

SOUTH AFRICA / JUDGMENT

Technology Corporate Management (Pty) Ltd v Moue and Others (J 186/23) [2023] ZALCJHB 71 (12 March 2023)

[2023] ZALCJHB 71

COURT

Labour Court Johannesburg

BEFORE

Tlhotlhamajane

CASE / FILE NUMBER

J 186/23

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case

No: J 186/23

Not

Reportable

In

the matter between:

TECHNOLOGY
CORPORATE MANAGEMENT(PTY) LTD
Applicant
And
MOGOTSI
JEFFREY MOUE
First
Respondent
LUCAS
MAKALELA
Second
Respondent
PHILEMON
LETJIANE
Third
Respondent
PETRUS
PHUBJE
Fourth
Respondent
LAVIOUS

MPHELA
Fifth
Respondent
THOMAS
NGOVENI
Sixth
Respondent
RODNEY
MOKGOTHADI
Seventh
Respondent
PERCY
MOFOKENG
Eight
Respondent
SANNA
MATJAOLA
Nineth
Respondent
JASMANE
JOSEPH N.O.
Tenth
Respondent
COMMISSION
FOR CONCILIATION, MEDIATION AND ARBITRATION
Eleventh
Respondent

Heard: 02
March 2023

Delivered: This
judgment was handed down electronically by circulation to the
parties' legal representatives by email and publication
on the
Labour Court's website. The date and time for the hand-down
is deemed to be on 12 March 2023

JUDGMENT

TLHOTLHALEMAJE, J

- [1] In this opposed urgent application, the applicant seeks an order staying the arbitration proceedings before the 11th respondent, the Commission for Conciliation Mediation and Arbitration (CCMA), pending the determination of an application to review and set aside a ruling issued by Commissioner Luyanda Olota on 11 October 2022 (herein referred to as the 'Disclosure Ruling'). In the alternative, an order is sought reviewing and setting aside the arbitration ruling dated 08 February 2023 issued by the 10th respondent (Commissioner Joseph), in terms of which the applicant's application to postpone the arbitration

proceedings pending the outcome of the review application was dismissed (The postponement ruling). In a further alternative, the applicant seeks an order reviewing and setting aside the 'Postponement Ruling, and for the matter to be referred back to the CCMA for a hearing de novo before another commissioner.

- [2] The 1st – 9th individual applicants (employees) were dismissed on account of various allegations of misconduct by the applicant on 31 March 2018. Upon an alleged unfair dismissal dispute having been referred to the CCMA sometime in 2020, it appears from the 'Postponement Ruling' that the arbitration proceedings first commenced sometime in 2020 and remained part-heard. An inspection in loco was conducted on 31 March 2021 and the matter proceeded on 19 July 2021 when the parties concluded pre-arbitration minutes.
- [3] On 20 August 2021, the applicant requested a variety of documents and disclosures from the applicants. On 25 August 2021,

the employees' representative's refused the request on the grounds that the documents were not in the employees'

possession, or were confidential, or that they not relevant to the issues to be determined before the CCMA.

- [4] When the arbitration proceedings resumed on 6 September 2021, the applicant raised the issue of disclosure before Commissioner Olota, and the latter directed the parties to file an application in terms of Rule 29 read with Rule 31(1)(c) of the Rules of the CCMA. Having received all submissions, Commissioner Olota issued the 'Disclosure Ruling' on 11 October 2022 and dismissed the application on the grounds that the disclosure sought was not relevant to the dispute. The applicant subsequently lodged an application to review and set aside that ruling on 31 October 2022. The matter is still pending before the Court under case number JR 2356/22.
- [5] The parties were then notified by the CCMA that the matter was set down on 12 - 14 December 2022. On 8 November 2022, the applicant applied for a postponement. The postponement was sought on the basis of the pending review application and the unavailability of its legal representative and other witnesses. The employees only opposed the application to the extent that it was sought in relation to the pending review.
- [6] Commissioner Joseph in her ruling of 15 November 2022 granted the postponement, but not on the grounds related to the pending review. She further stated in her ruling that since there was no interdict obtained to stay the arbitration proceedings, the Case Management Officers were instructed to schedule the matter in early January 2023 or reasonably thereafter[1].
- [7] On 20 January 2023, the applicant sought to get the employees' representatives' consent to postpone the arbitration proceedings set down on 8 February 2023. The request was premised on the pending review before this Court, and the employees refused to consent. The applicant then launched another application to postpone, which was dismissed by

Commissioner Joseph on 8 February 2023. Arising from the refusal to grant the postponement, the applicant then approach this Court with this urgent application on 13 February 2023 .

- [8] The Court may at its discretion under Rule 8 of the Rules of this Court, relax or shorten the strict formal rules relating to time for service, and treat an application as urgent. In such applications, the applicant is required to first, set forth explicitly in the founding papers, the circumstances which he avers, renders the matter urgent and second, to explicitly advance the reasons why he claims that he could not be afforded substantial redress if he had brought the matter to Court by way of an ordinary non-urgent procedure.
- [9] Whether the applicant will be able to obtain substantial redress in due course is dependent on the facts and particular circumstances of each case[2]. Of equal importance is that urgent relief may be refused in circumstances where the matter has become urgent owing to dilatoriness on the part of the applicant, since the primary objective of approaching a Court on an urgent basis is to prevent a harm or prejudice from occurring[3].
- [10] The employees had all argued that this application was vexatious, lacked urgency, and/or that any urgency claimed was self-created. The applicant was accused of being a bully that had employed every possible tactic to avoid the completion of the arbitration hearing. It was accused of having used its corporate muscle to abuse the arbitration process based on its financial ability to pursue unmeritorious cases.
- [11] Central to the applicant's complaint is the employees' refusal to disclose the information and Commissioner Olot's ruling in which the application for the disclosure of information sought was dismissed. This 'Disclosure ruling' was issued on 11 October 2022. All that the applicant did after this ruling was to file a review application on 31 October 2022.

Significant with the Notice of Motion to that application is that at its paragraph 4, it is prayed that an order is sought, 'ordering that the applicant may bring an urgent application to stay the arbitration proceedings if the CCMA refuses to postpone these proceedings (arbitration) pending the finalisation of this review application'[4].

- [12] The applicant complains of suffering irreparable litigation prejudice because of the 'Disclosure Ruling'. It needs to be said from the onset that the prejudice complained of is self-inflicted, inasmuch as the urgency claimed is self-created. The applicant, being legally represented, knew or ought to have known, that once the 'Disclosure Ruling' was issued, this meant that in the absence of anything in law or otherwise, nothing prevented the CCMA from setting the matter down for a hearing. The mere fact that an application to review a ruling issued by a commissioner was pending before this Court was not on its own sufficient to determine how the matter before the CCMA was to proceed flowing from that 'Disclosure Ruling'.

- [13] From a mere reading of the provisions of section 145 of the LRA read with section 145(1A) (7), those provisions refer to arbitration awards, not rulings. None of these provisions are relevant for the purposes of staying the operation of a CCMA ruling pending a review. A ruling issued by the Commissioner in this case is exactly that, and it was issued interlocutory for the sake of convenience. It was hardly dispositive of a matter for the purposes of gaining an automatic stay of CCMA proceedings simply because of the pending review application.
- [14] The applicant's prayer in its Notice of Motion that the Court 'may order it to bring an urgent application to stay the arbitration proceedings if the CCMA refuses to postponement' is self-serving if not cynical. It is not for this Court within the context of review proceedings, to order that a party 'may bring' an urgent application if the CCMA refuses to postpone proceedings before it.
- [15] I truly fail to appreciate the applicant's incorrect posture that it was as of right, entitled to a postponement pending the final determination of the review application in respect of the 'Disclosure Ruling', and without more. Equally perplexing is for the applicant to seek to blame the CCMA (Case Management Officers) for the delay in approaching this Court as far back as 3 November 2022, when they refused the request not to set the matter down simply on its say so. Even more astonishing

was that this argument was pursued at the hearing of this matter to justify why the urgent application was only brought on 13 February

2023.

- [16] The obvious needs to be stated. Case management officers of the CCMA have no other authority beyond their administrative duties. Of equal importance is that these officials take instructions from either the CCMA itself, (i.e., from the Director or other officials with due authority), or from its commissioners regarding further conduct of proceedings after interlocutory rulings are issued. They do not take instructions from litigants, especially regarding the setting down of matters or their removal from the roll. When they informed the applicant that the matter will proceed until the CCMA received an 'urgent application for review', this was merely to inform it of the obvious. Irrespective of the wording of the email from the CCMA, the upshot of it was that the matter would proceed before a commissioner until this Court ordered otherwise.
- [17] It is indeed shocking that the applicant, being legally represented by a 'substantial firm' as pointed out by counsel on behalf of the employees, needed case management officers to inform it as to what legal steps to take to have the arbitration proceedings stayed. To repeat, there is no legal basis that entitled the applicant to an automatic stay of arbitration proceedings pending a review of a ruling, in the absence of the Court's urgent intervention. The powers of the CCMA insofar as its own processes are concerned, are confined to those under Part C of Chapter VII of the LRA, unless of course interfered with on some

grounds by this Court.

[18] All the above boils down to is that the first available opportunity for the applicant to approach this Court on an urgent basis was immediately after the 'Disclosure Ruling' was issued on 11 October 2022, not on or after the first or

second postponement rulings. This therefore implies that as far as this application is concerned, nothing turned on those postponement rulings.

[19] All that can be said from the first postponement ruling is that whether stated obiter or not, in her ruling, Commissioner Joseph had specifically mentioned when granting the postponement, that since there was no interdict obtained to stay the arbitration proceedings would continue. This was the second available opportunity for the applicant to approach this Court with such an application, as it knew from 11 November 2022, that the matter was going to be set down. Yet it did nothing other than to take its time and only seek another postponement when the matter was to resume.

[20] It follows that all other excuses as to why the Court could not be approached earlier lack any substance. It is apparent that the

applicant was content on relying on spurious grounds on insisting that the matter before the CCMA ought not to proceed. To this end, I agree with the contentions made on behalf of the employees that the urgency claimed by the applicant is self-created, and the applicant deliberately through its dilatoriness, failed to act with the necessary haste in seeking urgent interim relief[5]. The circumstances averred as rendering the matter urgent are clearly of its own making, and in any event, fortifies the conclusions on the self-created nature of the urgency claimed.

[21] To the extent that the applicant failed to demonstrate any haste in seeking urgent relief, it is acknowledged flowing from East Rock Trading that the delay in instituting proceedings is not on its own a ground for refusing to regard the matter as urgent. A Court is nonetheless obliged to consider the circumstances of the case and the explanation given. The crucial consideration however is whether despite the delay, the applicant can or cannot be afforded substantial redress at a hearing in due course. This issue also ought to be determined with reference to the prejudice to the respondent, the administration of justice, the strength of the case made by the applicants, and the delay.

[22] Of course the prejudice to the employees in this case is immense, having waited for an end to this dispute since March 2018 after their dismissal. The applicant claimed irreparable litigation prejudice as a result of the conduct of the CCMA case Management Officers and the Commissioners. I have already dealt with this issue, other than to state that the applicant spent inordinate amounts of time and legal resources in adopting an impermissible posture even when it knew what it ought to have done to obtain a stay of the proceedings. Attempts to blame the CCMA, its staff and Commissioners for adopting a correct approach in the

absence of an interdict or any intention to obtain one since 11 October 2022, does not assist the applicant's case.

- [23] The administration of justice can never be enhanced by the approach the applicant took, which was merely to delay the conclusion of the proceedings before the CCMA, especially with the demands it had made to the employees and the CCMA in regard to either the postponements or the disclosures sought. On the opposite scale, the employees are made to go through all of the applicant's legal strategies which are unsustainable either in law or on the facts as shall further be dealt with below. These delays are unnecessarily burdensome on the employees, given the unmeritorious nature of this application as correctly pointed out on behalf of the employees.
- [24] On the basis of the above conclusions, clearly the applicant has not demonstrated why this application deserves the urgent attention of this Court. Even if the Court were to consider the merits of the application, and to the extent that it seeks an interim order, it must establish or at most, demonstrate a *prima facie* right; a well-grounded apprehension of irreparable harm if the interim relief is not granted; that the balance of convenience favours the granting of an interim interdict; and that there is no other satisfactory remedy[6].
- [25] In regards to whether a *prima facie* right has been demonstrated, the starting point is that at the core of the urgent interdictory relief sought by the applicant is that the Court must effectively intervene in arbitration proceedings before the CCMA, and to put a halt to them pending the review of the Commissioners' rulings. In respect of the Courts' willingness to intervene in incomplete arbitration hearings, it has long been reiterated in *Ngobeni v PRASA CRES and others*[7] that there are at least two reasons why the Court should be slow in intervening in on-going arbitration proceedings. The first was a policy related reason in that routine interventions would undermine the informal nature of the system of dispute resolution established by the Labour Relations Act[8] (LRA). The second reason was that to permit reviews on a piece-meal basis would frustrate the expeditious resolution of labour disputes. It was further held that justice would be advanced rather than frustrated by permitting CCMA arbitration proceedings to run the course without intervention by this Court[9].
- [26] To fortify the above legal principles, section 158(1B) of the LRA[10] provides that the court may not review any decision or ruling made during conciliation or arbitration before the issue in dispute has been finally determined by the CCMA or bargaining council, unless the Court is of the opinion that it is just and equitable.
- [27] It would further be remiss of this Court not to take judicial notice of the net effect of halting ongoing arbitration proceedings before the CCMA. It is that the mere fact that pleadings in an application to review impugned rulings are at an advanced stage, does not in itself fortify the basis for granting urgent interdictory relief. The advanced status of the pleadings in the review application is indeed small comfort for employees in view of the backlog in this Court which is well-known. It will take at least a minimum of 18 months before such review

applications are heard in Court upon the pleadings having closed. That is a reality given the nature of the backlog and the limited judicial resources available to this Court. Inasmuch as these problems have nothing to do with litigants, it is my view that they ought to be considered within the context of whether it would be just and equitable for the court to intervene in incomplete arbitration proceedings. In any event, where urgent relief for a stay of proceedings before the CCMA is sought and where the pleadings in respect of the subject matter on review are even at a closed stage, this, as correctly pointed out by counsel on behalf of the employees,[11] should not cloud the issue of whether the applicant's modification of the rules on the grounds of urgency were acceptable. I have already dealt with the issue of urgency.

- [28] The long history of this matter is indicative of why it has been said that to routinely intervene in ongoing arbitration proceedings cannot contribute to expeditious resolution of disputes, and why justice would better be advanced rather than frustrated by permitting the CCMA arbitration proceedings to run their course without intervention by this Court.
- [29] I have already indicated that this dispute goes back five years ago since the dismissal of the employees in March 2018. The arbitration proceedings are nowhere near being started in earnest. In these circumstances, the applicant is required to demonstrate why in these circumstances, it would be just and equitable for the Court to intervene and halt the arbitration proceedings in order for the application to review and set aside both the 'Disclosure Ruling' and/or the 'Postponement Ruling' to be determined. In other words, the issue is whether exceptional circumstances have been demonstrated requiring the intervention of this Court.
- [30] The applicant contends that it is mainly aggrieved by the employees' refusal to disclose the documents or evidence it requires, and the Commissioner Olota's ruling in that regard. The disclosures sought consisted of a shopping list of (a) a copy of the statement submitted to the SAPS in relation to a criminal case (b) copies of any bank statement that the employees controlled since January 2019;
- (c) records and full details of all communications between the employees for the period October 2019 to January 2020 regarding the employer (applicant), including the dates, method of communication and the content. These included but not limited to any text or WhatsApp messages exchanged between the employees on their private cell phones and other devices;
 - (d) the employees' private cell phone records for the period 2019 to January 2020; copies of bank statements, where any accounts that are in the employees' control for the period March – November 2020; (e) a list of movable and immovable property held by each of the individual employees, and (f), a list of their debts and or liabilities.
- [31] The employees had refused to make such disclosures for reasons outlined elsewhere in this judgment, and Commissioner Olota had agreed with them. In these proceedings, it was argued that this information impacts on the dispute, and was important in order to enable

the Commissioner 'to ask and answer the right questions' in respect of the dispute. It was further argued that since the proceedings before the CCMA were de novo, what took place at the internal disciplinary hearing was irrelevant for the purposes of the proceedings before the CCMA.

[32] It needs to be said from the onset that the applicant has not laid the basis demonstrating a prima facie right to the disclosures sought. The first issue is that for all intents and purposes, the 'Disclosure Ruling' is interlocutory in nature, and does not disable the applicant to present its case in relation to the reasons that led to the dismissal of the employees. The second consideration is that even if the arbitration proceedings before the CCMA are de novo, the hurdle that the applicant has to surmount in accordance with the provisions of section 192(2) of the LRA, is to discharge its onus that the dismissal of the employees was substantively and procedurally fair. Equally so, it must in accordance with the

provisions of section 188 (1)(a) of the LRA, demonstrate that the reason for the dismissal was a fair reason. If for whatever basis it had at the disciplinary enquiry, evidence that revealed reasons to dismiss the employees, it then needs to demonstrate before the CCMA that based on those reasons and the evidence it had, the dismissal was fair. If it did not have those reasons, or those reasons were shaky at the disciplinary enquiry, it is not for the dismissed employees at a later stage at the CCMA to willingly assist it in justifying its decision to dismiss them.

[33] In this regard, I agree with the submissions made on behalf of the employees that all that the applicant seeks with this discovery, and by extension this application and in the review application, is merely for assistance by the employees, to bolster its case against them. The applicant is indeed on a fishing expedition as correctly pointed out on behalf of the employees, and it merely seeks to pick on hanging fruit in order to feed its case before the CCMA. This is so in that from the nature of the disclosures sought, it is apparent that some of the evidence sought is not even properly identified. Worse still, most of the disclosure sought relates to events that took place between the employees, long after their dismissal. Since it was common cause that the applicants were dismissed on account of misconduct related to alleged unauthorised removal and of client property, and further on account of allegedly having colluded in these alleged infractions, that is the evidence that it would have relied on in March 2018.

The applicant cannot with the assistance of the employees, seek to prove such collusion or any other evidence long after the dismissal

took place. This is so in that when the matter comes before the CCMA, all that the commissioner would have to ask and answer, is whether the dismissal at the time it took place, and based on the reasons that prevailed then, was fair. Thus, it would not be fair for the employees to have to answer to new evidence that was not placed before the internal enquiry prior to their dismissal.

[34] As to why the employees would have willingly furnished other documents which are either confidential or not in their possession such as their bank records, confidential phone conversations amongst themselves or even a list of their own debts and liabilities is not

clear. It is equally not clear why the applicant could not have easily walked to the SAPS' offices where the statements it seeks were made and to politely ask for copies since it had a case number. Furthermore, even if these documents were of any relevance, and the application before Commissioner Olota had failed as it did, that was however not the end of the matter. The applicant if it was really interested in finalising the matter, would have proceeded with the matter, and then consider its options depending on the outcome. In any event, it is not for this Court either in this urgent application let alone at the stage of a review in respect of an incomplete process, to decide what is relevant or not for the commissioner. The Commissioner makes that

decision. If that decision leads to an outcome that is unreasonable for whatever reason, the provisions of section 145 of the LRA always remain available as an alternative remedy.

- [35] It follows from the above that any perceived apprehension of irreparable harm if the interim relief is not only imagined but contrived to unduly prolong the proceedings before the CCMA. The balance of convenience cannot favour the granting of an interim interdict, in circumstances where the applicant is resistant to the very principles and objectives of the LRA, which are the expeditious resolution of labour disputes.
- [36] It follows that in the light of the self-created urgency, this matter would have ordinarily been struck off the roll. All that this would do is to have it recycled back on the ordinary roll, when there is already a review application pending before the Court in respect of the same or similar issues. It is therefore deemed appropriate that the application be dismissed on its own merits, to the extent that the applicant has spectacularly failed to demonstrate any exceptional circumstances requiring the urgent intervention of this Court, let alone satisfy the requirements of the relief it seeks. It can neither be just nor equitable for the employees who have been patiently waiting since March 2018 and without an income, to have to wait for further protracted periods whilst the applicant indulges itself in baseless legal proceedings simply for no other reason but because it can. This is untenable and goes against the grain of everything that the LRA, let alone the Constitution stands for.
- [37] Costs in this Court are to be award upon due consideration of the requirements of law and fairness. The employees sought an award of costs inclusive of wasted costs of 22 February 2023 when the matter was removed from the roll before my colleague Mahosi J. The removal was occasioned by the applicant's failure to attend to the proper pagination and indexing of the Court's file. That was the responsibility of the applicant, and I agree that fairness dictate that the employees cannot be burdened with such wasted costs when the applicant failed to take basic steps to ensure that its application was properly before the Court.
- [38] It has already been concluded that indeed this application was vexatious, and as could be gleaned from the conduct of the applicant throughout, its aim with this application has been for no legal reason other than to delay and frustrate the employees in having the proceedings before the CCMA finalised. For some reason, the employees have persisted throughout, as they are indeed entitled

to have their dispute finally determined before the CCMA. During all these delays deliberately if not maliciously caused by the applicant, the employees have been unduly burdened with legal costs in having to oppose this application. This is in circumstances where they have been dismissed since March 2018. The requirements of law and fairness in these circumstances dictate that the employees be entitled to their costs, and it is in the light of these factors that the award of costs as below is deemed fair.

[39] Accordingly, the following order is made;

Order:

1. The applicant's urgent application is dismissed.
2. The applicant is ordered to pay the 1st – 9th Applicants' costs payable on the scale as between attorney and client. Such costs shall be inclusive of wasted costs occasioned by the removal of the matter on the urgent roll on 22 February 2023.

Edwin Tlhotlhamajje

Judge of the Labour Court of South Africa

Appearances:

For the Applicants: Adv. Z. Ngwenya (Heads of Argument prepared together with F.A Boda SC) Instructed by Cliffe Dekker Hofmeyr For the 1st, 2nd, 4th, 5th, 6th, & 8th, Respondents: Adv. M.R. Maphutha Instructed by GM Tjiane Attorneys. For the 3rd, 7th and 9th Respondents: Mr T.M. Ngobeni of T.M Ngobeni Attorneys.

[1] Annexure "AA4" to the 3rd, 7th & 9th Applicant's Answering Affidavit.

[2] See East Rock Trading 7 (Pty) Limited and another v Eagle Valley Granite (Pty) Limited and others (2012) JOL 28244 (GSJ) at para 6 and 7; See also Export Development Canada and Another v Westdawn Investments Proprietary and Others (6151/2018)

[2018] ZAGPJHC 60; [2018] 2 All SA 783 (GJ) at para 11; and Mogalakwena Local Municipality v The Provincial Executive Council, Limpopo and others (2014) JOL 32103 (GP) at para 63 – 64, where it was held; "It seems to me that when urgency is an issue the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent. Once such prejudice is established, other factors come into consideration. These factors include (but are not limited to): Whether the respondents can adequately present their cases in the time available between notice of the application to them and the actual hearing, other prejudice to the respondent's and the administration of justice, the strength of the case made by the applicant and any delay by the applicant in asserting its rights. This last factor is often called, usually by counsel acting for respondents, self-created urgency."

[2] See East Rock Trading 7 (Pty) Limited and another v Eagle Valley Granite (Pty) Limited and others (2012) JOL 28244 (GSJ) at para 6 and 7; See also Export Development Canada and Another v Westdawn Investments Proprietary and Others (6151/2018)

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“It seems to me that when urgency is an issue the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent.”

Once such prejudice is established, other factors come into consideration. These factors include (but are not limited to): Whether the respondents can adequately present their cases in the time available between notice of the application to them and the actual hearing, other prejudice to the respondent’s and the administration of justice, the strength of the case made by the applicant and any delay by the applicant in asserting its rights. This last factor is often called, usually by counsel acting for respondents, self-created urgency.”

[3] See *Golding v HCI Managerial Services (Pty) Ltd and others*

[2015] 1 BLLR 91 (LC) at para 24; *Ntozini and Others v African National Congress and Others* (18798/2018) [2018] ZAGPJHC 415 (25 June 2018) at para 11.

[4] Annexure “UA03” to the applicant’s Founding Affidavit.

[5] Erasmus in Superior Court Practice at D6 – 23 write that: “An interlocutory interdict may be refused if the applicant has delayed long before applying. An application for an interdict pendente lite from its very nature requires the maximum expedition from an applicant, who may forfeit his right to temporary relief if he delays unduly in bringing the interim proceedings to finality.” See also *Association of Mine Workers and Construction Union and others v Northam Platinum Ltd and another* [2016] 11 BLLR 1151 (LC), where it was held; “[25] Also, urgency must not be self-created ...as a consequence of the applicant not having brought the application at the first available opportunity.

[26] A final consideration where it comes to urgency is expedition when taking action. In other words, the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. But the longer it takes from the date of the event giving rise to the proceedings, the more urgency is diminished. In short, the applicant must come to court immediately, or risk failing on urgency. In *Valerie Collins t/ a Waterkloof Farm v Bernickow NO and another* the court held: “. . . if the applicants seeks this Court to come to its assistance it must come to the Court at the very first opportunity, it cannot stand back and do nothing and some days later seek the Court’s assistance as a matter of urgency.””

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“... if the applicants seeks this Court to come to its assistance it must come to the Court at the very first opportunity, it cannot stand back and do nothing and some days later seek the Court’s assistance as a matter of urgency.”

[6] See Setlogelo v Setlogelo 1914 AD 221; Erasmus, Superior Court Practice RS 5, D6-16A; Webster v Mitchell 1948

(1) SA 1186 (WLD).); National Treasury and Others v Opposition to Urban Tolling Alliance and Others (CCT 38/12) [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC); Magoda v Director-General of Rural Development and Land Reform and another [2017] 12 BLLR 1267 (LC).

[7]

[2016] 8 BLLR 799 (LC).

[8] Act 66 of 1995, as amended.

[9] At para [13].

[10] Which provides: ‘The Labour Court may not review any decision or ruling made during conciliation or arbitration proceedings conducted under the auspices of the Commission or any bargaining council in terms of the provisions of this Act before the issue in dispute has been finally determined by the Commission or the bargaining council, as the case may be, except if the Labour Court is of the opinion that it is just and equitable to review the decision or ruling made before the issue in dispute has been finally determined.’

[10] Which provides:

‘The Labour Court may not review any decision or ruling made during conciliation or arbitration proceedings conducted under the auspices of the Commission or any bargaining council in terms of the provisions of this Act before the issue in dispute has been finally determined by the Commission or the bargaining council, as the case may be, except if the Labour Court is of the opinion that it is just and equitable to review the decision or ruling made before the issue in dispute has been finally determined.’

[11] Caledon Street Restaurants CC v D’Aviera [1998] JOL 1832 (SE).

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