

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN

Not Reportable
CASE NO: J1351/11

In the matter between:

MORULE, TIRELO CRESSY

Applicant

and

ROAD TRAFFIC MANAGEMENT CORPORATION

Respondent

Date of hearing: 15 July 2011

Date of Judgment: 18 July 2011

J U D G M E N T

VAN NIEKERK, J:

[1] This is an urgent application initially brought on Friday, 15 July 2011, in which the applicant *inter alia*, sought to interdict the first and fourth respondents from proceeding with a disciplinary inquiry scheduled to commence at 10:00 on the same morning.

[2] The background to the application was canvassed by me in the ruling I made in an urgent application heard on 14 July 2011, under case number J 304/11, an application that was dismissed on 15 July 2011.

[3] I dealt with the background facts at some length in that ruling and do not intend to repeat them for present purposes, save to say that when the matter was called on 15 July, Mr Scholtz, representative of the applicant, advised the Court that the applicant had been handed a letter in terms of which she had been advised by the first respondent of her dismissal from its employ.

[4] Mr Scholtz persisted in his contention that the dismissal was of no force in effect, for the same reasons provided by the applicant in her application to interdict the inquiry. In these circumstances, the application was postponed to today to enable the applicant to file a Supplementary Affidavit should she so wish, dealing with events of the morning of the 15th.

[5] Consequent on the filing of the Supplementary Affidavit, this morning the applicant now seeks an order to the effect or to seek what is in effect, a declaratory order to the effect that the decision to dismiss her is of no force in effect and that she remains employed by the first respondent.

[6] The basis of the application is a contention that in a ruling made in this matter by my brother Molahlehi on 10 March this year. When the Court held that the appointment by secondment of the Acting CEO of the first respondent was invalid and that it necessarily followed that the disciplinary inquiry convened into allegations of misconduct levelled against her, was unlawful.

[7] It is correct that in paragraph 9 of the Court's order issued on 10 March 2011, the Court held that the appointment of the fifth respondent in that application as Acting CEO was irregular and invalid and that any decision taken by him in relation to the institution of the disciplinary proceedings against the applicant, was unlawful and invalid.

[8] It is also correct that that ruling is the subject of a pending application for leave to appeal. Be that as it may, it seems to me that in the present matter, the real issue is whether it is appropriate for this Court in proceedings instituted on an urgent basis and in which a declaratory order is sought as to the authority upon which the disciplinary proceedings were initiated, to grant the order sought.

[9] In my view, this is not a matter that warrants determination today on an urgent basis. Judge Molahlehi has filed his reasons for judgment and these were made available to the parties, I understand, during the course of last week and the hearing of the application for leave to appeal, is therefore imminent.

[10] The relief sought in this application is entirely contingent on the outcome of the application for leave to appeal and a final decision in any subsequent appeal process is on the question of authority. Judge Molahlehi has indicated to me his intent on entertaining the application for leave to appeal on an expedited basis, and I am

authorised to convey that to the applicant in terms of this ruling.

[11] It also remains open to the applicant should she so wish to have any further appeal processes expedited in accordance with the procedures that are ordinarily applicable.

[12] I come to this view specifically having regard to the context of this matter and the charges which were brought against the applicant in September last year. This is the fourth urgent application brought by the applicant that relates to those charges in the disciplinary process initiated against her.

[13] In my view, the interest of justice is best served by having the issue of authority dealt with definitively in terms of the appeal process that has already been invoked, rather than by way of urgent motion proceedings.

[14] For these reasons, I intend to remove the matter from the roll with no order as to costs. This leaves the applicant free to pursue the appeal and to defend the order made by Molahlehi J which will finally determine the issue of authority, in particular, the question whether the disciplinary action against her was indeed authorised.

[15] As I have indicated, my ruling in this matter does not represent a finding made in regard to the question of authority or indeed in respect

of any other matter that is raised by these proceedings.

[16] The view I take is based solely on the fact that I do not consider it in the interests of justice to make a declaratory order which is, as I have said, definitive of the question of authority.

[17] So for those reasons I make the following order,

1. The application is removed from the roll.
2. There is no order to costs.

VAN NIEKERK J