THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

CASE NO: J1693/19

In the matter between:

NECODEMUS JOSIAH MOTAUNG **Applicant**

and

MINISTER OF THE DEPARTMENT OF

CORRECTIONAL SERVICES **Respondent**

Heard: 14 August 2019

Delivered: 16 August 2019

JUDGMENT

VAN NIEKERK J

[1] This is an urgent application in which the applicant seeks relief in terms of the Promotion of Access to Information Act. In particular, he seeks documentation relating to a pending arbitration where it would appear that he claims severance pay from the respondent.

[2] The matter has a history – the applicant resigned from the respondent's employ and claimed that he had been constructively dismissed. That claim was dismissed after an arbitration hearing and in terms of an award issued on 2 April 2019. The applicant now contends that he is owed severance pay, and seeks a list of grievances made by him, his employment contracts, and all records and proceedings 'portraying to disciplinary proceedings by the respondent'. The notice of motion is incomplete – it refers simply to 'the required information'. This lack of specificity in itself constitutes a basis for the application to be dismissed. However, I assume the notice of motion to refer to the documents previously demanded from the respondent by his erstwhile attorney.

[3] In *Sihlali & others v City of Tshwane Metropolitan Municipality & another* (2017) 38 *ILJ* 1692 (LC), Moshoana J said the following:

> [29] I take this opportunity to warn practitioners approaching urgent court with such matters to ensure that such exceptional circumstances as contemplated in Booysens case do exist. Otherwise they run the risk of punitive costs orders being made against their clients. It is good practice for practitioners practicing in this court to keep abreast with the judgments of this court particularly those arising from the urgent court. There is a developing trend that points to the fact that the urgent court is being abused. Might I state, the urgent court is for urgent matters. This court should not be detained to use its scarce, valuable time entertaining self-created urgent matters. Practitioners should exercise urgent matters. Practitioners should exercise greater care when considering approaching this court on urgency in matters where substantial redress is obtainable in due course.'

[4] I endorse these sentiments. They resonate with a number of other judgments where this court has warned litigants that the urgent court is not there to be used to micromanage workplace discipline, or the conduct of proceedings in the

CCMA or bargaining councils. In the present instance, what the applicant seeks is an order compelling discovery in a pending arbitration hearing. That is not a matter that ought to occupy a place on the urgent court roll.

[5] Even if I give the applicant the benefit of the doubt and find that the application is urgent, what the applicant's attorney was unable to explain is why the applicant did not seek discovery of the documents he requires at the level of the bargaining council, the forum in which the arbitration hearing will be conducted. Section 7 (1) of PAIA makes clear that the Act does not apply to a record of a public or private body if the record is requested for the purpose of civil proceedings, requested after the commencement of those proceedings and where the production of or access to the record is provided for in any other law. Contrary to what the applicant's attorney submitted, there is specific provision in the rules of the GPSSBC for the production of documents, and arbitrators are empowered to order the production of documents. It is no answer to say, as the applicant's attorney then attempted, that the bargaining council's rules make no provision for urgent applications. The applicant could have directed his request to the bargaining council as long ago as the date on which he received the notice of set down for the arbitration hearing. In short, there is no merit to the application.

[6] The court has a broad discretion to make orders for costs according to the requirements of the law and fairness. Ordinarily the court is reluctant to make orders for costs against individual employees, where they pursue legitimately felt grieves against their employers. In this case, however, the applicant is no stranger to the court. Indeed, he demonstrates a trend of approaching the urgent court as a matter of course – the present application is the third in which he has done so, having had an urgent application dismissed with costs as early as recently as February 2019. It is also not sufficient to submit, as was submitted on the applicant's behalf, that the applicant should be excused since he is a lay person. In this matter, he has the benefit of a legal representative. On every occasion that the applicant files an urgent application in circumstances where this is not warranted, not only is the court inconvenienced, but the taxpayer funds

the opposition to the application. The applicant ought to have learned a lesson in February 2019. His persistence with the strategy of invoking the assistance of this court, on an urgent basis, in what is not more than an attempt to compel discovery in an arbitration hearing, cannot go unsanctioned.

I make the following order:

1 The application is dismissed, with costs, such costs to be paid on the scale as between attorney and client.

André van Niekerk
Judge

REPRESENTATION

For the applicant: Mr. T Faku, T Faku Inc.

For the respondent: Adv. S Mahlangu, instructed by the state attorney.