THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Of Interest to Other Judges

Case no: J 1716/17

In the matter between:

ECOLAB (PROPRIETARY) LIMITED **Applicant**

and

RAYMOND THOABALA **First Respondent**

KEVALI CHEMICALS (PROPRIETARY) LTD **Second Respondent**

Heard: **15 August 2017**

Delivered: **23 August 2017**

Summary: **Urgent application to enforce restraint of trade. Fact that breaches of restraint of trade have an inherent quality of urgency not a free pass to urgent relief. Requirements of Rule 8 still to be complied with, and applicant obliged to place satisfactory reasons before the Court as to why the matter should be treated as urgent. Matter struck off the roll for lack of urgency.**

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

[1] The applicant approached the Court on an urgent basis, to seek final interdictory relief enforcing certain restraint of trade and confidentiality

undertakings contained in the first respondent's contract of employment. The specific orders sought by the applicant are as follows;

"2. The 1st Respondent is interdicted for a period of 12 (twelve) months [or such other period as the above Honourable Court deem reasonable] from directly or indirectly;

2.1 Being interested or engaged, in any capacity (including but not limited to an employee, advisor, agent, consultant, director, financier, manner, member of a close corporation, member of voluntary association, partner, proprietor, shareholder or trustee) in any entity directly or indirectly engaged or interested in delivering any service and/or product to the clients and prospective clients of the Applicant, in competition or replacement of the services and/or products provided by the Applicant to its clients and prospective clients in South Africa;

2.2. Being employed and/or utilized by the 2nd Respondent in any capacity;

2.3. Revealing, disclosing or in any way utilizing, for any purpose, the confidential information of the Applicant;

3. The 2nd Respondent is interdicted and restrained from in any way being associated with the 1st Respondent, in breach of the Restraint of Trade Covenant of the 1st Respondent

4. That the costs of this Application be paid by the 1st Respondent, alternatively, should be application be opposed, those Respondents who oppose this Application' (Sic)

Background:

[2] The applicant carries on business in water, hygiene and energy technologies and services. It services a broad variety of clients, both local and international with a spectrum of what it terms 'highly technical' services and products. It counts amongst its clients, Tiger Brands, ABI Bottling, Coca Cola, 'SAB', Sedibeng Brewery, and McCain Foods. In servicing these clients, it has seven divisions including Food & Beverage, Hygiene & Sanitation, Water Treatment, Pest Control and Institutional Services.

[3] Mr Raymond Thoabala (Thoabala) was employed by the applicant with effect from 1 February 2012 as Engineering Service Technician. At some point during his employment, and in view of his excellent performance in the applicant's Food and Beverage Division, he was promoted to the position of Territory Manager for the Northern Regions of South Africa.

[4] Thoabala's duties and functions related to the management of sanitation, cleaning and lubrication products provided by the applicant to its clients to ensure *inter alia* that the mechanical manufacturing lines at the clients ran smoothly and hygienically. There is a dispute as to which clients Thoabala had serviced and how he had serviced them. He however denied that he had audited, provided innovations and did corporate pricing for the applicant's clients within his portfolio. He further contended that his duties were simply of a technical nature, and included conducting of tests, collecting data, and calculations of results at various sites.

[5] It is common cause that Thoabala resigned from the applicant's employment on 7 April 2017 and had served his one month's-notice. According to the applicant, Thoabala informed Arnu Muller, the deponent to the founding affidavit and applicant's Divisional Manager that he planned to move to KwaZulu- Natal as his wife was relocating to that province. Thoabala in turn had conceded that he did mention to Muller that his wife had taken up employment in KwaZulu-Natal, but however, this was during a discussion that preceded his resignation, which had nothing to do with the matter.

[6] It was further common cause that Thoabala is presently employed by the second respondent, a direct competitor of the applicant. On his version, he had been employed by the second respondent since 9 May 2017. The applicant contends that Thoabala by being so employed is acting in deliberate breach of the parties' Confidentiality and Restraint of Trade Agreement, which he had signed in February 2012.

[7] The applicant contended that whilst Thoabala's employment with the second respondent in itself could have little effect on its business and profitability, it

has drastic effects, which could become devastating should he be allowed to continue his employment.

[8] Thoabala and the second respondent opposed the application. Central to the opposition to the application is that it is not urgent, alternatively that the urgency claimed is self-created.Thoabala further contended that he had no access to any information concerning the applicant's database, pricing, formulations, business structures or strategies and tenders. To the extent that he may have had access to or was privy to such information (which he denied), the information was by now completely outdated and was of no application or value in the market place.

[9] Thoabala further contended that his interaction with the applicant's clients was extremely limited and at a junior level; that he did not interact or establish any trade connections with any decision-makers at clients, let alone have them in his pocket so much so that he established any influence over them or the decisions they took regarding suppliers or service providers.

[10] In summary, the respondents' case is that the applicant has failed to prove that matter is urgent and there is no self-created urgency; or that it is the proprietor of the information it contends is confidential; or that the information it contends is worthy of protection and qualifies as confidential information; or that there exists trade connections between Thoabala and the applicant's clients for which it seeks to interdict and restrain him; and last, that there mere employment of Thoabala by the second respondent cannot *per se* infringe any proprietary interests of the applicant.

Urgency:

[11] To the extent that the respondents placed emphasis on the contention that the matter was not urgent, I propose to deal with this issue first, as on the facts as pleaded, it will be dispositive of this matter. The circumstances leading to this application and the contention that the matter was urgent are according to the applicant as follows;

11.1 Whilst serving his notice, Thoabala suddenly became interested in the applicant's operations at its clients both within and outside of his portfolio. In particular, he became interested in the operations at Distell (Springs) and had requested permission to do site inspections at this client, which request was refused;

11.2 Out of concern, Thoabala was cautioned during his last week of employment with the applicant that should it transpire that he was in breach of his confidentiality and restraint of trade agreement, the applicant would seek interdictory relief against him.

11.3 On 10 May 2017, Distell cancelled part of its business with the applicant and awarded a trial contract to the second respondent. The applicant viewed this as strange in that the second respondent had no apparent prior relationship with Distell, and also since it had been contracted to render the exact same services that the applicant was performing for Distell.

11.4 'In late June 2017', the applicant 'received' reports that various site managers at its clients had seen Thoabala at their sites. Upon further investigation, it was discovered that he was working for the second respondent and had been seen at Distell. On 18 June 2017, the applicant had approached its labour consultants to assist it in enforcing the confidentiality and restraint of trade agreement;

11.5 Several engagements with Thoabala's attorneys of record were made, and it was confirmed that he was indeed employed by the second respondent but at its Water Treatment Division as its Site Manager, and thus was not in breach of the agreement.

11.6 The applicant nevertheless continued to further investigate the apparent breach by Thoabala and discovered as of 21 July 2017 that Thoabala was not employed as a Site Manager or in Water Treatment Division at the second respondent as it was originally contended, but was acting in exact the same position that he held at the applicant, in the same geographical area and rendered the same services to the second respondent, using the applicant's confidential and proprietary information together with its trade connections;

11.7 Thoabala was also responsible for putting together a proposal for one of the production lines at one of the applicant's client (Coca Cola Polokwane), after having done a significant amount of research and pricing on their requirements. On 18 May 2017, it was agreed with this client that the contract would be given to the applicant. This contract was however awarded to the second respondent, who according to the applicant had no apparent interest in the contract prior to Thoabala joining them;

11.8 The applicant holds the view that Thoabala is actively attempting to transfer and has successfully done so, its business that he had managed to the second respondent; that he had used its confidential information and proposal to Coca Cola (Polokwane) containing pricing, systems, proprietary solutions, together with his personal relationships with senior managers of this client to create an unfair and unlawful competitive advantage that has already resulted in a direct and sizeable financial loss to it. Given these factors, the applicant also holds the view that Thoabala is doing the same with other clients, especially those that he had previously managed;

11.9 Of huge concern to the applicant however is that it is due to submit a multi-million Dollar tender to Coca Cola Beverages SA by 7 August 2017. Since Thoabala is aware of the applicant's pricing schedules, services and products, it is anticipated that he will use or disclose this knowledge to the unfair advantage of the second respondent as he did with Coca Cola Polokwane tender. The applicant further contends that it came to its attention that the second respondent had also entered this particular tender, and that there was a probability that Thoabala was assisting it, using its proprietary and confidential information;

11.10 In essence, Thoabala is believed to be actively assisting the second respondent to unlawfully obtain business from its clients, in direct contravention and breach of his confidentiality and restraint of trade agreement;

11.11 The applicant further submitted that it had endeavoured to avoid litigation and the costs entailed as it believed that it was in the best interests of all parties involved to attempt to resolve the matter amicably. It was alleged however that Thoabala's blatant *mala fides* and misrepresentations left the applicant with no choice*;*

11.12 Thoabala's dealings with the applicant's clients were investigated as allowed by limited time frames and the applicant in its dealings with Thoabala acted with the utmost *bona fides*, seeking to ensure that it had an honest and wholistic understanding of his conduct and sought not to unreasonably restrain him;

11.13 A comprehensive understanding of the facts was obtained, and it became apparent that the unlawful, undesirable conduct of Thoabala was to be censured, and that he could not be permitted to continue his employment with the second respondent;

11.14 Thoabala is aware of its confidential information and with every passing day, and should he be permitted to continue his employment at the second respondent, there is an increasing risk that such confidential information will be disclosed, and that the latter would benefit from his assistance in submitting the multi-million Rand tender documents from Coca Cola due on 7 August 2017;

11.15 Thoabala has already caused millions of Rands in revenue to its business and such losses could be multiplied tenfold should he continue his employment with the second respondent.;

11.16 The potential or actual harm to the applicant's business increases, and would be impossible to prevent or reverse should the matter proceed on non-urgent basis, and the applicant will not be able to obtain satisfactory redress in the ordinary court.

[12] In contending that the application was not urgent, it was submitted on behalf of the respondents that;

12.1 The matter initially came before Prinsloo J on 3 August 2017, and at the time of the hearing, the applicant had not filed a replying affidavit, which necessitated a postponement of the matter;

12.2 To the extent that the applicant's main concern and the basis of urgency was that Thoabala was assisting the second respondent with the preparation of the multi-million Dollar tender to Coca Cola Beverages SA which was due on 7 August 2017, as at the time of the hearing of this matter, the date had passed and the tenders had been submitted, which implied that urgency had fallen away as the proverbial horse had bolted;

12.3 At the time of the hearing of this matter, Thoabala would have already been employed by the second respondent for more than three months, having commenced on 9 May 2017;

12.4 If Thoabala was in possession of confidential information contended for by the applicant (which the latter denied), and if he wanted to divulge such information to the second respondent or use the same, he could have done so by now, something to which the applicant had conceded to;

12.5 The clients that had terminated their relationship with the applicant are also existing clients of the second respondent, or the second respondent had tendered for or was awarded their business prior to Thoabala becoming employed by the second respondent;

12.6 The urgency alleged was self-created on consideration of the following facts;

a) The applicant allegedly received reports in late June 2017 that various site managers at the applicant's clients had seen Thoabala at their sites, and yet no confirmatory affidavits were attached to Muller's founding affidavit to substantiate these allegations;

b) It is not known when the alleged reports came to Muller's attention, and the applicant was at best aware for more than 5 – 6 weeks that Thoabala had taken up employment with the second respondent before it decided to launch this application on 26 July 2017.

The legal principles and evaluation:

[13] The principles applicable to urgent applications are well-established, and for the purposes of this application, they need to be restated in view of what can be deemed to be a misconception as to how these principles should be applicable in relation to restraint of trade disputes.

[14] A determination of whether a matter deserves the urgent attention of this Court entails a considerations of whether the reasons that make the matter urgent have been set out succinctly in the founding papers and secondly, whether the applicant seeking relief will not obtain a substantial relief at a later stage. Thus, the basis for allowing parties to dispense with the Rules of Court relating to time periods is to prevent the occasioning of an injustice and involves the balancing of this consideration with that of the rights of parties to a considered opportunity to place their cases before the court[1]. This approach is predicated upon the provisions of Rule 8 of the Rules of this Court[2] which were interpreted in *Jiba v Minister: Department of Justice and Constitutional Development and others*[3] as follows;

> "Rule 8 of the rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and the degree to which the ordinary applicable rules should be relaxed is dependent on the degree of urgency. It is equally

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[1] See *National Police Services Union v National Commissioner of the National Police Services and Others* (1999) 20 ILJ 2408 (LC*); Commissioner For the South African Revenue Services v Hawker Air Services (Pty) Ltd and Another* Case no: 379/2005 at para 9 and *Vermaak v Taung Local Municipality* (JR315/13) [2013] ZALCJHB 43 (12 March 2013)

[2] Which reads;

(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".

[3] (2010) 31 ILJ 112 (LC)

> trite that an applicant is not entitled to rely on urgency that is self-created when seeking deviation from the rules".[4]

[15] It therefore follows from the above that where the court is not satisfied that sufficient reasons have been advanced for the matter to be treated as one of urgency, and where the Court is not satisfied that the applicant cannot obtain substantive relief at a later stage, the application ought to be struck off from the roll on that ground alone[5].

[16] The applicant's approach in this case in regard to the issue of urgency was that the enforcement of confidentiality and restraint undertakings is a matter that should be treated as inherently urgent, and that what was required was for it to prove that Thoabala is in breach. It was further submitted on its behalf that it did not matter how long the respondents had been in breach, and that what mattered was when the applicant discovered that there was a breach. Mr. Donaldson for the applicant further submitted that it was not required of the applicant to present a substantial explanation as to the reason the matter should be accorded urgency. There are obvious fundamental problems with this approach, which in my view is either a misinterpretation or misunderstanding of the acceptance by Davis J in *Mozart Ice Cream Classic Franchises (Pty) Ltd v Davidoff and Another*[6] that breaches of restraint of trade have an inherent quality of urgency.[7]

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[4] At para 18

[5] See *Commissioner For the South African Revenue Services v Hawker Air Services (Pty) Ltd and Another* Case no: 379/2005 at para 9, where it was held that:

> *"Urgency is a reason that may justify deviation from the times and forms the rules prescribe. It relates to form, not substance, and is not a prerequisite to a claim for substantive relief. Where an application is brought on the basis of urgency, the rules of court permit a court (or a judge in chambers) to dispense with the forms and service usually required, and to dispose of it 'as to it seems meet' (Rule 6(12) (a)). This in effect permits an urgent applicant, subject to the court's control, to forge its own rules (See Republikeinses Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk 1972(1) SA 773 (A) 782A-783H) which must 'as far as practicable be in accordance with' the rules). Where the application lacks the requisite element or degree of urgency, the court can for that reason decline to exercise its powers under Rule 6(12) (a). The matter is then not properly on the court's roll, and it declines to hear it. The appropriate order is generally to strike the application from the roll. This enables the applicant to set the matter down again, on proper notice and compliance*

[6] *2009 (3) SA 78 (C)* at 88J

[7] See also *ARB Electrical Wholesalers (Pty) Ltd v Grove and Others* (C335/14) [2014] ZALCCT 31 (3 June 2014) at para 20

[17] One cannot quarrel with the conclusion that there is indeed inherent threat and prejudice to an employer whose ex-employee flagrantly fails to comply with his or her confidentiality and restraint of trade undertakings, and particularly one that immediately joins a competitor. At the same time however, I did not understand the import of *Mozart Ice Cream* to be an erosion of the requirements of Rule 8 of this Court, read together with Clause 12 of the Practice Manual of this Court[8], or worst still, to imply that these disputes should enjoy special privileges in this or any other Court. To hold otherwise would lead to absurdity and unmitigated abuse of court processes, in that any party aggrieved by alleged non-compliance with restraint provisions may fold its arms and approach a Court at its leisure, and long after the alleged breach, to seek urgent intervention. In such circumstances obviously, any urgency claimed will be regarded as self-created. The Court should therefore refuse to assist an applicant who approaches it for urgent relief at its leisure and then claim that it did not matter how long it had known of the alleged breach[9].

[18] It is my view that even if breaches of restraint of trade may have inherent quality of urgency, these disputes cannot by mere virtue of that quality, be treated any differently from any other disputes that randomly come before this Court on an urgent basis. Thus, for example, an employer faced with the prospects of an unprotected strike action is entitled to approach this court on an urgent basis, in the same way as is a Union threatened with a mass dismissal of its members flowing from participation in a protected strike. There

[8] In particular Clause 12.5 which reads:

> 'The above requirements are additional to the applicant's obligation to set out explicitly the circumstances which render the matter urgent. In this regard, it is emphasised that while an application may be urgent, it may not be sufficiently urgent to be heard at the time selected by the applicant.'

[9] See *National Police Services Union & Others v National Negotiating Forum & Others* (1999) 20 ILJ 1081 (LC) at 1092 paragraph 39, where it was held that;

> "The latitude extended to parties to dispense with the rules of this court in circumstances of urgency is an integral part of a balance that the rules attempt to strike between time-limits that afford parties a considered opportunity to place their respective cases before the court and a recognition that in some instances, the application of the prescribed time-limits or any time-limits at all, might occasion injustice. For that reason, rule 8 permits a departure from the provisions of rule 7, which would otherwise govern an application such as this. But this exception to the norm should not be available to parties who are dilatory to the point where their very inactivity is the cause of the harm on which they rely to seek relief in this court…."

can be no doubt that these disputes in view of the consequences that flow from the threat or actual conduct in question, also have an element of inherent urgency about them.

[19] In a nutshell therefore, there is nothing inherently special or unique about restraint of trade disputes that makes them deserve more urgent attention from this Court than other disputes. To hold otherwise would equally be contrary to the tenets of section 9 (1)[10] of the Constitution of the Republic[11], read together with section 34[12]. Thus, all disputes that come before the Court on an urgent basis should be treated equally, without giving preference based on their nature, with the only distinguishing factor being whether the requirements in Rule 8 have been met.

[20] To summarize then, parties alleging breaches of restraint of trade agreements are not indemnified from satisfying the requirements in Rule 8. Thus, a mere contention that the enforcement of restraint of trade is inherently urgent and therefore must be treated as such by this court without any further consideration cannot by all accounts be sustainable. The fact that these disputes may have an inherent quality of urgency cannot be equated to a free pass to urgent relief on the already over-burdened urgent roll in this court. Like all other urgent matters, more than a mere allegation that a matter is urgent is required[13]. This therefore implies *inter alia* that the Court must be placed in a position where it must appreciate that indeed a matter is urgent, and also that an applicant in the face of a threat to it or its interests had acted with the necessary haste to mitigate the effects of that threat.

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[10]Which reads:

‘ **Equality**

Everyone is equal before the law and has the right to equal protection and benefit of the law.’

[11] Act 108 of 1996

[12] Which reads:

‘**Access to courts**

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.’

[13] See *Moyo & Others v Administrator of the Transvaal & Another* (1988) 9 ILJ 372 (W) at 387I:

“An applicant who seeks relief by way of notice of motion should put all the facts, in as much detail as possible, before the Court. The mere fact that an application is urgent and urgent relief is sought does not relieve an application of this duty.”

[21] Applying the above principles to the facts of this case, it appears that the high-water mark of the applicant's case in seeking urgency was the concern surrounding the multi-million Dollar tender in respect of Coca Cola Beverages SA that was due for submission on 7 August 2017.

[22] It is accepted that the applicant launched this application on 27 July 2017, and set the matter down for a hearing on 3 August 2017. On that date however, a postponement was sought on the basis that the applicant wanted a right of reply. The matter was postponed to 15 August 2017 and there is no explanation as to the reason the applicant had agreed to that date in view of the alleged urgency of the matter, particularly in respect of the Coca Cola tender. As correctly pointed out on behalf of the respondent, as at 15 August 2017 when the matter was heard, the submission of the tender on 7 August 2017 had come and gone, thus eroding any urgency that may have been claimed.

[23] It nonetheless gets worse for the applicant in view of the date on which Thoabala had joined the second respondent. As at the launching of this application, Thoabala had been in the employ of the second respondent since 9 May 2017. On the applicant's own version, in the last week of Thoabala's employment with it, it had suspicions that he might have designs to breach his restraint of trade undertakings. Nothing happened to him other than a warning and a threat that the undertakings would be enforced.

[24] Again, on the applicant's own version, in 'late June 2017' it had received reports that Thoabala was seen at the applicant's clients' sites. There are obvious problems with these averments in view of the fact that it is not known exactly in June 2017 such reports were received, who or what the source of these reports was, or what exactly it is that Thoabala had done at the clients' sites to raise any suspicions. Even if the applicant had cause to be suspicious, there is no indication that any urgent steps were taken to deal with the perceived threats to its business interests.

[25] The applicant alleged that 'further investigation' were done but again, there is no particularity in this regard as to when and by whom were these

investigations conducted, or when it was discovered that Thoabala was indeed employed by the second respondent, and any steps taken in that regard. However, notwithstanding the alleged investigations, and it being apparent to it that Thoabala was employed by the second respondent, the applicant upon approaching its labour consultants then went on to 'engage' with Thoabala's attorneys of record, and again, decided to 'further investigate' the apparent breach by him.

[26] It is not uncommon for parties to allege that attempts were made to engage with the other party in order to resolve a dispute, whether real or perceived, before approaching the Court. Whilst it is accepted that parties would or should engage each other prior to approaching the Court, there is a limit in regard to the level and extent of that engagement, particularly where urgency is claimed.

[27] It is my view that where the applicant as in this case had reason to believe that Thoabala was in breach of the restraint undertakings, and further where there was reason to believe that he might not have been forthright as to the identity of his new employer or the tasks he would be performing, little can be achieved with any further 'engagements ' or 'investigations, once it is apparent that interests are being threatened, and it would be incumbent upon the applicant under the circumstances to take immediate steps to deal with the threats to its interests. Sadly, the applicant was lacking in this regard. To further illustrate the point, it is not indicated in the papers as to what had transpired between 28 June 2017 when the applicant allegedly approached its labour consultants and 21 July when it discovered *inter alia*, that Thoabala was actually employed by the second respondent in the exact same position that he fulfilled at it.

[28] In consideration of these factors, inclusive of the fact that as at the hearing of this matter Thoabala would have been in the employ of the second respondent for just over three months, I am satisfied that the urgency claimed in this case is clearly self-created, and this is even moreso based on the applicant's assertions that it did not matter how long the breach had taken place, or that it was not obliged to proffer a substantial explanation for its

dilatoriness. Of course it matters how long the breach went on in that the alleged breach is the very essence of this urgent application. Furthermore, an applicant is obliged to place substantive reasons before the Court as to why its matter deserves urgent attention.

[29] In circumstances where the applicant was aware as 'early June 2017' that Thoabala was in breach of his restraint and confidentiality taking, and did nothing other than to 'further investigate' the matter or consult with its labour consultants, or 'engage' with Thoabala's attorneys of record, there is no basis for this court to intervene, as the institution of the proceedings, should take place as soon as reasonably possible after the cause thereof has arisen, and a party must not be dilatory in bringing the application and must show that its interests warrant an urgent hearing[14].

[30] The delay of the applicant in this case since it became aware of Thoabala's movements after his resignation and the time it took to approach the court is about seven weeks, which delay is of a serious nature. No satisfactory explanation was proffered in this regard and the only conclusion to be made is that the delay was due to culpable remissness on the part of the applicant. In the light of these factors, I am further not satisfied that the applicant has demonstrated that it cannot obtain substantive relief in the normal course, and fairness therefore dictates that this matter ought to be struck from the roll.

Costs:

[31] This Court is obliged, in accordance with the provisions of section 162 of the LRA to have regard to the requirements of law and fairness in awarding costs. It was correctly pointed out on behalf of the respondents that to the extent that the applicant did not meet the requirements of Rule 8, and further in view of the relief sought and belated nature of this application, this constituted an abuse of the Court's process which should be frowned upon. To this end, it is concluded that the applicant should be burdened with the costs of this

[14] See *Twentieth Century Fox Film Corporation and Another v Anthony Black Films (Pty) Ltd* 1982(3) SA 582(W) at 586 G. See also *Schweizer Reneke Vleis Mkpy (Edms) Bpk v Die Minister van Landbou en Andere* 1971(1) PH F11 (T)at F11-12

application, together with the wasted costs occasioned by the postponement on 3 August 2017.

Order:

[32] Accordingly, the following order is made;

1. The applicant's application is struck off the roll on account of lack of urgency.
2. The applicant is ordered to pay to the costs of this application, together with wasted costs occasioned by the postponement on 3 August 2017.

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E. Tlhotlhalemaje

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Adv. Q. Donaldson
Instructed by:	GP Prinsloo Attorneys
For the First and Second Respondents:	Adv. L Malan
Instructed by:	Suren Moodley INC