

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG

Not reportable

CASE NO J 2757/011

In the matter between:

DR JOHNSON JERRY MAHLANGU

Applicant

and

PREMIER: MPUMALANGA PROVINCIAL

GOVERNMENT

First Respondent

MEC: DEPARTMENT OF HEALTH

MPUMALANGA PROVINCIAL GOVERNMENT

Second Respondent

Date of application: 2 December 2011

Date of judgment: 5 December 2011

JUDGMENT

VAN NIEKERK J

[1] This is an urgent application in which the applicant seeks a final interdict declaring his suspension and a pending disciplinary hearing unlawful.

[2] The applicant was placed on suspension on 4 November 2011 after being afforded an opportunity to furnish reasons why he should not be suspended. The basis for the suspension and the subsequently convened disciplinary enquiry is a forensic audit report that had found gross financial irregularities in the Department of Health, which is headed by the applicant. The disciplinary enquiry that is the subject of this application was to have commenced on 28 November 2011, and has been postponed pending the outcome of these proceedings.

[3] The respondents contend that the application is not urgent. They rely *inter alia* on the proposition that this court, while it has the powers to intervene in domestic disciplinary hearings, will do so if and only if the circumstances are exceptional, and a grave injustice not capable of being remedied, would result (see, for example, *Mahlalela v Officer of the Pension Funds Adjudicator* (2011) 32 ILJ 1932 (LC)). The respondents submit that the present application does not fall into this category.

[4] In the present instance, the applicant relies primarily for the relief that he seeks on a lack of authority on the part of the first respondent to discipline him. This is not a point that has been raised before or considered by the chairperson of the disciplinary hearing, even less is it the subject of a ruling. The applicant has, in effect, bypassed domestic proceedings to come to this court to seek a final order in respect of an issue that ought, in the first instance, to be the subject of a ruling in those proceedings. It may well be that the chairperson of the enquiry is prepared to entertain the applicant's point and that he finds merit in it. In that event, it would be a simple matter to have the charges re-issued by the relevant authority. I express no views on this issue – for present purposes, it need only be said these proceedings are premature, and the application stands to be dismissed on that basis.

[5] Finally, there is no reason why costs should not follow the result.

I accordingly make the following order:

1. The application is dismissed, with costs.

ANDRE VAN NIEKERK

JUDGE OF THE LABOUR COURT

Appearances:

For the applicant: Mr S Mhlungu, Werksmans Attorneys

For the respondents: Adv P Nkuta.