

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA (MAIN SEAT)**

(1)	REPORTABLE:NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES

23/02/2024

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SIGNATURE

DATE

CASE NO: 1132/2022

In the matter between:

DANNY SIBUSISO THWALA

Applicant

and

SOUTH AFRICAN NATIONAL PARKS

First Respondent

THE BOARD OF DIRECTORS OF SANPARKS

Second Respondent

CHIEF EXECUTIVE OFFICER OF SANPARKS

Third Respondent

WERKSMANS ATTORNEYS

Fourth Respondent

GARETH COLEMAN

Fifth Respondent

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 23 February 2024 at 10:00.

Date heard: 13 February 2024

J U D G M E N T

BHENGU AJ:

INTRODUCTION

[1] This matter concerns a labour dispute between the Applicant, Mr Thwala and his employer, South African National Parks ("SANPARKS"). The Applicant was charged with 6 charges relating to misconduct. His disciplinary enquiry commenced on 23 September 2021. On 12 February 2022, he was issued with an addendum containing an additional charge of bringing his employer, SANPARKS into disrepute due to his whistle blowing letter that he had sent to the office of the Chairperson of the Board of SANPARKS, office of the Public Protector, the Minister of Environment & Fisheries and the Minister of Finance.

[2] On 08 March 2022 the Applicant brought an urgent application against the Respondents. In the urgent application, the Applicant sought an order compelling two witnesses, namely, his line manager, Mr Coleman as well as the author of an investigative report relating to his charges to testify at his disciplinary hearing. The disciplinary hearing was scheduled to proceed on 30 March 2022. The Applicant also sought a declarator to the effect that the

additional charge contained in the addendum to a charge sheet dated 12 February 2022 be declared invalid¹.

[3] Having discussed the background of the matter I was faced with the following challenges:-

3.1 I was concerned that the matter now serves before this Court with the same papers that was before the Urgent Court in 2022. This concern was informed by the fact that the disciplinary hearing against Mr Thwala was to be held on 30 March 2022 and it has now been 23 months since that date has passed. There is no supplementary affidavit from the Applicant explaining what has happened in the matter since 08 March 2022 to date.

3.2 The papers before the Court were not properly indexed and paginated and the Court bundle was falling apart. The Court's Registrar had to ask the parties to provide a properly secured bundle which was only provided in the morning of the hearing. There was no Form B relating to the opposed motions which is an indication that the matter was not case managed. There was no agreement between the parties when their heads of argument were to be filed. This resulted the Applicant filing its heads of argument on 09 February 2024 and the Respondent filing its heads of argument and an additional bundle on the eve of the hearing. It is worth to note that none of the documents that were filed via email were placed in the Court File. This prompted me to ask the parties to address the Court on the readiness of the matter to proceed.

¹ Notice of motion dated 01 March 2022, para 2, 3 & 4

Submissions on behalf of the Applicant

[4] Counsel for the Applicant submitted that the matter is ready to proceed. He submitted that the Applicant is no longer persisting with the relief sought in prayer 2 of his Notice of Motion as that the relief that was sought in prayer 2 has been overtaken by events. According to counsel for the Applicant, the Fifth Respondent, Mr Coleman against whom the relief was sought had already testified at the disciplinary hearing. He still however persists with the relief sought in prayer 3 and 4 as there has not been a ruling on this issue yet. Whilst he concedes that there is no supplementary affidavit or amended Notice of Motion that is properly placing this change of circumstances before Court, he asked the Court to use its discretion and dispense with any non-compliance if any and allow the matter to proceed. He is of the view that the non-compliance is not of such a degree that can prevent the matter from proceeding.

Submissions on behalf of the Respondents

[5] Counsel for the Respondent argued that the application is moot and constitutes frivolous and vexatious litigation. He argued that the relief sought in the application is not competent. That the applicant has abused the processes of the Court by not supplementing his papers that served before the urgent Court in March 2022, thus not disclosing all that has passed since the last two years to enable the Court to properly determine the matter. He submitted that the Applicant had failed to comply with the directives of this Court relating to case management of opposed motions. He contends that this matter should be enrolled as a special motion because the estimated time for oral argument is estimated by the Applicant's counsel is over 2 hours.

[6] The Respondents referred to the Court to an *ex-tempore* judgement by Judge Ratshibvumo dated 08 March 2022, which in addition to striking off the from the roll for lack of urgency, stated that “*there is no merit in bringing the application altogether*”.

[7] The Respondents also contends that the issues before this Court in the application as it stands are moot because the internal disciplinary hearing has concluded, and the Applicant has also closed its case. Mr Coleman has testified and one of the investigators and authors of the investigative reports have also testified. He submitted that the moot charge 7 has been already fully ventilated and that the Applicant did not disclose other judgments of this court in respect of the same matter and further findings in the Pretoria High Court, CCMA and Labour Court. The Respondent sought dismissal of the Application with a punitive cost order.

Analysis

[8] Harms² provides that a notice of motion must set out the relief sought and must be accompanied by an affidavit in which the facts upon which the applicant relies are set out. In this matter the Applicant seeks to amend the relief sought in the Notice of motion by ways of a practice note and from bar without setting out reasons a case for the departure in a supplementary affidavit.

[9] Applicant’s counsel denied any knowledge of the *ex-tempore* judgment by Judge Ratshibvumo dated 08 March 2022 and contended that as far as he

² D Harms Civil Procedure in the Superior Courts (2022 – Service Issue 75) para B6.4

knows, the judgement only related to the urgency of the matter and nothing else.

[10] Practice Directives of the Division

“7.1 No opposed matter shall be enrolled for hearing unless it has gone through judicial case management conference by completion of Form B after consulting with the registrar for the available date chosen and agreed upon between the parties and the parties or their legal representatives having entered their particulars in the opposed motion roll provisional register.”.

[11] In this matter there has been a total disregard of the Practice Directive and there is no reasonable explanation for such conduct. I agree with the Applicant’s counsel that the Court hearing the matter has a discretion to condone non-compliance. But I must re-iterate that that discretion can only be exercised in favour of the defaulting party on good cause shown for non-compliance. Even if I were to condone the non-compliance with the Practice Directive, I am however, still faced with a matter which has almost two years history that is missing from the papers. It seems there are other parallel proceedings that have taken place in other Courts which this Court is not informed of that may have an effect of the orders sought. I take note of the submissions by the Respondents as to what transpired in the matter before this hearing, but I am constrained from utilising that information as such information was not contained in a supplementary affidavit from either party.

[12] Having regard to the aforesaid, I am persuaded to find that the matter is not ready to proceed.

Costs

[13] Counsel for the Applicant argued that costs should be costs in the application. Counsel for the Respondent argued that costs should be awarded against the Applicant on a punitive scale for abusing the Court process by bringing frivolous and vexatious Application. The Labour Appeal Court in Plastic Converters Association of SA³, found that “the scale of attorney and client is an extraordinary one which should be reserved for cases where it can be found that a litigant conducted itself in a clear and indubitably vexatious and reprehensible manner.”

[14] Over and above the Applicants failure to comply with the practice directives of this Court, the Applicant also failed to bring to the attention of the Court all the other proceedings in different fora adjudicating on the same or related issues. This could have an effect of issuing conflicting orders. I am satisfied that the conduct of the Applicant is tantamount to an abuse of Court process and as such a cost order on an attorney and client scale is justified.

[15] In the circumstances, I make the following order:

³ Plastic Converters Association of SA on behalf of Members v National Union of Metalworkers of SA [2016] ZALAC 39; (2016) 37 ILJ 2815 (LAC) at para 46

- (a) The matter is removed from the roll.
- (b) The Applicant is ordered to pay Respondent's costs on an attorney on an attorney and client scale.
- (c) The matter is referred to Case Management.



JL BHENGU

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

APPEARANCES:

**Counsel for the Applicant:
Instructed by:**

Adv B Morris
Werksmans Attorneys

**Counsel for the Respondent:
Instructed by:**

Adv A Maisela
Macbeth Attorneys Inc

Date of Judgment:

23 February 2024