relaxed is dependent on the degree of urgency, and the applicant is not entitled to rely on urgency that is self-created when seeking deviation from the Rules. It is trite that the consequence of self-created urgency is fatal to an application.

[6] A further essential requirement in urgent applications is that an applicant seeking urgent relief must approach the court with the

necessary haste, or as soon as the cause of discontentment arises.[4]

[7] Thus, if a party is hesitant, the urgency equally dissipates and the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. Equally of importance when considering whether urgent relief should be granted are the interests of the respondent party and any prejudice that may be suffered should urgency be granted or refused.

[8] In this matter, the applicant faces significant hurdles with urgency.

- [9] First, the grounds upon which urgency is based are not fully set out in the founding papers, as required.[5]
- [10] Second, there was an inordinate, and unexplained, delay in approaching the court. The applicant could have approached this court at any time after 20 December 2024. Instead, it waited two months, until 17 February 2025, to launch the application. The applicant has not even attempted to explain the delay in launching the application. This court has, previously, held that an unexplained five week delay in launching an application for urgent relief, is unacceptable.[6]
- [11] One must accept, of course, that it is critically important that the public officials and entities behave lawfully. However, this is not licence to ignore the rules of court, or to delay. In *Golding v HCI Managerial Services (Pty) Ltd & others*[7] Steenkamp J held: “As Prest points out, a matter which is inherently urgent may be rendered not urgent and fall outside the provisions of the [High Court] rules where an applicant delays in bringing the application as one of urgency.”
- [12] If the applicant’s dignity was indeed infringed by the ongoing suspension, as alleged, one would have expected her to act with greater expedition. In the circumstances, one cannot avoid the conclusion that urgency was self-created. By 17 February 2025, urgency had sufficiently diminished to the point where the matter could no longer be regarded as urgent.
- [13] Furthermore, in this matter, the applicant seeks final relief. In *Tshwaedi v Greater Louis Trichardt Transitional Council*[8] the court said: “An applicant who comes to court on an urgent basis for final relief bears an even greater burden to establish his right to urgent relief than an applicant who comes to court for interim relief.” The applicant has, in my view, not discharged the increased burden.
- [14] Given the extensive delay in launching this application, the court must accept that a challenge to the lawfulness of suspension in normal course will provide substantial redress to the applicant.
- [15] It is worth considering that if, in the matter under case number 104660-2024, the court finds that the initial period of suspension was indeed unlawful, this could impact any extension of that period.

Order:

1. The application is struck off the roll on account of lack of urgency.
2. There is no order as to costs.

Reynaud Daniels

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Adv TS Ngwenya

Ntiwane Mgijima Attorneys

For the First to Fourth Respondents:

Adv P Mohlabi

WS Nkosi Attorneys

[1] GG 34213 GN. 344 dated 21 April 2011

[2] Minister of Police and Another v Kgopa and Another (JA42/2017) [2018] ZALAC 45; [2019] 1 BLLR 16 (LAC) (7 June 2018); Hendricks v Overstrand Municipality [2014] 12 BLLR 1170 (LAC) at para 29;

[3] Jiba v Minister: Department of Justice and Constitutional Development and Other (2010) 31 ILJ 112 (LC) at para 18; East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others

[2012] JOL 28244 (GSJ) at para 6; Dynamic Sisters Trading (Pty) Limited and Another v Nedbank Limited (081473/2023) [2023] ZAGPPHC 709 (21 August 2023) at para 18; Public Servants Association of SA and Another v Minister of Home Affairs and Others

[2016] ZALCJHB 439 at paras 12 to 18; Moyane v Ramaphosa and Others

[2019] 1 All SA 718 (GP) at para 33

[4] Association of Mineworkers & Construction Union & others v Northam Platinum Ltd & another

(2016) 37 ILJ 2840 (LC) at para 26

[5] Mashiya v Sirkhot NO & others

(2012) 33 ILJ 420 (LC) at para 17; see also Rules 38(2) of the Rules of Court, published on 3 May 2024

[6] Ngcongo v University of South Africa & another

(2012) 33 ILJ 2100 (LC)

[7]

(2015) 36 ILJ 1098 (LC) at para 24

[8]

[2000] 4 BLLR 469 (LC) at para 11

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