

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG

Not Reportable
Case no: J8204/2010

In the matter between:

MOLATELO MALEHOPO

Applicant

and

ATHLETICS SOUTH AFRICA

First Respondent

SOUTH AFRICAN SPORS CONFEDERATION

Second Respondent

AND OLYMPIC COMMITTEE (“SASCOC”)

Third Respondent

RAYMOND HACK N.O.

Fourth Respondent

RAYMOND MALI

Fifth Respondent

Date of Hearing: 30 May 2011

Date of Judgment: 07 June 2011

JUDGMENT

VAN VOORE AJ

1 This is an application launched on an urgent basis to, *inter alia*, interdict disciplinary proceedings against the applicant, Mr Molatelo Malehopo (Malehopo) from proceeding as

scheduled on 31 May 2011. I heard the matter on 30 May 2011 and dismissed the application with costs on the attorney own client scale. I now set out the brief reasons for my order of 30 May 2011. I will supplement these reasons if need be.

2 On 30 August 2010 Malehopo was charged with serious allegations of misconduct. Amended allegations of misconduct were served on Malehopo on 10 November 2010. The disciplinary hearing was scheduled to take place over the period 29 November 2010 to 3 December 2010. This was not to be. Since 30 August 2010 the proceedings of the disciplinary hearing have limped along in 'stop-start' fashion. It is a matter of great concern that by the time this matter came before me nearly 17 months have passed since 10 November 2010.

3 Malehopo is legally represented in the disciplinary hearing by an attorney and counsel. In fact, the amended allegations of misconduct were served on him through the offices of his legal representatives. Malehopo has had the benefit of legal advice in the disciplinary proceedings since at the very latest November 2010. Prior to the launching of this application it was agreed between Athletics South Africa (ASA) and Malehopo that the hearing would continue on 26 and 27 May 2011. That agreement was reached taking into account the availability of all relevant parties including Malehopo's counsel. Due to the apparent non-availability of Malehopo's counsel the disciplinary hearing did not in fact proceed on 26 and 27 May 2011. A further agreement was then reached that the disciplinary hearing would proceed on 31 May 2011. By 26 May 2011 the proceedings of the disciplinary hearing were under way. There served before the appointed chairman of the disciplinary hearing very many documents including a report styled a "Forensic

Report”. At some point during the proceedings of the hearing, on or about 11 April 2011, Malehopo raised a jurisdictional challenge which required a decision or ruling by the chairman. Malehopo had the benefit of legal advice in mounting the jurisdictional challenge and the chairman made a ruling on 11 April 2011 dismissing the jurisdictional challenge. On 18 April 2011 and during the course of the proceedings of the hearing, the chairman gave a written decision on the jurisdictional challenge. The chairman dismissed the jurisdictional challenge and ruled that the “disciplinary inquiry is to proceed into the merits of the allegations against” Malehopo. It had earlier been agreed that the hearing would proceed on 11, 12 and 15 April 2011. Following the chairman’s ruling on 11 April 2011 the hearing proceeded. However, due to the illness of Malehopo’s counsel, the matter did not proceed on 15 April 2011.

4 In 2010 the matter was scheduled to proceed on 29 November 2010. However, Malehopo was apparently not available on that date and the hearing was rescheduled to proceed on 30 November 2010. Yet again, and apparently at Malehopo’s request, the hearing did not proceed on 30 November 2010 and was postponed to 13 December 2010. Events then took an interesting turn in that an application was launched in the Labour Court on an urgent basis and was set down for hearing on 10 December 2010. Malehopo approached the Labour Court for seeking for relief, *inter alia*, that the SASCOC and the then chairman of the hearing, Norman Arendse SC, be interdicted from proceeding with the disciplinary hearing scheduled for 13 December 2010. In the 10 December 2010 application Malehopo also sought an order that pending an application to review and set aside the refusal, that the disciplinary inquiry is referred to the Commission for

Conciliation, Mediation and Arbitration in terms of section 188A of the Labour Relations¹, the hearing be interdicted. The December 2010 application came before Steenkamp J and he dismissed the application with costs. Steenkamp J found, *inter alia*, that the matter did not fall into a category of exceptional cases as contemplated in the matter of *Booyesen v Minister of Security*.² Steenkamp J took into account that allegations of misconduct were put to Malehopo on 30 August 2010, that these allegations were amended in November 2010 and that Malehopo was given supplementary documentation. Steenkamp J found that it took Malehopo an ‘extraordinary long time’ to approach the Court on an extremely urgent basis. Steenkamp J did however proceed to consider the merits of the application and then dismissed the application with costs.

5 In relation to the alleged urgency, Malehopo’s position in the current application has not improved.

6 Malehopo comes before this Court with a multi-pronged attack on the propriety of the proceedings of the disciplinary hearing. These may be summarised as validity of the proceedings, the authority challenge in relation to SASCOC and its constitution, the non-alleged compliance with the disciplinary code of the ASA, the alleged unlawful suspension, the alleged illegality of action taken by the SASCOC, the chairman of the disciplinary hearing and the administrator. It is also alleged that the chairman is biased. It is hard to imagine a fuller challenge to continued disciplinary proceedings. In relation to the authority challenge Malehopo claims that he has always disputed the authority of the SASCOC and that this application was launched after it became clear to him during the

¹ 66 of 1995 (LRA).

² [2011] 1 BLLR 83 (LAC).

cross-examination of one du Plooy that, notwithstanding statements to the contrary, SASCOC was the driving force behind the allegations and disciplinary hearing against him. This allegation is simply not sustainable. On or about 11 April 2011, Malehopo raised an authority issue before the chairman. A ruling was made on that day and the chairman gave his written reasons on 18 April 2011. Since 11 and 18 April 2011 Malehopo continued his participation in the hearing. It is not part of Malehopo case that on 11 or 18 April 2011 he conveyed to the chairman that he could no longer participate and submit himself to the proceedings of the hearing for lack of authority. Far from it, further dates were agreed for the continuation of the proceedings. Those dates included 12 and 15 April 2011, 26, 27 and 31 May 20011 and 7 to 9 June 2011. Malehopo has come before this Court claiming that there is in the offing an authority challenge yet to be launched and the disciplinary hearing should be interdicted pending such a challenge. Malehopo in this application now says that he 'intended to review' the ruling made by the chairman on 11 April 2011. However, he has done nothing since 11 April 2011 to launch such a review. On any reckoning Malehopo's conduct amounts to an abuse of the processes of this Court.

7 I do not propose to dwell on the alleged unlawful suspension as a ground for interdictory relief. Malehopo was suspended on 16 November 2009. He now claims that he was suspended by SASCOC, an entity that is not his employer and which, so he says, does not have the power and authority to suspend him. During the period 16 November 2009 to 24 May 2011 (the date on which the notice of motion in this matter was signed) Malehopo took no steps to approach a Court to challenge the alleged unlawful suspension on the basis for lack of power or authority. Further at no time has Malehopo referred an

alleged unfair suspension dispute to the CCMA or a bargaining council. It is wholly unacceptable that a party in Malehopo's position can do nothing about an alleged unlawful suspension for so long and then on the eve of the continuation of a disciplinary hearing approach this court for urgent interdictory relief. On this score also, the application falls to be dismissed with costs. Malehopo's conduct displays a disturbing degree of abuse of the processes of this Court.

8 It is telling that notwithstanding the judgment of Steenkamp J of December 2010 Malehopo, persists with the challenge based on section 188A of the LRA.

9 From no later than 25 August 2010, Malehopo was aware of the involvement of SASCOC allegations of misconduct against him. The fourth respondent, Mr Raymond Mali (Mali) was appointed as the administrator of ASA by SASCOC during November 2009. The fact of the suspension of the ASA's board of directors in November 2009 and Mali's appointment as administrator was known to Malehopo since November 2009. Mali's involvement in the disciplinary proceedings and the hearing was known to Malehopo since November 2009. Between November 2009 and launching of this application on 26 May 2011, Malehopo did not approach a Court to challenge the lawfulness of the suspension of the board, the decision to suspend him, to bring allegations of misconduct against him and to convene and hold a disciplinary hearing. He now seeks, *inter alia*, an order interdicting the continuation of the disciplinary hearing pending an application or action to set aside the full range of decisions and proceedings that lead to his suspension and the disciplinary hearing and that he be ordered by this Court to institute such an application or action within 30 days.

10 Malehopo's conduct and approach are untenable. In the nearly 17 months since November 2009 he had every opportunity to do that which he proposes to do now but has to date failed to do. His excuse is that he did not do it previously because only when du Plooy gave evidence at the disciplinary hearing did it become apparent to him that it was SASCOC and not the ASA who instituted disciplinary proceedings against him is simply not good enough.. Malehopo, knowing that he has grave problems with urgency (that knowledge having supplemented by his experience in the December 2010 application before Steenkamp J) has desperately sought to create urgency out of nothing.

11 Our courts have repeatedly held that the Labour Court must be slow to intervene in pending and ongoing disciplinary proceedings. This application was launched on 26 May 2011 in circumstances where the hearing was scheduled, by agreement, to proceed on 31 May 2011. Malehopo waited until the day before the hearing to seek an order that would put a stop to the already commenced disciplinary hearing. Malehopo's case must fail on urgency. Malehopo's conduct in launching these proceedings has raised serious concerns with me. As to costs, Malehopo's conduct as described above cannot be tolerated and is certainly not to be encouraged.

12 In the circumstances I made the following order:

12.1 The application is dismissed for lack of urgency

12.2 The Applicant is ordered to pay the costs on the attorney own client scale.

VAN VOORE AJ

Appearances:

For the Applicant : Adv.Mphahlele

Instructed by : Makafula & Verster

For the Respondent : Adv.Mosam

Instructed by : Jay Reddy

LABOUR COURT