



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

CASE NO: J 721/15

In the matter between:

MARY-ANN RATHOGO

Applicant

And

DEPARTMENT OF TELECOMMUNICATIONS

AND POSTAL SERVICES

First Respondent

ADVOCATE MOOKI

Second Respondent

ADVOCATE SM SHABA

Third Respondent

Heard: 10 April 2015

Delivered: 17 April 2015

Summary: (An applicant may not rely on self-created urgency when seeking urgent relief).

JUDGMENT

LALLIE J

Introduction

[1] The applicant launched this urgent application for an order in the following terms:

- “2 interdicting and restraining the Respondents from proceeding with the disciplinary proceedings set down to be heard on 10 April 2015 pending the First Respondent complying with prayer 3 below;
- 3 ordering the First Respondent to provide the applicant with all relevant documents required to prepare for the hearing of the disciplinary proceedings within 7 days of this order being granted;
- 4 ordering the recusal of the Second Respondent from the disciplinary proceedings;
- 5 directing the First and Second Respondents to pay the costs of this application on attorney and own client scale;”

[2] The applicant is employed by the first respondent as a personal assistant to the Deputy Director General: Administration. In November 2014 the first respondent informed the applicant of its intention to subject her to a disciplinary enquiry as a result of serious allegations of misconduct which were levelled against her. The disciplinary enquiry was scheduled for 9 and 10 April 2015. On 23 January 2015, the applicant and the first respondent held a preparatory conference which was presided over by the third respondent, in his capacity as the chairperson of the disciplinary enquiry. They reached an agreement on the conduct of the disciplinary enquiry. In terms of the agreement the first respondent was required to furnish the applicant with its bundle of documents on or before 30 January 2015. The applicant submitted that only a portion of the documents were delivered at the offices of her attorneys on the agreed date. The applicant exercised her right in terms of the agreement and requested further documents on 9 February 2015. The first respondent was required to have replied to the applicant's

request on or before 11 February 2015. Both parties were to request further particulars from each other by 16 February 2015 and the requests, in the event of them being made would have been applied to by 20 February 2015. The applicant was required to file with the third respondent her motivated preliminary points, if any, by 27 February 2015, a step she submitted she was unable to take owing to the first respondent's failure to reply to her request for further documents. The first respondent was to respond to the preliminary points, had they been filed, on or before 6 March 2015. The applicant submitted that it abandoned the timetable which the parties had agreed on and considered it no longer binding as a result of the first respondent's failure to comply with it.

[3] On 9 April 2015 the date on which the disciplinary enquiry should have proceeded, the applicant, through her counsel, advised the third respondent that the disciplinary enquiry was not ripe for hearing as the first respondent had failed to provide the applicant with documents she had requested in breach of the agreement. The agreement, including the dates on which the disciplinary enquiry should have proceeded had, in the applicant's view, fallen away. He sought a postponement of the disciplinary enquiry. The third respondent refused to postpone the disciplinary enquiry on the grounds that the applicant had been finished with all the documents in support of the first respondent's case as early as 20 February 2015. He made a ruling that the disciplinary enquiry should proceed on 10 April 2015 in terms of the agreement as the disciplinary enquiry was not contingent on the only outstanding document, the SIU report. In response to the ruling the applicant's counsel informed the third respondent that the applicant would not attend the disciplinary enquiry but would exhaust other alternative remedies which turned out to be the present urgent application.

[4] The first respondent opposed this application mainly on the grounds of lack of urgency and exceptional circumstances which merit this court's interference in incomplete disciplinary proceedings. In addition, it submitted that the applicant failed to make the necessary averments for the granting of an interdict. The first respondent submitted that on 20 February 2015 it provided the applicant

with all the documents that she needed. Its response for not furnishing the applicant with the SIU report was that it was not going to rely on it. It directed her to acquire it from the SIU. It is common cause that by 20 February 2015 the applicant was aware that the first respondent had breached the agreement by missing the deadline for furnishing her with the necessary documents. She should have, by 27 February 2015, filed an objection with the third respondent who would have dealt with the matter immediately. She did not do so. She conceded that the matter did not move forward meaningfully between 20 February 2015 and 30 March 2015 when a letter was forwarded on her behalf to the first respondent seeking extracts of the SIU report which is alleged to implicate her in some form of wrong doing.

[5] On the applicant's own version an agreement was reached to deal with any party's failure to comply with it. Had the applicant complied with the agreement she would have brought the first respondent's failure to provide her with documents to the attention of the third respondent by 27 February 2015. The only reason she proffered for not complying with the agreement was that the first applicant flouted it. The applicant was not at liberty to take a unilateral decision that the agreement was no longer binding after she had failed to assert her right before the third respondent. Any decision by the third respondent on the first respondent's failure to comply with the agreement would have been taken shortly after 27 February 2015 long before the 9 April 2015 the date on which the disciplinary enquiry was scheduled for hearing. The applicant gave no valid reason for the delay in taking steps to compel the first respondent to discover the portions of the SIU support which implicated her. The only reason the applicant approached this court on an urgent basis is that she created her own urgency on which she may not rely.

[6] The applicant conceded that she did not raise the issue of the recusal of the second respondent with the third respondent. She therefore raised it for the first time in this application. She offered no explanation for not raising it on 9 April 2015 when she applied for the postponement of the disciplinary enquiry before the third respondent. She sought to rely on *Booyesen v the Minister of*

*Safety and Security and Others*¹ where it was held that this court has jurisdiction to interdict disciplinary action in exceptional cases. She however failed to prove exceptional circumstances which required this court to deal with the issue of the second respondent's recusal. She also did not justify this court's intervention on an urgent basis.

[7] I could find no reason for costs not to follow the result.

[8] In the premises the following order is made:

8.1 The application is struck from the roll for lack of urgency.

8.2 The applicant is ordered to pay the first respondent's costs.

Lallie J

Judge of the Labour Court of South Africa

¹[2011] 1 BLLR 83 (LAC)

APPEARANCES

For the Applicant: Advocate Mokutu

Instructed by: Matlala Von Me tzing

For the First Respondent: Advocate Mooki

Instructed by: State Attorney

LABOUR COURT