

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 2024-072435

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO [REDACTED]

Date: 11 July 2024 E van der Schyff

In the matter between:

DR ANIL KURIAN INCORPORATED

FIRST APPLICANT

Registration No 2020/090634/21

DR P NARAN INCORPORATED

SECOND APPLICANT

Registration No 2018/641339/21

and

MARI-SAN JACOBS

RESPONDENT

JUDGMENT

Van der Schyff J

Introduction

1. The applicants approached the urgent court seeking an order that the respondent cure her breach of contract by immediately returning to the applicant's employment to complete her three-month notice period. Alternatively, they seek damages in the amount of R3 500 000.00.
2. The applicants approached the court on the basis of utmost urgency. The Notice of Motion is dated 2 July 2024. The respondent was required to file a notice of intention to oppose by 8h00 on 3 July 2024 and an answering affidavit by 16h00 on the same day. The matter was enrolled to be heard on Tuesday, 9 July 2024.
3. The question of whether there is any justification for these severely truncated timelines can only be answered if the context created by events preceding the litigation is considered.
4. The relevant facts underpinning the application are the following:
 - 4.1. The respondent and two cardiologists, Dr. Anil Kurian and Dr Parmanand Naran, concluded an employment contract. The contract identifies the two doctors as "the Employers". The respondent, Ms. Jacobs, a Clinical Cardiac Technologist, is identified as "the Employee";
 - 4.2. The employer or employee may terminate the contract with a three month notice period;
 - 4.3. The parties signed the contract respectively on 6 and 9 May 2024. On 11 May 2024, Ms Jacobs tendered her resignation. She informed the employers that her last working day would be 18 June 2024. On 18 June 2024, a letter was directed to Ms.

Jacobs, informing her that the employers do not accept the short resignation period and expect her to complete the three month-notice period;

4.4. The application was subsequently served on Ms. Jacobs on 2 July 2024, 21 days after she resigned and 14 days after she left the employment of doctors Kurian and Maran, affording her a mere one day to file opposing papers.

5. In the well-known matter of *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)*¹ The court explained that urgency involves mainly the abridgment of times prescribed by the Rules and, secondarily, the departure from established filing and sitting times of the Court. The first question that must be decided is whether there must be a departure from the times prescribed in Rule 6(5)9(b). The court cautioned practitioners to carefully analyse the facts of each case to determine whether a lesser or greater degree of relaxation of the Rules is required. The degree of relaxation should not be greater than the exigency of the case demands.
6. The applicants claim that the application is urgent because her breach of contract is causing 'irreparable harm and risk to patient life and to the reputation of the applicants' practice.' Because the notice period would have passed by the time an application is heard on the ordinary roll, the damage would have been done, and a court order in due course 'will be hollow' as the notice period would have expired.
7. Ms. Jacobs, in her answering affidavit, explains that her decision to terminate the employment relationship was preceded by the employers breaching the terms of the employment contract in several regards. She also denies that her absence from the practice causes any risk to patients' lives, as the services she rendered can be rendered by locums or the doctors themselves. These averments are not disputed in the applicants' replying affidavit. The applicants do not answer Ms Jacob's averments by saying that they attempted to get locums and failed, or that they were themselves not able to step in and do the work. They fail to address these averments in the replying affidavit.

¹ 1977 (4) SA 135 (W) 136C-W.

8. The question then arises whether the severely truncated timelines with which Ms. Jacobs was to file an answering affidavit were justified if the applicants do not make out a case on the papers that Ms. Jacob's absence is anything more than an inconvenience, albeit stringent, and that her alleged breach of contract causes damages that can be the subject of future litigation. I am of the view that it is not, and the application stands to be struck from the roll for lack of extreme urgency.
9. In addition, it is evident that a factual dispute exists regarding the conditions that precede Ms. Jacob's decision to terminate her employment contract. In the circumstances, it would not be just to order her to complete the three-month notice period.
10. As for costs, the general principle is that costs follow success. Having regard to the severely truncated timelines in which the respondent had to obtain legal representation this matter justifies an order that costs be paid on attorney and client scale.

ORDER

In the result, the following order is granted:

- 1. The application is struck from the roll with costs on attorney and client scale.**


 E van der Schyff
 Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be emailed to the parties/their legal representatives as a courtesy gesture.

For the applicant:

Adv. CR Minnaar

Instructed by:

Tjale Attorneys

For the respondent:

Adv. JJ Venter

Instructed by:

Francois de Necker Inc.

Date of the hearing:

9 July 2024

Date of judgment:

11 July 202