



IN THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

Not Reportable

CASE NO: P 209/16

In the matter between

HYRON GAVIN BOOYSEN

Applicant

and

THE MINISTER OF POLICE

First Respondent

NATIONAL COMMISSIONER OF THE

SOUTH AFRICAN POLICE SERVICES

Second Respondent

Heard: 21 September 2017

Delivered: 9 November 2017

Summary: This court will not decide a matter with no practical effect on the parties as such matter is moot.

JUDGMENT

LALLIE, J

Introduction

- [1] The applicant is a Colonel in the organised crime unit, the Hawks. Owing to allegations of misconduct against him, the first respondent subjected him to a

disciplinary enquiry. He launched an urgent application seeking an order declaring the first and second respondent's failure to start his disciplinary enquiry an unreasonably long delay which justified its dismissal. He sought a further order declaring the first and second respondent's failure to accept the decision of the presiding officer to reinstate him in terms of clause 13 (4) of Resolution 1/2006 irregular. In addition, he sought an order declaring the first and second respondent's failure to complete or finalise his disciplinary hearing as irregular and an unreasonably long delay. The urgent application was dismissed in a judgment handed down on 25 April 2017. The applicant again brought an application on the same papers seeking only an order declaring the first and second respondents' failure to complete or finalise his disciplinary hearing irregular and an unreasonably long delay. The first and second respondents opposed the application.

- [2] In the answering affidavit the first and second respondents raised a number of *points in limine*. I will only consider the *point in limine* that this dispute is moot because, if proved, it will be dispositive of this matter. In the supplementary answering affidavit, the first and second respondent's attorney submitted that on 18 April 2017, the applicant's disciplinary enquiry was resumed after it had been postponed to afford him an opportunity to secure the services of an alternative legal representative as the one who had been assisting him had walked out. The disciplinary enquiry did not proceed on 18 April 2017 because the applicant requested a further postponement as his new attorney was not available. It was postponed to 16 May 2017 to accommodate his attorney. The disciplinary enquiry proceeded on 16 May 2017. After the respondents had closed their case the disciplinary enquiry was postponed to 26 and 27 June 2017 for the applicant to present his case. On 30 May 2017, the applicant's legal representative requested a postponement. It was granted and the disciplinary enquiry was scheduled for 28 and 29 June 2017. As the chairperson of the disciplinary enquiry was not available on 28 and 29 June 2017 owing to other official duties, the disciplinary enquiry was rescheduled by agreement between the parties to 10 to 12 July 2017. For the same reason, the disciplinary enquiry could not sit on the scheduled dates and it was further postponed by agreement between the parties to 20 to 21 July

2017. On 20 July 2017, the disciplinary enquiry proceeded until the applicant closed his case. The parties agreed to submit closing arguments. The respondents were required to file theirs on 25 August and 8 September 2017. The applicant's submissions were due on 1 September 2017. Both parties met their deadlines. When this matter was argued on 22 August 2017 all the evidence had been led and a decision on when closing submissions had to be submitted had been taken. For the above reasons the respondents argued that this matter is moot as there is no dispute between the parties.

- [3] The applicant denied that this matter is moot. He based his argument on the fact that the disciplinary enquiry had not been finalised as its outcome was still outstanding. Amongst the authorities the respondent relied on is the decision in *MEC for Local Government, KZN v Yengwa*¹ where the Court referred with approval to the authority that is totally against deciding matters which have no practical effect on the parties. Such matters are moot as they do not constitute disputes between parties.
- [4] The averments on behalf of the respondents on the reasons for the delay in the finalisation of the applicant's disciplinary enquiry were not gainsaid. They prove that the delay in the finalisation of the disciplinary enquiry was mainly caused by the applicant. He also consented to some postponements which were occasioned by the unavailability of the chairperson. He may therefore not seek to rely on the delay he is responsible for. Above all, only the outcome of the disciplinary enquiry was outstanding when this application was argued on 21 September 2017. The chairperson received the last set of closing submissions on 8 September 2017. The applicant did not argue that the period between 8 and 21 September 2017 is unreasonably long. The disciplinary enquiry is virtually complete and there is therefore no dispute between the parties. The matter is, in the circumstances, moot.

- [5] In the premises, I make the following order:

Order

¹ 2010 (5) SA 494 at para 11.

1. The *point in limine* that this matter is moot is upheld.
2. The application is dismissed.

Z Lallie

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate Burton

Instructed by: Wikus Van Rensburg

For the Third Respondent: Advocate Simoyi

Instructed by: The State Attorney

LABOUR COURT