



**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

**JUDGMENT**

**Not reportable**

Case no: J 418/17

In the matter between:

**POLICE AND PRISONS CIVIL RIGHTS  
UNION (POPCRU) obo BRIGADIER GA  
ASSEGAI**

**Applicant**

and

**THE MINISTER OF POLICE**

**First Respondent**

**THE ACTING NATIONAL  
COMMISSIONER OF POLICE**

**Second Respondent**

**GAUTENG PROVINCIAL  
COMMISSIONER**

**Third Respondent**

**DIVISIONAL COMMISSIONER:  
PERSONNEL MANAGEMENT**

**Fourth Respondent**

**Heard: 28 February 2017**

**Judgment: 1 March 2017**

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## JUDGMENT

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### VAN NIEKERK J

- [1] The applicant seeks an interim order, on an urgent basis, interdicting the respondents from implementing a decision taken by the third respondent to terminate the applicant's service with the SAPS, pending an application to review and set aside that decision.
- [2] The matter was set down for hearing on 27 February 2017. On that date, the application was stood down to the next day, 28 February 2017, and the costs reserved. The postponement of the matter was occasioned by the respondents having apparently consented to the relief sought in the form of a letter addressed to the applicant's attorneys in terms of which the decision that is the subject of these proceedings was withdrawn. The respondents' representative, who was not a legal representative, was unable to furnish the letter or provide any further instructions in regard to any consent to the order and for that reason, the matter was stood down.
- [3] On 28 February 2017, the letter, dated 27 February 2017, was made available to the Court. In terms of the letter, as I have indicated, the decision to terminate the applicant's services is withdrawn. The applicant was urged to withdraw the application on the basis that each party pay its own costs, alternatively, to remove the matter from the roll with costs to be determined at a later stage. I determined that there was no reason why the question of costs could not be argued and determined immediately, and both parties' counsel made submissions in this regard.
- [4] In essence, the applicant contends that the withdrawal of the applicant's letter of termination constitutes a capitulation on the part of the respondents and that they ought on that basis to be liable for the applicant's costs. Indeed, the applicant

sought costs in a punitive scale, largely on the basis of a letter written to the respondents by the applicant's attorney on 17 February 2017 in which information, details and the reasons that necessitated the applicant's termination of service in terms of s 35 of the SAPS Act were requested. That request was refused and in a letter dated 20 February 2017, the respondents confirmed that the applicant's service was to be terminated with effect from 28 February 2017. Had the respondents acceded to the applicant's request, the application would have been necessary.

- [5] The respondent's counsel opposed any costs order on the basis that the application in any event lacked merit. He contested the urgency of the application (on the basis that it was a claim for money) and on the basis that the applicant would suffer no irreparable harm, the respondents had agreed to her continuing to receive remuneration until the end of her agreed extended service. Counsel also submitted that to the extent that the relief sought was interim relief pending the outcome of the review, the applicant had made no averments as to the nature of the review, or any grounds for review.
- [6] In terms of s 162 of the LRA, the court has a broad discretion to make orders for costs in accordance with the requirements of the law and fairness. First, I must say that the unchallenged version put up by the applicant demonstrates a gross degree of incompetence on the part of the SAPS and its human resource management. This no doubt contributed to the decision to withdraw the decision that the applicant sought to review, and to the present application. However, while I appreciate that the present application might have been avoided altogether had the respondents acted more constructively in relation to the applicant's efforts to avoid initiating these proceedings, I must also take into account the deficiencies in the applicant's papers and in particular, the failure to assert any grounds for review or to make any averments regarding the applicant's prospects of success in any review application. To the extent of that the court would have been required to assess the applicant's prospects of

success in order to determine whether interim relief should be granted, this would not have been possible on the basis of the papers as they stand. It is likely therefore that the application would not have succeeded, certainly not without some degree of amplification of the founding affidavit. I also have my doubts that the applicant suffered any irreparable harm, given the undertaking that she would be remunerated at least until 31 December 2018. In these circumstances, in my view, the interests of the law and fairness are best served by each party bearing its own costs.

For the above reasons, make the following order:

1. The application is removed from the roll, with no order as to costs

ANDRÉ VAN NIEKERK  
JUDGE OF THE LABOUR COURT

#### APPEARANCES

For the Applicant: Adv. E Sithole instructed by Makgahlela Mashaba Attorneys

For the respondent: Adv. Mtsweni instructed by the State Attorney