

SOUTH AFRICA / JUDGMENT

Sibiloane v POPCRU (J1314/22) [2024] ZALCJHB 372 (18 September 2024)

[2024] ZALCJHB 372

COURT

Labour Court Johannesburg

BEFORE

Martin

CASE / FILE NUMBER

J1314/22

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

No: J1314/22

In

the matter between

SIBILOANE,

M M

Applicant

and

POPCRU

Respondent

Heard:

25 April 2024

Delivered:

Ex tempore on 25 April 2024 with written judgment on [18
September 2024]

JUDGMENT**MARTIN, AJ**

[1] This matter came before me on 25 April

2024. In an *ex tempore* judgment I postponed the application sine die with an order that costs are reserved. The reasons for this order appear hereunder.

[2] The application was originally launched as an urgent application during October 2020. When it came before Justice Nkutha-Nkontwana it was struck off the urgent roll for lack of urgency.

[3] Some three and a half years later the application was been set down for hearing on the opposed motion roll. Since the application was struck from the roll in October 2020 the papers have not been updated. No supplementary affidavits have been filed by the applicant or the respondent.

[4] The application is for declaratory and other relief, including the payment of arrear salaries, which the applicant contends he was entitled to during the finalisation of an internal appeal process. The crux of the complaint is that the applicant contends that POPCRU's policies entitle him to be paid whilst an appeal process is pending after disciplinary charges have been finalised.

[5] POPCRU on the other hand contends that the applicant was not an employee of POPCRU, but rather a member of POPCRU. He was, POPCRU asserts, being disciplined as a member of POPCRU and not as an employee. Accordingly, he was not entitled to the payment of monies as he contends.

[6] This is the thrust of the dispute that served before the urgent court some three and a half years ago.

[7] During argument I raised a number of concerns with both counsel. Firstly, the urgent application was launched pending the appeal process which had, at that stage, not been finalised. Because of this the papers that served before the urgent court were relevant to a dispute that had crystallised at the time that the matter was enrolled on the urgent roll. This much is evident from the notice of motion:

6.1 Prayer 1 of the notice of motion contains the conventional relief for urgency.

6.2 Prayer 2 seeks a declarator that the decision of POPCRU to stop or withhold the payment of the applicant's September 2022 remuneration and or any salary pending the outcome of an appeal launched by the applicant is unlawful and invalid.

6.3 Lastly the notice of motion seeks an order directing that the first respondent give effect to the relief sought in prayer 2 within seven working days of the date of the granting of the order. In other words the applicant sought an order of payment.

[8] The payment relief is not quantified in the notice of motion.

[9] As matters stand the affidavits do not disclose: (a) the outcome of the appeal and when the appeal was finalised (both the date of the appeal decision and the decision itself being relevant to the merits and the quantum of the applicant's case);

(b) what findings were made by the appeal board as to the applicant's contended employment status; (c) the total period for which the applicant contends he was unpaid; and

(d) the quantum which he asserts is outstanding.

[10] When I raised these issues with the applicant's counsel he informed me that the appeal was finalised, and that the finding was successfully challenged before the CCMA. He informed me that the CCMA did pronounce on the applicant's alleged employment status.

[11] The CCMA award is now itself the subject of a pending review before this Court and the question of the applicant's employment status is an issue before this court in another matter.

[12] None of this appears in the application which, as it presently stands, calls for the conflated relief of a declarator, a review, and a request for the specific performance of an alleged employment contract.

[13] I am to understand now that: (a) the appeal was finalised, but the result is unknown to me; (b) the initial finding, and with it the appeal result, was challenged in the CCMA, but I am unclear of the parameters of CCMA's award; and that (c) the CCMA has pronounced on the question of the applicant's employment status, but what the CCMA has found has not been made known to me.

[14] Similarly, I am now to understand that the CCMA's award (including the finding on the question of the applicant's employment status) is serving before this court in the form of a review.

[15] It also emerged from argument that the applicant's counsel did not seek relief that was limited to the notice of motion and the payment of salaries for the month of September 2020. The applicant sought the payment of all outstanding salaries that he claims were not paid pending the finalisation of the appeal, which he contends has been finalised.

[16] However, the number of months to which the claim applies is not disclosed, and the sum sought is not quantified.

[17] It is quite clear that all material facts have not been made available to this court and the application is not ripe for hearing.

- [18] Counsel for the applicant conceded that the application was shy of facts and he sought to provide me with all outstanding information from the bar. Counsel for the respondent understandably objected to this. The court must deal in facts, not submissions made from the bar.
- [19] Counsel for the applicant then sought leave to prepare an affidavit on the day of the hearing so that the founding affidavit could be supplemented and argued on the same day. The respondent objected to this and I agreed with the objection. The failure to update the application should not act to the prejudice of the respondent which will be constrained to respond to new information on urgent timeframes.
- [20] Counsel for the applicant then sought to convince me to hear the matter without any supplementation, and when I warned him of the prospective consequences of persisting with an application that fails to make out a complete case he relented and sought a postponement with leave to supplement. Counsel for the respondent agreed to the postponement.
- [21] The applicant seeks that the costs of the postponement be reserved, and the respondent complains that the application is to be postponed in consequence of a lack of diligence on the part of the applicant.
- [22] At face value the applicant has enrolled an application with papers that do not record the factual position as it stands at the time of the hearing. However, I am concerned that there appear to be a number of external and material facts that are not before me, and without sight of them I cannot get a sense of whether both parties had an obligation to ensure that their papers were supplemented to ensure that all relevant facts were placed before the court.
- [23] In my view, it is likely that another court may, in the future, be in a better position to consider the costs of today's postponement than I am.
- [24] Accordingly, I make the following order:
- a) The application is postponed sine die.
 - b) The applicant and the respondent are given to supplement their founding, answering, and replying affidavits.
 - c) The costs of the postponement are reserved.

MARTIN AJ

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicant:

Instructed by:

For the Third Respondent:

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Prepared on 10 October 2026 · Esheria