



REPUBLIC OF SOUTH AFRICA

Not reportable

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: J 2099/15

In the matter between:

MOTSEMME ELIE TSIETSI

APPLICANT

and

CITY OF MATLOSANA LOCAL MUNICIPALITY

FIRST RESPONDENT

RAMAGAGA SETH (ADMINISTRATOR)

SECOND RESPONDENT

**MAAKE MJC (CHAIRPERSON: DISCIPLINARY
ENQIRY)**

THIRD RESPONDENT

Heard: 3 November 2015

Delivered: 4 November 2015

JUDGMENT

VAN NIEKERK J

- [1] This is an urgent application in which the applicant seeks to interdict the respondents from continuing with disciplinary proceedings against him, pending the outcome of proceedings before the High Court. In those proceedings, the applicant seeks, amongst other things, to challenge the second respondent's authority to institute disciplinary proceedings against him, as well as the legality of the proceedings themselves. In broad terms, the basis of the applicant's challenge is that second respondent, appointed by the MEC for local government and human settlement to administer the City of Motlosana Local Municipality, was in validly appointed and therefore had no authority to institute disciplinary proceedings against him.
- [2] The disciplinary proceedings in question commenced on 15 April 2015, when the applicant was charged with 106 counts of misconduct. On 24 April 2015, the disciplinary hearing commenced before the third respondent, an independent chair person. On this occasion, the applicant's legal representative raised a series of challenges to the legality of the proceedings. On 23 May 2015, the third respondent forwarded his ruling to the parties. In essence, he held that he did not possess *locus standi* to determine the issues, and that the applicant ought to indicate within seven days whether it was his intention to challenge the legality of the intervention by the MEC and the legality of the disciplinary proceedings in an appropriate court.
- [3] On 27 May 2015, the applicant filed an urgent application in the High Court, Gauteng Division: Pretoria. That application was heard on 9 June 2015, when it was struck from the roll for lack of urgency. The applicant has since sought to pursue the application in the normal course. On 9 September 2015 the applicant

filed a joinder application, seeking to join the National Council of Provinces to the proceedings. That application was granted on 16 October 2015. The registrar of the High Court has not allocated a date for the hearing of the application, and there is no indication as to when the application might be enrolled.

- [4] This brief chronology ought to be interrupted by noting that on 5 March 2015, the applicant launched an urgent application in this court in which he challenged his precautionary suspension on broadly the same grounds which form the subject of the application pending before the High Court. On 13 March 2015, this court dismissed the application, primarily on the basis that it had no jurisdiction to make findings on the validity or otherwise of an intervention in terms of which the municipality was placed under administration.
- [5] The disciplinary proceedings against the applicant were resumed on 7 September 2015. On that occasion, the applicant failed to attend the hearing. On 14 September 2015, the chairperson ruled that the hearing continue, on the basis that while the applicant had given an undertaking to challenge the validity of the intervention in April 2015, the matter had not yet been set down for hearing after having been dismissed during June 2015 for lack of urgency. The proceedings were thereafter set down for 12 to 16 October 2015. In that hearing, the applicant brought an application to stay the proceedings until the application pending before the High Court was determined. In a ruling issued on 12 October 2015, the chairperson refused to stay the proceedings and ordered that the enquiry should proceed. The enquiry was thereafter postponed to 5 November 2015. In essence, it is resumption of the enquiry on the state that the applicant seeks to interdict.
- [6] Since the decision of the Labour Appeal Court in *Booyesen v Minsiter of Safety and Security* [2011] 1 BLLR 83 (LAC) it is clear that this court has the jurisdiction to intervene in incomplete disciplinary processes, but that it should not ordinarily do so. The court has a discretion in this regard, to be exercised having regard to the facts of each case but only in truly exceptional circumstances. Among the

factors to be taken into account are whether the failure to intervene would lead to a grave injustice or whether justice might be attained by other means.

- [7] The privacy right on which the applicant relies, in effect, is his right to disciplinary proceedings are lawful and valid. In this regard, Mr Scholtz, who appeared on behalf of the applicant, submitted that the applicant had established a *prima facie* case before the High Court and that of this serves as a basis for intervention by this court. I am not persuaded that it is for this court to take a view on the merits of the application pending before the High Court. The fact that those proceedings remain pending and are unlikely to be determined in the short term is a factor that this court must necessarily take into account. Other relevant factors, it would seem to me, are that the commencement of the disciplinary proceedings initiated against the applicant have since their inception during April 2015, some six months ago, been delayed solely on account of the applicants points in *limine* and the litigation initiated by him. In the interim, it is not disputed that the applicant remains on suspension, drawing a salary of some R 100,000 each month.
- [8] The facts of the present case can be distinguished from those in *McBride v Minister of Police* (J 1396/15, and delivered on 24 July 2015) in which Basson J stayed a disciplinary hearing pending the final determination of a constitutional challenge launched in the High Court. In that matter, the constitutional challenge was a matter of some importance and supported by two prospective *amici curiae*. Heads of argument had been filed and the application was to be heard in less than a month from the date on which the application seeking a stay of the disciplinary hearing were initiated in this court. In the present instance, there is no indication as to when the applicant's challenge to the validity of the intervention and the second respondent's appointment and also to the validity of the disciplinary proceedings themselves will be heard. Further, I must necessarily bear in mind that the applicant approaches this court on an urgent basis to interdict a process initiated some six months ago, making the same allegations that were dismissed by this court in March 2015.

- [9] Insofar as the applicant contends that he will suffer irreparable harm should the relief sought not be granted, the only harm to which he points is the prospect of him having to incur wasted costs in respect of the present disciplinary hearing, should the disciplinary process be declared invalid and set aside. The applicant is also concerned that should the current disciplinary proceedings not be interdicted, he would face the possibility of cross-examination for no good reason. He also observes that should the proceedings continue and should they result in a finding against him, he faces the prospect of prejudice in the form of exclusion from employment in any municipality for a period of 10 years. While these all likely consequences should the disciplinary hearing proceed, none of them in my view constitute irreparable harm. In the event that the application pending before the High Court is granted, whenever that might be, that would have the effect of restoring the applicant to the position in which he would have been had the disciplinary proceedings not been instituted.
- [10] What weighs heavily in the present matter is the need for an expeditious disciplinary hearing. The code of good practice next to the Labour Relations Act contemplates that workplace disciplinary processes be relatively informal, thus avoiding the protracted proceedings evidenced in the present instance. It is in the interests of the ratepayers of the first respondent, and indeed, in the applicant's interests, that the substance or otherwise of the charges brought against him be determined without further delay. The enquiry is chaired by an independent person (a member of the Pretoria bar) and both parties are represented by attorneys. Between them, they ought to appreciate the merits of a speedy finalisation of the disciplinary hearing and the disadvantages, both to the parties and the ratepayers, of costly, protracted proceedings.
- [11] In summary, having regard to all of the relevant facts, I am not persuaded that the present matter is one where failure to intervene would lead to a grave injustice. The application therefore stands to be dismissed.
- [12] There is no reason why costs should not follow the result. The applicant has included in the notice of motion a prayer for costs on the punitive scale. On the

principle of reciprocity, Mr Sekhula, who appeared for the respondents, sought a similar order. There is no basis for an award of costs on the scale as between attorney and client but equally there is no reason to deny the respondents their costs on the ordinary scale.

I make the following order:

1. The application is dismissed, with costs.

ANDRÉ VAN NIEKERK
JUDGE OF THE LABOUR

COURT

APPEARANCES

For the Applicant: Mr. F. Schöltz of Schöltz Attorneys

For the Respondent: Adv. P Sekhula, instructed by Waks Silent Attorneys