



IN THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

Not Reportable

Case No: P77/18

In the matter between:

HAMID MUNIR

Applicant

and

MEMBER OF THE EXECUTIVE COUNCIL

FOR HEALTH EASTERN CAPE

First Respondent

T.A MODONSELA CHIEF EXECUTIVE OFFICER

LIVINGSTONE TERTIARY HOSPITAL

Second Respondent

Heard: 29 March 2018

Delivered: 11 April 2018

Summary: A matter cannot be heard on the basis of urgency when the applicant has not given reasons for its urgency.

JUDGMENT

LALLIE, J

- [1] In this urgent application the applicant seeks an order in the following terms:

'Declaring the placing of the applicant on special leave on 6 September 2017 unlawful and set aside pending the finalisation of the unfair labour practice dispute relating to the special leave imposed on the applicant referred to the Public Health and Social Development Sectoral Bargaining Council, the Council.'

The application is unopposed.

- [2] The applicant is employed by the Department of Health in the Eastern Cape Province (the Department) since 2004 as a Specialist Cardio – Thoracic Surgeon at Livingstone Tertiary Hospital. He received a letter dated 8 August 2017 from the Health Professions Council of South Africa (HPCSA) in which he was, *inter alia*, placed in supervised practice for two years and to cease working in private practice until the completion of the two year period of supervision. On 24 August 2017 the applicant, through his attorneys addressed a letter to the HPCSA requesting reasons for the decision and expressed his intention to challenge its decision. On 29 August 2017 the Department addressed a letter to the applicant in which it informed him of its intention to place him on leave pending incapacity proceedings on the basis that the decision of the HPCSA made him unable to meet his contractual obligations with his employer. He was afforded an opportunity to make written submissions by 1 September 2017. On 6 September 2017 the Department, after considering the applicant's submissions, granted him special leave with immediate effect for purposes of finalising the investigation and any further process into the applicant's alleged incapacity. The applicant was required to return all the equipment of the Department and not to enter his employer's premises without prior authorization.
- [3] The applicant submitted that in compliance with the HPCSA letter dated 8 August 2017 he obtained letters from Doctor ID Oosthuizen and Rashoek R Sewsunker. He received a letter from the HPCSA dated 2017/09/05 which, *inter alia*, informed him that he was entitled to practice his profession in the RSA. The certificate the HPCSA attached to the letter is a certificate of registration certifying that the applicant is a medical practitioner in the

category of supervised practice specialist cardiothoracic surgery with effect from 9 June 2017.

- [4] The applicant submitted that the special leave imposed on him is both unlawful and unfair as it is not in terms of the special leave policy and constitutes disguised suspension. He expressed the view that even if the Department could construe the special leave as suspension, such suspension would be in conflict with provisions of paragraph 7.2.(a) and (c) of Resolution 1 of 2003 which provides that the suspension of an employee who has committed a serious offence and the employer believes that the employee's presence at the workplace might jeopardise any investigation into the alleged misconduct, or endanger the well-being or safety of any person or state property, such suspension may not exceed 60 days. The applicant has referred an unfair labour practice dispute relating to suspension/other disciplinary action short of dismissal to the Public Health and Social Development Sectoral Bargaining Council (the PHSDSBC).
- [5] In the notice of motion the applicant sought to have this matter heard as a matter of urgency. Rule 8(2) of the Labour Court Rules requires an applicant in an urgent application to give reasons for urgency, why urgent relief is necessary and reasons why the requirements of the rules were not complied with. In his founding affidavit, under the subheading of urgency, the applicant submitted that as he is seeking final interdict it is not necessary for him to show urgency. He added that as the application is brought on a semi-urgent basis, he was required to show that there are extra ordinary circumstances that required the matter be heard as one of urgency. The applicant's submission that it is not necessary to show urgency because he is seeking a final interdict has no legal basis. The requirements in Rule 8 do not distinguish between interim and final interdicts. In addition, the need to prove urgency is correctly stated in the following words in *Jiba v Minister of Justice and Constitutional Development*¹.

[18] Rule 8 of the Rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and why urgent relief

¹ [2009] 10 BLLR 989 (LC) para 18

is necessary. It is trite that there are degrees of urgency, and the degree to which the ordinarily applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self-created when seeking a deviation from the rules.'

[6] I have considered the decision in *Heyneke v Umhlathuze Municipality*² the applicant sought to rely on. In that matter the court did not deal with the issue of urgency and did not make a finding that provision of Rule 8 can be dispensed with in extra ordinary circumstances. The applicant's reliance on semi-urgency equally lacks a legal basis. In *De Beer v Minister of Safety and Security/Police*³ it was held that the Labour Relations Act⁴ (the LRA) does not refer to semi-urgent interim relief. The court further held that a matter is either urgent or it is not. Section 158(1)(a)(ii) the applicant seeks to rely on is also silent on semi-urgency. As the applicant seeks an order declaring the conduct of placing him on special leave unlawful and to have it set aside pending the finalisation of the unfair labour practice dispute he has referred to the PHSDSBC, he is effectively seeking urgent interim relief as envisaged in section 158 (1)(a)(i) of the LRA which is silent on semi-urgency.

[7] The applicant was placed on special leave on 6 September 2017 having received a letter from the HPCSA informing him that he was entitled to practice his profession in the country on 5 September 2017. He launched this urgent application on 7 March 2018, six months after being placed on special leave, he gave no reasons for the delay in bringing this application. Even the collective agreement he sought to rely on does not assist him as it does not address the entire delay as it requires that employees not be suspended for a period in excess of 60 days. As the applicant has failed to give reasons for this matter to be given priority over other cases which were referred before it and be heard as a matter of urgency, his application cannot succeed.

[8] In the premises, the following order is made:

² (2010) 31 ILJ 2608 (LC)

³ [2013] 10 BLLR 953 (LAC) para 32

⁴ Act 66 of 1995.

Order:

1. The application is struck from the roll for lack of urgency.

Z Lallie

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Advocate Nduzulwana

Instructed by: Zibi Inc

LABOUR COURT