

LABOUR COURT OF SOUTH AFRICA
(HELD AT BRAAMFONTEIN)

Case: J982/11

In the matter between:

TRANSPORT EDUCATION TRAINING AUTHORITY

Applicant

and

SIBABANTU GLADYS SEGOMOCO

Respondent

JUDGMENT

LAGRANGE, J:

Background

[1] This is an urgent *ex parte* application. The respondent in the matter, a former employee of the applicant, allegedly has had in her possession certain personnel files belonging to the applicant since early 2011. She was dismissed by the applicant on 9 March 2011, by which stage return of the documents had already been requested from her, but she had denied having them in her possession.

[2] About 9 March 2011, the respondent sent a letter of complaint to the Minister of Higher Education and Training in which she made various allegations about a variety of corrupt practices at the applicant. Among those complaints, were allegations relating to the same personnel whose files were missing. In the applicant's belief this served as confirmation that the respondent did have the files in question. On 22 March 2011 the respondent referred an unfair dismissal dispute to the CCMA. I was advised from the

bar by the applicant's representative, Mr Goldberg, that this claim has been set down for arbitration in the near future, but this does not appear on the papers.

[3] The applicant cites various provisions of the respondent's contract of employment and the applicant's policies which make it clear that the respondent has no right to retain any documents or information belonging to the applicant and should have returned them. There is no reason to doubt the applicant's rights in this regard. The real issue that must be decided is urgency.

[4] This particular urgent application was heard on the same day by Van Niekerk J who had dismissed another application in this court, which was also brought on an urgent *ex parte* basis. That application was for an Anton Piller order, under case number JS 424/2011. That application was removed from the roll for lack of urgency.

[5] From the court file it would have seemed that a statement of case had been filed by the applicant because the statement of case was lodged in the court file, but Mr Goldberg confirmed this morning that it had not been served on the respondent. In the statement of claim, the applicant seeks the following relief, in summary:

- a. A declaration that the respondent has breached the provisions of her employment contract.
- b. An interdict restraining her from disclosing information relating to the applicants staff, in which the applicant has a propriety interest.
- c. An order directing the respondent to return information, documents and files of the applicant in her possession.

[6] This application essentially seeks the same relief, but on an interim basis pending the outcome of the action to be instituted by the statement of claim. Because the application has not been served on the respondent, the respondent's first opportunity to oppose the matter will be after the court grants an interim order compelling her not to disclose the information to third parties and to return the information in her possession.

Urgency

[7] The basis on which the applicant brings this application as an urgent matter is threefold. Firstly, the applicant fears that the information and documentation the respondent has in her possession may be “hidden, destroyed or in some manner spirited away” by the time the relevant case comes to trial or reaches the discovery stage. The applicant takes the respondent’s failure to comply with its previous demands to return the items in question as an indication that this fear is well founded. I note that this fear should have manifested itself by March already. The applicant goes on to say that it has a genuine fear that the respondent will not hesitate to destroy the files and documents once she becomes aware of its intention to obtain the same by means of its pending action.

[8] Secondly, the applicant submits that the matter is urgent because it has exhausted all reasonable avenues to try and obtain the items in question. Once again this was already the case some months ago.

[9] The applicant further claims that it was only after the letter to the Minister and enquiries from the newspaper, City Press that it became “more certain” that the respondent had the items in her possession. By way of elaboration it should be mentioned that on 31 May 2011 the applicant received an enquiry from a journalist at City Press who was preparing a story on allegations of irregular conduct made against three senior officials of the applicant, including its CEO.

[10] The City Press enquiry does not appear to refer to any allegations which were not already mentioned in the letter to the Minister. Accordingly, there is nothing material in the way of information about what the respondent might have in her possession which the City Press enquiry reveals, and the state of the applicant’s knowledge of this was to all intents and purposes no different from what it was when the complaint was lodged with the Minister.

[11] It would seem that the real reason that this matter has been brought before court on an urgent basis at this time, relates to the applicant’s concern that respondent will

provide information to the media, which may result in the publication of articles placing the applicant in a bad light. If the prospect of such publication was not present, it would be much more difficult to discern the applicant's reasons for instituting these proceedings on an urgent basis at this point in time. The reason I say this is that if the applicant's main objective is to obtain return of the items from the respondent, then there is no reason why proceedings should not have been instituted as early as March this year to achieve this. Regarding the applicant's fear that the respondent may destroy the files in question, I am not persuaded that there is sufficient evidence to support the reasonableness of such an apprehension, even if the applicant is saying that the mere fact she became aware of its vindictory proceedings would be sufficient to trigger such action.

[12] If the respondent indeed is attempting to further publicise her complaints against the applicant by feeding information to the media, it seems to me that there would be every reason for her to preserve the same, in order to defend any defamation claim or proceedings to prevent publication, brought jointly against her and the media institution in question. Secondly, the respondent has been aware since February this year that the applicant believes she has the material in the position and has demanded its return. If she was afraid that the applicant may take steps to obtain material it is equally possible she would have destroyed it at that stage. Assuming she has not yet done so, as the applicant believes, it stands to reason that this is because she requires the information to support her claims in the media and to the Minister. In this regard it must be mentioned that in closing her letter to the Minister she states: "Evidence is available when required and I can be reached at the address given above, or by telephone..." To make good on this promise to the Minister, it would hardly be in her interests to destroy the very information she says she has.

[13] In the light of the above, I am not persuaded that there have been any recent developments which now justify the applicant bringing this application on an *ex parte* urgent basis. I have also had sight of the contents of the file in the Anton Piller application and it appears that on the question of urgency the same factors were relied upon by the applicant to justify the curtailment of the normal procedural rules of this

court. Mr Goldberg argued that even though there was nothing on the face of it to distinguish the urgency of this application from the previous one, I should have regard to the fact that the Anton Piller application entailed a request for more exceptional relief, whereas the relief sought in this application is of a more run-of-the-mill character. It is possible to envisage situations in which urgency in respect of one type of relief might be justified but not for another form of relief.

[14] In this instance however, I am not convinced that there is any distinction which markedly distinguishes the urgency of this application from the urgency in the Anton Piller application. Both applications were brought as interim measures, with a view to instituting action to recover the information in the respondent's possession. Had the Anton Piller application been successful, it would have had the effect of the Sheriff removing the information from the respondent. By contrast, the relief sought in this application would result in the information being returned to the applicant. In either event, the information would no longer be in the respondent's possession. In both cases, it would seem that it was the threat of publication of some part of the information which spurred the applicant to action.

[15] In passing, it would seem to me that if the real concern is the prospect of adverse articles in the press, then the appropriate relief the applicant ought to be seeking, is an undertaking from the media institution in question not to publish information of the applicant provided to it by the respondent, failing which an application to prevent such publication could be launched in the High Court in which the respondent would be joined. I say this because, even though the applicant is bringing an action based on the respondent's employment contract, the principal harm which the applicant now seeks to prevent on an urgent basis is the wider publication of such material and accordingly it is an action or application relating to its rights to prevent such publication, and not simply its rights to have the physical information returned to it, which is the real thrust of the relief it seeks. This much is made clear by a copy of a purported e-mail, submitted this morning by Mr Goldberg without a covering affidavit. The e-mail was apparently sent to the City Press on third June 2011 requesting the newspaper to hold over publication of

the story for "a few days in order to allow our clients the opportunity to comment further" on the respondent's allegations.

[16] Be that as it may, I am not persuaded that the applicant has demonstrated sufficient urgency in this matter, for the reasons stated above and accordingly the matter is removed from the roll.



R LAGRANGE, J

JUDGE OF THE LABOUR COURT

Date of hearing: 7 June 2011

Date of judgment: 8 June 2011

For the applicant: Mr Goldberg