



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

CASE NO: JR122/2017

In the matter between:

BONGA BALDWIN MAJOLA

Applicant

And

**MEMBER OF THE EXECUTIVE COUNCIL FOR
ROADS AND TRANSPORT; GAUTENG PROVINCIAL
GOVERNMENT**

First Respondent

**HEAD OF TRANSPORT FOR ROADS AND
TRANSPORT: GAUTENG PROVINCIAL
GOVERNMENT**

Second Respondent

Heard: 02 February 2017

Delivered: 21 February 2017

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

- [1] The Applicant (in Part A) of his Notice of Motion seeks an order interdicting the Respondents from transferring him from his position as Chief Director: Registration and Operating Licensing within the Transport Branch to a position of Chief Director without portfolio, pending the determination of an application (Part B) to review and set aside the decision of the second

Respondent (Swartz) taken on 30 August 2016, to transfer him. The application in respect of Part B was still to be launched by the Applicant. The Respondents opposed the application.

Background:

- [2] The Applicant is employed at post level 14 and is a member of the Senior Management Services (SMS). He started his employment on 01 April 2008 as Chief Director and reported to the Deputy Director-General (Transport Branch). His responsibilities included overseeing the regulation and control of public transport, management of Registration and Monitoring' Operating Licensing, and also of the Provincial Regulatory Entity Directorates. Central to his position is the management and overseeing of road based public transport by registering public transport operators; monitoring public transport operators, ensuring compliance; issuing operating licenses and management of the Gauteng Provincial Regulatory Entity.
- [3] The Applicant alleges that his right to fair labour practices has been violated, and that he has been targeted since 2010 whenever he exposed certain irregular conduct within the department, by either being transferred to another post, or being suspended. On 4 June 2015, he was summarily suspended for 15 months based on allegations surrounding misconduct related to fruitless and wasteful expenditure. This was after he had opened a criminal case of fraud pertaining to the salary payments of certain officials without the requisite documentation or verification of their salary claims. The charges against him were dismissed on 15 August 2016 following a disciplinary hearing, resulting in his suspension being uplifted.
- [4] Upon his return on 29 August 2016, he had made a protected disclosure in terms of the Protected Disclosure Act¹ to the First Respondent (MEC) in respect of irregular expenditure caused by Swartz in contravention of the Public Finance Management Act and Treasury Regulations.

¹¹ Act 26 of 2000

[5] The Applicant further averred that on 30 August 2016, he met Swartz who had expressed his displeasure at his return on 16 August 2016 immediately after he was cleared of the charges against him. Swartz had informed him that his suspension ought not to have been uplifted as he should have waited for instructions before reporting for duty in view of the Department's intention to approach this Court to review and set aside the outcome of the disciplinary hearing. The Applicant was then informed *inter alia* that he was going to be transferred from his post to that of Chief Director without portfolio, and was to be temporarily assigned new functions that were to be explained to him at a later stage. He was also furnished with a letter in this regard which read as follows;

'Dear Mr Majola

OUTCOME OF YOUR DISCIPLINARY HEARING

1. *We write the letter to you to inform you that the Gauteng Department of Roads and Transport (The Department) is considering the findings of Mr Moshwana including but not limited to whether it can take such findings on review.*
2. *We have taken notice of the fact that you have, notwithstanding the fact that you have not received any communication or instruction from us to return to work, nevertheless reported for work. We assume that you have done so as a result of the findings of Mr Moshwana and specifically his comment that your suspension ought to lapse. We are of the view that Mr Moshwana did not have the power to uplift your suspension, but nevertheless take note of the fact that he has purported to do so.*
3. *In the light of his ruling (the validity of which we reserve the right to challenge in a proper forum) and the fact that you have tendered your services, we now need to deal with the requirements of your position of Chief Director: Registration and Operating Licencing. In this regard we specifically refer to the requirement, of which you are well aware, that any person occupying that position must subject himself of herself to a security vetting exercise (for the appropriate security clearance) as stipulated by the national Strategic Alliance Act 39 of 1994 (the security vetting exercise).*

4. *You will recall that during 2014 the Department had instructed you on numerous occasions to subject yourself to the security vetting exercise. In the circumstances, you will readily appreciate that it is not possible for the Department to allow you to perform duties as Chief Director: Registration and Operating Licencing until such time that the security vetting exercise has been successfully finalised. To do so would mean that the Department is acting unlawfully.*
5. *In the circumstances, we have, in the meantime and pending the finalisation of the security vetting exercise, considered alternative positions and/or functions for you to occupy on a temporary basis, in a less demanding security clearance. We have obviously looked for the next most senior position that can be occupied by you having regard to your seniority. Furthermore, we confirm that the temporary move to an alternative position will not result in you losing your current earnings or benefits. It is as we emphasise temporary in nature pending the successful finalisation of the security vetting exercise. We confirm that you will temporarily occupy the position of Chief Director without portfolio, with functions to be outlined in a separate communication.*

However, should you prefer another position that also does not require a security clearance we are willing to consider that request.

6. *Insofar as the security vetting exercise is concerned you are hereby instructed to take such reasonable steps as may be necessary to comply with your obligations in that regard, including but not limited to completing such applications and submitting such documents, and to avail yourself for any engagement that may be required and as may be necessary to enable the State Security Agency to fulfil its mandate in this regard.*
7. *Should you require any assistance from us to enable you to comply with your duty to undergo the security vetting exercise you are to notify me immediately in writing so that we can finalise this exercise without further delay with a view to, depending on its outcome, allow you to return to your position.*
8. *Given the prolonged history of the security vetting saga we wish to put this matter behind us as soon as possible. We accordingly request that you provide us, by Friday 2 September 2016 with a clear plan on how you intend to ensure that you comply with your duties in that regard and to confirm that you will make sure that it is completed by the end of September 2016 or as soon as possible thereafter.*

9. We look forward to hearing from you urgently and confirm that you will in the meantime occupy the position of Chief Director without portfolio.

Your faithfully

Ronald Swartz

HEAD OF DEPARTMENT'

[6] The Applicant had responded by e-mail on the same day in which he had *inter alia*, stated that;

- a) in June 2015, he was suspended indefinitely and had referred a dispute to the Bargaining Council. As the dispute pertained to a protected disclosure, he had launched an application before this court (Under case number JS831/2015) and was still waiting for a trial date;
- b) He was cleared of all allegations against him by Mr Moshwana on 15 August 2016 after being on suspension for 15 months;
- c) His removal from his position was without regard to his rights, and there was no position of Chief Director without portfolio in the Department;
- d) Swartz did not have legal authority to transfer him or change his conditions of employment, and even if he had such authority, he could not act arbitrarily;
- e) He urged Swartz to immediately reverse his unlawful decision to transfer him to the non-existent position, and to do so by 2 September 2016, failing which he would have no option but to approach this Court on an urgent basis to review and set aside that decision.

[7] On 2 September 2016, Swartz responded to the Applicant's e-mail, and *inter alia*, stated that;

- a) It was worrisome that as soon as he had returned to work, he had threatened to go to court;
- b) That he had explained the reason why he could not continue to occupy his position in the light of the fact that he had not

- secured the requisite security clearance and had attempted to assist him to fulfil that requirement;
- c) That he had not indicated the steps he intended to take to fulfil the requirement, and had instead threatened legal action, which approach was unreasonable and unacceptable;
 - d) Swartz was not permitted to allow him, until he was granted top security clearance to continue in his position;
 - e) The decision to move him was not permanent and was not a transfer;
 - f) The invitation to discuss any alternatives still stood.

The submissions and evaluation:

- [8] The application is founded on the provisions of section 77 (3) of the Basic Conditions of Employment Act². The Applicant contends that the Respondents have effected a unilateral variation of his contract of employment and conditions of service; prevented him from performing his responsibilities and functions; and have acted unlawfully in transferring him from his post to the one without portfolio.
- [9] It is trite that for an applicant to be successful in an application for an interim interdict he must establish (i) a *prima facie* right, even though open to some doubt; (ii) a well-grounded apprehension of irreparable harm if the interim relief is not granted; (iii) absence of an alternative remedy; (iv) a balance of convenience in favour of granting the interim relief. Other than these requirements, the key question in such cases is whether the application deserves the urgent attention of this court.
- [10] The Respondents opposed this application based on various grounds. These are that;
- a) the matter was not urgent; alternatively
 - b) that the urgency was self-created;
 - c) that since the main issue pertained to a challenge of a transfer, the Court lacked jurisdiction to determine the matter;

² Act 75 of 1997

- d) that an interdict could not be granted in respect of a decision that was taken five months ago, and which had since been implemented;
- e) that the effect of granting the interdict would be to require the Respondents to do what is unlawful;
- f) that the Applicant has not complied with the provisions of section 35 of the Public Service Act³, and was accordingly precluded from approaching the Court for relief;
- g) the reassignment was neither unfair nor unlawful

The issue of security vetting:

- [11] The issue of the Applicant's security vetting is according to the Respondents, central to his removal from his position, whilst the Applicant holds the view that he was being merely targeted and victimised for exposing irregularities. In my view, if at the end, it is concluded that the reinstatement of the Applicant in his position would be unlawful in the light of the requirements imposed upon him by the State Security Agency and other legislative provisions to be dealt with shortly, this should be the end of the matter, irrespective of any findings on urgency.
- [12] The Respondents' main reasoning behind the moving of the Applicant from his position was that he had to have the required security vetting, which he had allegedly avoided over the past 4 to 5 years. It was argued on behalf of the Applicant that the issue of security vetting was a red herring, as the real reason was to retaliate against the Applicant after he had raised concerns surrounding malfeasance in the Department.
- [13] In summary, the Applicant contended that since 2010 when he first declined to recommend payments of various invoices of a specific service provider in the amount of some R29m, he has been subjected to various retaliatory measures by the Respondents whenever he raised concerns in the Department, necessitating that he approach various courts for protection. The latest retaliatory measure followed upon the protected disclosure he had

³ Act 103 of 1994

made on 29 August 2016 about irregular expenditure caused by Swartz in contravention of PFMA and Treasury Regulations. This had led to his removal from his post, prompting him to launch this application.

[14] In terms of the provisions of the National Strategic Intelligence Act⁴, the State Security Agency (SSA) has a mandate to perform counter intelligence and security screening investigations and vetting of employees. The provisions of the Public Service Regulations, 2001 further require of certain officials to subject themselves to a security clearance where the duties attached to their posts require such a clearance. The same requirements are contained in the SMS Handbook, which also lists the failure to comply with, or contravention of an Act, regulation or legal obligation, and refusal to obey security regulations as forms of misconduct⁵.

[15] I did not understand the Applicant's case to be that his position did not require of him to submit himself to a security vetting exercise. That exercise is a requirement for persons in his position, and also in line with clause 1.2.3 of his contract of employment and the legislative provisions mentioned above. He nevertheless contends that he has complied with those requirements. The Respondents however hold a different view.

[16] It is my view that there is no merit in the Applicant's contention that the raising of this requirement as a justification for his removal from his position is mere red herring. My conclusions in this regard are based on the following observations;

16.1 The issue of the Applicant's need for security vetting dates as far back as 2012 when he became aware of it. On 24 May 2013, the Gauteng arm of the SSA wrote a letter to the MEC, indicating that some officials within the department, including the Applicant might be implicated in the perpetuation of conflict in the taxi industry, and that there was a need for them to be subjected to security vetting to determine the extent of their involvement in the on-going conflict and to re-test their suitability

⁴ Act No 39 of 1994 (as amended by Act 67 of 2002)

⁵ See Annexure A to the SMS Handbook

for the critical positions they occupied in the department. In my view, the fact that the Applicant was not furnished with a copy of this correspondence from SSA, does not imply that the SSA did not raise those concerns necessitating his security clearance. Even if there might not be merit in the allegations raised by SSA, the fact remains that the Applicant was indeed required to subject himself to security vetting in terms of the provisions as already alluded to;

16.2 It took the Respondents until 04 October 2013 to act when Swartz wrote a letter to the Applicant requesting him to complete the necessary Z204 forms in compliance with these vetting procedures. He was asked to return the forms to the department's Security Management before 31 October 2013. It is common cause that the Applicant failed to act in accordance with the request;

16.3 On 25 June 2014, Izzy Machaba of the Department's Security Management informed the MEC in writing that the Z204 forms were initially given to all SMS members following upon a workshop held in 2012, and that the Applicant had missed the deadline as he had still not submitted the forms. It was reiterated that similar forms given to him on 4 October 2013; 29 April 2014 and 8 May 2014, and were followed up by e-mails on 05 and 24 April 2014, reminding him of the need to finalise the vetting exercise. Again, the Applicant failed to respond to these requests;

16.4 On 6 August 2014, Swartz wrote another letter to the Applicant reminding him of several attempts since February 2012 that he had to comply with the requirements of security vetting. Swartz instructed him to within five days, explain why a formal disciplinary could not be instituted against him in the light of his negligent and insubordinate conduct. Again, no response was forthcoming from the Applicant;

16.5 Swartz again on 13 August 2014 in an e-mail, advised the Applicant that previous communication was ignored, and he had until 15 August 2014 to provide reasons as per the previous written request. The Applicant responded in an e-mail on the same date, requesting an extension to furnish a written response by 21 August 2014. He gave reasons pertaining to his busy schedule since 8 August 2014 as to why he could not immediately respond to the request. On 9 September 2014, the Applicant was issued with a notice of precautionary suspension for his refusal, omission or neglect and/or failure to attend a compulsory security vetting, and for refusing, omitting or disobeying a direct lawful instruction from Swartz;

16.6 The Applicant's contention that he had complied with the requirements on 9 September 2014 by submitting his application for security clearance with the necessary documentation to the SSA's provincial offices in Centurion cannot in my view lead to a conclusion that he had been vetted. I did not understand his case to be that subsequent to the submission of the application, he was cleared by the SSA, and the mere submission and receipt of the application cannot equate to a clearance. There is nothing in his pleadings to suggest that he had made any follow up with SSA to establish whether despite the receipt of his application any progress had been made on his application, nor did I understand it to be his case that it was the responsibility of the Respondents to ensure that the exercise was completed. On the contrary, it appears that the Applicant was content to fold his arms since September 2014 when he last submitted his application;

16.7 At the time that the Applicant was placed on precautionary suspension on 09 September 2014, and subsequent to settlement agreement made an order of court under case number J2261/14, in terms of which his suspension was uplifted

with effect from 18 September 2014, he had still not obtained his clearance. As I understand the court order, which came about as a consequence of an agreement between the parties, 'the unlawful suspension of the Applicant' was lifted with immediate effect. This cannot by any means be deemed to have been a pronouncement on the issue of security vetting;

16.8 There is further no merit in the Applicant's contentions that the issue of security vetting could not have prompted his removal from his position on the basis that it has never been a situation in the Department that officials were transferred or moved from their position on account of security clearance not having been finalised, or that he has been reliably informed by his colleagues that currently, there were officials within the department and other departments in the Gauteng Province, who were still in the process of finalising their security clearance, and/or none of them had ever been transferred or prevented from performing their responsibilities and functions. This is so in that on the Respondents' version and further in the light of the material placed before the court, the Applicant has been requested since 2012 to sort out his security vetting, and as at the hearing of this application, he had not secured clearance.

16.9 It was only on 23 January 2017 as averred in his replying affidavit, that he had submitted all outstanding documents for the purposes of security vetting. This was some few days prior to launching this application, and it can only be an acknowledgement that indeed he still needed to be cleared.

16.10 The circumstances of the other officials within the department who are also not cleared are issues not before the court despite the Respondents' acknowledgement that indeed this might be the case. Be that as it may, the fact that other officials have not been cleared cannot in my view absolve the Applicant from his

own obligation to ensure that his own security vetting was finalised;

16.11 There is merit in the Respondents' contentions that the Applicant has clearly ignored requests since 2012 that he should subject himself to a security vetting exercise. Ultimately, the provisions of the Applicant's own contract of employment, and those of the National Strategic Intelligence Act, the SMS Handbook, and the Public Service Regulations, 2001 require of him to have secured his security clearance. As matters stand, he has not complied with these requirements, and as correctly pointed out on behalf of the Respondents⁶, to place him back in his position in contravention of these legislative provisions in the light of his position would be unlawful. Thus, any form of relief, whether interim or otherwise pertaining to reinstatement in these circumstances would not be competent.

Urgency:

[17] Rule 8 of the Rules for the Conduct of Proceedings in the Labour Court provide that;

- (1) "A party that applies for urgent relief must file an application that complies with the requirements of rules 7(1), 7(2), 7(3) and, if applicable, 7(7).
- (2) The affidavit in support of the application must also contain-
 - a) the reasons for urgency and why urgent relief is necessary;
 - b) the reasons why the requirements of the rules were not complied with, if that is the case; and
 - c) if a party brings an application in a shorter period than that provided for in terms of section 68(2) of the Act, the party must provide reasons why a shorter period of notice should be permitted".

⁶ In reference to Armaments Corporation of South Africa (SOC) Ltd v CCMA and Others [2016] 5 BLLR 461 (LC) at paragraphs 40-43

- [18] An Applicant that approaches the court on an urgent basis essentially seeks an indulgence and to be afforded preference, in order to prevent the prejudice and harm that may materialise or persist, if the conduct complained of continues. Central to a determination of whether a matter is urgent is whether the Applicant has in his founding affidavit, set forth explicitly, the circumstances which renders the matter urgent, and the reason why he or she claims that substantial relief cannot be attained at a hearing in due course. A failure to do meet these basic requirements in the founding affidavit would prove fatal.
- [19] Urgency is further dictated upon by the exigency and circumstances of the particular case, and it is trite that a matter cannot be regarded as urgent simply on the say-so of the Applicant. In equal measure, a kneejerk approach in truncating the time periods will not be tolerated⁷, nor will the courts countenance a belated approach for relief. Thus, it is expected that in order for any arguments on urgency to be sustained, the Applicant must have acted with due haste, when knowledge of the Respondent's prejudicial behaviour or actions is gained.
- [20] An Applicant that is well aware of the harm, and takes no steps over a protracted period of time, and then launches an urgent application, is likely to have its application struck from the urgent roll. Thus, to the extent that an Applicant wishes its matter to be accorded urgency, in the same token it is expected of it to have acted with the same urgency that the matter deserves, failing which the invariable conclusion to be reached is that any urgency claimed is self-created, as the prejudice or harm being allegedly suffered is not of such a serious nature to deserve the court's urgent attention. Acting in due haste however may not necessarily lead to a conclusion that a matter is urgent, bearing in mind other requirements of urgency to be looked at.
- [21] In this case, it is acknowledged that the Respondents had been more than lackadaisical since 2012 in enforcing compliance with the security vetting exercise amongst its senior officials, and in particular, the Applicant. The fact

⁷ Gallagher v Norman's Transport Lines (Pty) Ltd 1992 (3) SA 500 at 502E-503 D.

of the matter however is that they had to act in enforcing compliance, because that is what the provisions already alluded to require of them to do.

[18] Other than the insurmountable hurdles dealt with in respect of the issue of security clearance, I am also not satisfied that this application deserves the urgent attention of the court for the following reasons;

18.1 Since the Applicant was issued with a letter informing him of his removal from his position on 30 August 2016, it took him until 26 January 2016 before he could approach this court on an urgent basis. This is a period of about five months since the source of his complaint arose;

18.2 The Applicant averred that the application was urgent on the basis that having received the letter of 30 August 2016, he had been engaging the Respondents at length, and had also referred a dispute to the SALGBC in terms of the provisions of section 64 (4) of the LRA. He had further contended that he did not simply rush to court at the first opportunity, but had taken all reasonable steps to avoid bringing the application by exhausting internal avenues first; and had repeatedly requested Swartz to reverse his unlawful decision to transfer him and vary his contract of employment. The MEC, despite undertakings to resolve the dispute had failed to do so. The Applicant claimed his right to an annual salary increase and performance bonus was violated as a consequence of his removal from his position, and that if he did not have a performance agreement, he would not receive the benefits in accordance with his contract of employment.

18.3 As already indicated, an Applicant that takes time to approach the court for urgent relief cannot expect the court to readily grant such relief. On the Applicant's own version, and as per his correspondence with Swartz, as at 30 August 2016 after the receipt of the letter that informed him of his removal, he regarded the matter as urgent in the light of his threats to approach this court on an urgent if the decision

was not set aside⁸. Swartz's response 02 September 2016 was clearly that his decision would not be reversed.

- 18.4 On 09 September 2016 despite the matter being purportedly urgent, the Applicant in an e-mail to Swartz essentially raised his concerns surrounding the lawfulness of the decision, and further alleged that the only basis for the decision was retaliatory and an abuse of power. He gave Swartz until 14 September 2016 to reverse his decision.
- 18.5 Nothing happened until 16 September 2016 when the Applicant again informed Swartz that he would be approaching this court on an urgent basis as it was apparent to him that he was not willing to reverse his decision. On 23 September 2016, and notwithstanding his acknowledgement that Swartz would not reverse his decision, the Applicant sent an e-mail to the MEC advising him that his dispute with Swartz remained unresolved. The MEC's response on 26 September 2016 was *inter alia* that the steps the Applicant chose to take the matter forward were entirely his decision. In essence, the Applicant was told by the Executive Authority in polite terms that he was at liberty to take the matter further, and outside of the department if he so wished.
- 18.6 In his response on 30 September 2016, again the Applicant indicated his intention to approach the Court, and further pointed out that his dispute pertained to a breach of contract and conditions of service, and thus could not be determined through the internal grievance process. Further correspondence was exchanged between the parties, and on 24 November 2016, again the Applicant informed the MEC that since his dispute could not be resolved, he would approach the court.
- 18.7 On or about 2 December 2016, he had then referred a dispute to the SALGBC pertaining to an alleged unilateral variation of his contract of employment, and a certificate of non-resolution was issued on 14 December 2012. Other than the exchange of correspondence, on the

⁸ Page 67 of the Applicant's bundle, Paragraph 11 of his e-mail of 30 August 2016 to Swartz

Applicant's own version he had also met with Swartz on 04 and 07 November 2016 and the same ultimatum was given.

- 18.8 The Applicant further attributed the delay to the fact that he could only consult with his attorneys of record on 18 January 2017, hence the application was launched on 24 January 2017.
- 18.9 Based on the principles already alluded to in regards to urgency, and further in consideration of the same principles as set out in *National Union of Metalworkers of South Africa & others v Bumatech Calcium Aluminates*⁹ as referred to on behalf of the Respondents, it is concluded that the Applicant's application does not come close to meeting the requirements of urgency.
- 18.10 The Applicant took a period of no less than five months after the occurrence of the alleged harm or prejudice. He was prepared to endure same as he vacillated between either approaching the court timeously or on his version, attempting to resolve the dispute internally. As at 30 August 2016 he already formed the opinion that his matter was urgent. It was also apparent to him as at 02 September 2016 that Swartz would not reverse his decision. It is therefore inexplicable that despite holding the view that the matter was urgent, he would persist in attempting to resolve the matter internally, and send repeated correspondence with basically the same complaints to the Respondents, when it was clear that the impugned decision would not be reversed. The Respondents had reached a point where they had basically dared the Applicant to act on his threats as is evident from the MEC's correspondence of 26 September 2016. Yet the Applicant failed to do so.

⁹ (2016) 37 ILJ 2862 (LC) at paragraphs 22 to 26, and in particular, at para 26 where Snyman AJ held that;

"Urgency must not be self-created by an Applicant, as a consequence of the Applicant not having brought the application at the first available opportunity. In other words, the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. But the longer it takes from the date of the event giving rise to the proceedings, the more urgency is diminished. In short, the Applicant must come to Court immediately, or risk failing on urgency. In *Valerie Collins t/a Waterkloof Farm v Bernickow NO and Another* the Court held:

'... if the Applicants seeks this Court to come to its assistance it must come to the Court at the very first opportunity, it cannot stand back and do nothing and some days later seek the Court's assistance as a matter of urgency.'" (Authorities and citations omitted)

18.11 The Applicant's contention that he had to exhaust internal remedies prior to approaching the Court is disingenuous in view of his correspondence of 30 September 2016, wherein he had indicated his intention to approach the Court, as his dispute pertained to a breach of contract and conditions of service and could not be determined through the internal grievance process. Further correspondence on 24 November 2016 to the MEC was clearly an acknowledgement that the dispute could not be resolved internally.

18.12 To further have referred the dispute to the SALGBC in circumstances where it is known that the dispute could further be protracted due to the time frames of setting down conciliation proceedings at that forum cannot by any stretch of imagination be an acknowledgement that a matter is urgent. The Applicant's contention that he was hopeful that the matter could be resolved at conciliation is indeed far-fetched in the light of the clear stance by the Respondents on the matter as far as 2 September 2016. Even at that belated stage, and to the extent that the issue of alternative remedy might be used as a defence, nothing prevented him from approaching the Court despite having referred the dispute to the SALGBC, particularly in view of his knowledge that the bargaining council would not be able to arbitrate his dispute. Furthermore, nothing turns on the Applicant's excuse that he could only approach the court on the date that he did on the basis that he could only consult with his representatives after the festive season. This cannot by all accounts amount to a reasonable explanation.

18.13 The Applicant remains employed, *albeit* he had been removed from his position, and not much turns on his contentions surrounding an annual increase or performance bonus. To conclude then, the Applicant has failed to demonstrate that this application deserves the urgent attention of the Court. As correctly pointed out on behalf of the Respondents, and by virtue of the delay between the alleged source of the complaint and the timing of the launching of this application, the urgency in this matter is clearly self-created. In the light of this inordinate delay, and as

again correctly pointed out on behalf of the Respondents, there is nothing to interdict in view of the long-standing decision. The Applicant has by choice, endured the consequences of the impugned decision for a period of five months, and cannot seek the intervention of this court at this belated hour.

18.14 It is further trite that the courts are loath to grant urgent relief in circumstances where an Applicant has alternative remedies available to him. The SALGBC might not have jurisdiction to arbitrate disputes pertaining to alleged unilateral changes to terms and conditions of employment. A certificate of outcome was issued in respect of that dispute, and the Applicant as per Part B of his Notice of Motion intends to approach the Court to obtain the relief that he seeks. He therefore has substantial redress in due course.

[19] In the light of the above conclusions, it would not be necessary to deal with the other preliminary points raised on behalf of the Respondents. Since the application is deemed not to be urgent, it should accordingly be struck off the roll. Further having had regard to the requirements of law and fairness, and having taken the circumstances of this case into account, I am not convinced that a cost order against the Applicant is warranted. Accordingly, the following order is made;

Order:

1. The Applicant's application is struck off from the roll on account of lack of urgency.
2. There is no order as to costs.

Edwin Tlhotlhemaje

Judge of the Labour Court, South Africa

APPEARANCES:

For the Applicant:

Adv. B. Ford

Instructed by:

Ndumiso Voyi INC

For the Respondents:

Adv. V Soni SC with Adv. V. September

Instructed by:

Norton Rose Fulbright. South Africa INC

LABOUR COURT