

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 2024-096651

- (1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

11/10/2024

.....
DATE

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SIGNATURE

In the matter between:

SEMAKALENG DAPHNEY MANAMELA

Applicant

and

THE NATIONAL COMMISSIONER, SOUTH

AFRICAN POLICE SERVICE

1st Respondent

THE PREMIER OF THE MPUMALANGA

PROVINCIAL GOVERNMENT

2nd Respondent

THE MINISTER OF POLICE

3rd Respondent

MAJOR-GENERAL ZEPH MKHWANAZI

4th Respondent

JUDGMENT

MNGQIBISA-THUSI J

[1] In her amended notice of motion, the applicant seeks the following relief:

- 1.1 Dispensing with the forms, service and time periods prescribed in terms of Uniform Rules of Court and directing that the matter be heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court and condoning non-compliance with the time periods by the Applicant.
- 1.2 That the suspension of the Applicant by the First Respondent on 14 June 2024 be uplifted pending the hearing and determination of a review of the decision of the First Respondent to bring additional charges against the Applicant, which review application was issued on 11 June 2024.
- 1.3 Interdicting and restraining the First Respondent from convening and conducting a Board of Inquiry on 14 to 18 October 2024 and 18 to 22 November 2024, pending the hearing and determination of the ongoing appeal processes under SCA case number 928/24 and/or review application under case no 2024/06489.
- 1.4 That Adv Leon Halgryn SC, Adv K Millard and Adv H Cassim be joined as Fifth, Sixth and Seventh Respondents accordingly.
- 1.5 That the First and/or Fifth, Sixth and Seventh Respondents are interdicted and restrained from convening and conducting a Board of Inquiry on 14 to 18 October 2024 and 18 to 22 November 2024, pending the hearing and determination of the ongoing appeal processes under SCA case number 928/24.
- 1.6 That the First Respondent be held to be in contempt of the order of Janse van Nieuwenhuizen J dated 4 October 2023.

1.7 Ordering the First Respondent to pay the costs of this application on an attorney and own client scale.

1.8 Further and/or alternative relief.”

[2] The first, second and fourth respondents are opposing the relief sought by the applicant.

[3] The applicant is a Lieutenant-General within the South African Police Service. Before her suspension from duty on 14 June 2024, the applicant was the Mpumalanga Provincial Commissioner. The fourth respondent, Major-General Zeph Mkhwanazi, is currently the Acting provincial commissioner in her stead.

Factual Background

[4] On 23 February 2023 the first respondent, the Minister of Police, preferred certain charges against the applicant. On 24 February 2023, the applicant was suspended from duty. The applicant launched an urgent application for the upliftment of her suspension and the review and setting aside the decision of the first respondent to establish a board of inquiry. On 23 March 2023 an order uplifting the applicant's suspension was granted. However, on 18 September 2023 the first respondent set down a board of inquiry, leading to the applicant bringing an urgent application for an order interdicting the first respondent from establishing a board of inquiry based on the charges preferred against her, pending the determination of the review application.

- [5] On 4 October 2023, and by agreement, an order (per Janse van Nieuwenhuizen J) which reads as follows:

“1. The urgent application enrolled for 4 October 2023 is hereby withdrawn.
2. The sitting of the Board of Inquiry in terms of Section 9(1) of the South African Police Act, 68 of 1995 (“the SAPS Act”) scheduled to commence on 11 to 13 October 2023 is hereby postponed *sine die*, pending the hearing and determination of the review application issued by the Applicant on 28 February 2023 under case number 020531/2023.”

- [6] On 4 April 2024, the applicant’s review application in which she sought the review and setting aside of the first respondent’s decision to establish a board of inquiry, was dismissed. An application for leave to appeal the decision was also dismissed. The applicant has petitioned the Supreme Court of Appeal (SCA) for leave to appeal under case number SCA 928/24 and the petition is still pending.

- [7] The applicant and the respondents have filed their founding and answering affidavits. The Applicant still has to file her replying affidavit.

- [8] Even though the applicant and/or her legal representatives had engaged the first respondent’s and/or the first respondent, complaining about the insufficient information provided in relation to the intended suspension of the applicant, on 27 May 2025, the first respondent brought additional charges against the applicant and gave the applicant notice of his intention to place the applicant under suspension.

- [9] On 11 June 2024 the applicant issued an application for the review and setting aside of the first respondent's decision to bring additional charges against the applicant.
- [10] On 14 June 2024, the first respondent suspended the applicant based on a report of a certain Lieutenant-General Jacobs who was mandated to investigate and verify allegations and complaints against the applicant.
- [11] On 27 August 2024 the applicant issued this application, set-down for 10 September 2024, in which she sought the upliftment of her suspension, pending the determination of a review application issued on 11 June 2024.
- [12] The first second and fourth respondents filed an answering affidavit. According to the applicant, it was through the respondents' answering affidavit that she learnt for the first time that the first respondent had set down a board of inquiry into her fitness to hold office.
- [13] In her replying affidavit, and in light of the knowledge she now had about the setting down of the board of inquiry, the applicant sought an amendment of her notice of motion.
- [14] Although set down for 10 September 2024, the application for the upliftment of the applicant's suspension was heard on 12 September 2024. The matter was removed from the roll as the applicant's legal representative wanted to file a supplementary founding affidavit in light of the knowledge that the first respondent had set down a board of inquiry. The applicant was ordered to pay the wasted costs occasioned by the postponement on an attorney and client scale.

[15] Subsequently the applicant filed an amended notice of motion in which she sought, besides the upliftment of the applicant's suspension pending the review of the first respondent's decision to bring additional charges against the applicant, also sought an interdict restraining the commencement of the board of inquiry pending the determination of the petition for leave to appeal by the SCA; the joining of the evidence leaders of the board of inquiry' and an order holding the first respondent to be in contempt of the order dated 4 October 2023. The applicant filed a review application in which she sought the review and setting aside of the decision of the first respondent to bring additional charges (second charges) against her.

[16] The notice of set-down of the board of inquiry was served on the applicant on 06 September 2024.

[17] The respondent has submitted that the application is not urgent in that the applicant can still be afforded substantial redress in due course. It was further argued that since the applicant had referred the issue of her alleged suspension to the Safety and Security Sectoral Bargaining Council, which process is still pending, the applicant will not suffer any prejudice if successful. Further, it was submitted that the application is not urgent as the applicant was aware of her pending suspension as early as May 2024, and also during June 2024 and she did nothing to bring this urgent application.

[18] I am of the view that the application is urgent in light of the fact that a board of inquiry is scheduled to sit on 14 October 2024. Should the application not be heard and the applicant's petition to the SCA, and her appeal is successful, the

applicant will not be afforded substantial redress in due course as the board will have dealt with the same issues which are the subject matter of the appeal.

[19] I am, however, not convinced that the applicant has made out a case of urgency with regard to her prayers relating to the prayer for the first respondent to be found in contempt of the order of 4 October 2023 and the prayer for the joinder of the presiding officers of the board of inquiry. With regard to the prayer for the first respondent to be held in contempt of court, the applicant has not shown what prejudice she will suffer if the application is not dealt with in the urgent roll. These prayers will be postponed, to be dealt with in the ordinary motion court.

[20] With regard to the application for the joinder of Adv Leon Halgryn SC, Adv K Millard and Adv H Cassim as Fifth, Sixth and Seventh Respondents, the non-compliance with the Uniform Rules of Court is condoned and the joinder of Adv Leon Halgryn SC, Adv K Millard and Adv H Cassim as Fifth, Sixth and Seventh Respondents is granted.

Suspension

[21] It is the applicant's contention of the applicant that the suspension was arbitrary and irrational in that she was not afforded sufficient opportunity to make representations before she was suspended as the first respondent and/or Lt Jacobs had not provided her with the information she had requested to enable her to make representations. Further, it was contended that as the charges which form the subject matter of the board of inquiry are pertinent to the petition lodged with the SCA, it was premature for the board of inquiry to deal with those matters before the petition and/or the appeal was finalised. Furthermore, it is

the applicant's contention that her suspension has a negative impact on her constitutional rights to dignity and right and her right to pursue her chosen career. On behalf of the respondent it was contended that the suspension was rational considering the nature, extent and seriousness of the charges levelled against the applicant. It was further contended that the applicant failed to make use of the opportunity given to make representations before the suspension was effected.

[22] It cannot be gainsaid the negative impact a suspension has on the person under suspension and being prevented from continuing with your profession. The negative impact not only affects the applicant but also her family. The fact that the applicant will continue to receive her salary not only does it not lessen the negative impact the suspension has on the applicant the applicant but also has a negative impact on scarce public funds, particularly in the event that the applicant is successful in her petition, appeal and review. The first respondent's decision to suspend the applicant is inexplicable, albeit based on the additional charges, in light of the reasons set out in the earlier judgment of this court concerning the suspension of the applicant in March 2023 and based on the same charges as will be dealt with by the board of inquiry and taking into account that the investigation relating to the charges has been completed and there is no danger that the applicant might interfere with any witness. Furthermore, the charges which form that basis for the decision to suspend the applicant are subject to a review application which has still to be determined. I am therefore of the view that the decision of the first respondent to commence with the board of inquiry on 14 October 2024 goes against the grain of the order

granted on 4 October 2023 and that the applicant's suspension ought to be uplifted.

Interim interdict

[23] In order for the applicant to succeed in her prayer for an interim interdict halting the commencement of the board of inquiry set to start on 14 October 2024, the following requirements have to be met:

- 22.1 a *prima facie* right on the part of the applicant;
- 22.2 a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is granted;
- 22.3 a balance of convenience in favour of granting the interim relief; and
- 22.4 absence of any other satisfactory remedy available to the applicant.

[24] On behalf of the applicant it was submitted that the scheduling of the board of inquiry whilst the applicant's lodged petition was still pending before the Supreme Court of Appeal is unlawful in light of the provisions of section 18 of the Superior Courts Act 10 of 2013 which reads as follows:

"Suspension of decision pending appeal

- (1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.
- (2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is in interlocutory order not having the effect of a final judgement, which is the subject of an application for leave to appeal or

of an appeal, is not suspended pending the decision of the application or appeal.

- (3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.
- (4) If a court orders otherwise, as contemplated in subsection (1)-
 - (i) the court must immediately record its reasons for doing so;
 - (ii) the aggrieved party has an automatic right of appeal to the next highest court;
 - (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and
 - (iv) such an order will be automatically suspended, pending the outcome of such appeal.”

[25] According to the applicant, on a correct interpretation of the order of Janse van Nieuwenhuizen J dated 4 October 2023, the order of Makhoba J on 5 April 2024 is suspended pending the finalisation of the appeal process undertaken by the applicant. It was submitted on behalf of the applicant that the order granted on 4 October 2023 should be interpreted to preclude the first respondent from establishing a board of inquiry until the review application and any concomitant appeal processes are concluded.

[26] On behalf of the respondents it was submitted that the order of 3 October 2023 only halted the main review process which has taken place and has been determined and that the order did not cover any subsequent appeals to the decision made by Judge Makhoba. Further was submitted that the applicant is aware of the charges of the initial charges and the additional charges preferred against her. And lastly it was submitted that it is in the public interest that the

apparently serious charges against the applicant ought to be ventilated and determined as soon as possible.

- [27] With regard to the interim interdict against the commencement of the board of enquiry it was submitted on behalf of the respondents that there was agreement between the parties that the boxboard of enquiry would be postponed pending the determination of the applicant's review application and that the parties would make a joint approach to the Deputy Judge President for the allocation of a preferential date for the hearing of the review application. It was submitted that if the order of 3 October 2023 intended to suspend or postpone the commencement of the board of enquiry pending the conclusion of all appeals, it would have said so. In this regard counsel referred the court to the matter of *Auction Alliance (Pty) Ltd and another v Minister of Police and others* (8324/2014) [2014] ZAWCHC 180 (3 December 2014) where the court in considering the proper interpretation of the phrase "final determination" stated that:

"On a proper consideration of the Stelzner AJ order 'final determination' of an application must therefore be read to be something, distinct from the mere 'determination' of the application. In my view the word 'final' in the Stelzner AJ order, ca and must on its ordinary meaning only mean to include determination on review or appeal."

- [28] With regard to the interpretation of section 18 of the Superior Courts Act, that suspension does not mean that the judgement of 5 April 2024 does not exist or that it does not have binding effect. In this regard the court was referred to the decision in *Visagie t/a Prieska Entertainment Centre v Minister of Safety and Security* (1084/2013, 1085/2013) (2018) ZANHC 77 (26 October 2018).

[29] It was further argued on behalf of the respondents that the pending petition to the Supreme Court of Appeal does not afford the applicant a prima facie right for the relief she seeks. Further it was submitted that the balance of convenience and irreparable harm favour the respondents in view of the serious and disturbing charges against the applicant which are in the public domain and the need to be ventilated as soon as possible.

[30] On an ordinary interpretation of the order of 4 October 2023, it is clear that the respondents were precluded from establishing the commencement of the board of enquiry until the review was determined. Ordinarily this means that the hearing of the review and its consequent appeals would be covered by the interdict. The import of subsections (1) and (2) of section 18 is that as soon as an appeal or an application for leave to appeal is lodged an order is subject to the appeal or the application to appeal.

[31] In light of my conclusion that section 18 of the Superior Courts Act and read with the order of 3 October 2023 precludes the first respondent from establishing a board of inquiry until the applicant's leave to appeal and review application are determined, I am satisfied that the applicant has sufficiently shown that she has a prima facie right worthy of protection and that there is reasonable apprehension that she will suffer harm if the board of inquiry commences pending the petition and the review application. I am further satisfied that the applicant will suffer irreparable harm if the board of inquiry commences before the petition and the review application are determined. I am of the view that should the applicant be successful with her petition and review application, the horse would have bolted if the board on inquiry is

allowed to commence and that she would not have a satisfactory remedy available to her.

[32] In the result the following order is made:

1. Dispensing with the forms, service and time periods prescribed in terms of Uniform Rules of Court the matter is urgent in terms of Rule 6(12) of the Uniform Rules of Court and non-compliance with the time periods by the Applicant is condoned.
2. The suspension of the Applicant by the First Respondent on 14 June 2024 is to be uplifted pending the hearing and determination of a review of the decision of the First Respondent to bring additional charges against the Applicant, which review application was issued on 11 June 2024.
3. The First Respondent is interdicted and restrained from convening and conducting a Board of Inquiry on 14 to 18 October 2024 and 18 to 22 November 2024, pending the hearing and determination of the ongoing appeal processes under SCA case number 928/24 and/or review application under case no 2024/06489.
4. Adv Leon Halgryn SC, Adv K Millard and Adv H Cassim are joined as Fifth, Sixth and Seventh Respondents accordingly.
5. The First and/or Fifth, Sixth and Seventh Respondents are interdicted and restrained from convening and conducting a Board of Inquiry on 14 to 18 October 2024 and 18 to 22 November 2024, pending the hearing and determination of the ongoing appeal processes under SCA case number 928/24.

6. Prayer 6 of the Amended Notice of Motion is postponed sine die.
7. Costs are reserved.



N P MNGQIBISA-THUSI J
JUDGE OF THE HIGH COURT

Date of hearing: 02 October 2024

Date of judgment: 11 October 2024

Appearances:

Counsel for Applicant: Adv F J Nalane SC (instructed by Thapelo Kharametsane Attorneys)

Counsel for 1st, 2nd and 3rd Respondents: Adv H Barnes SC (instructed by The State Attorneys, Pretoria)