



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J235/20

In the matter between:

LORAIN PULENG KUHLMANN

Applicant

and

**THE CIT OF JOBURG PROPERTY
COMPANY (SOC) LTD**

First Respondent

BONITAS MEDICAL AID SCHEME

Second Respondent

Decided: In Chambers

Delivered: This leave to appeal judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court's website and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 26 June 2020.

JUDGMENT IN APPLICATION FOR LEAVE TO APPEAL

LAGRANGE J

Background

- [1] The first respondent ('Joprop') is the applicant for leave to appeal against part of the judgment handed down on 28 February 2020 in the above urgent application. The applicant ('Kuhlmann') opposes the application and applies for condonation for the late filing of her answering submissions, which I see no reason not to grant.
- [2] This matter came before the court on the urgent roll. Kuhlmann had sought reinstatement of her medical aid cover, salary and benefits in terms of her contract of employment, and to be 'taken back' to employment. Further, she sought to prevent the first respondent from effecting her "unlawful retrenchment".
- [3] At the hearing of the urgent application, the parties agreed to settle the matter except in one respect, namely the payment of her remuneration after the date of the order. The agreed portion of the court's order read:
- 'By agreement between the parties the first respondent shall pay the arrears and employer medical aid contributions to the applicant's medical aid from 1 January 2020;
- the first respondent will resume paying the applicant's housing subsidy in terms of the first respondent's conditions of service with effect from the date of this order.'
- [4] In respect of the disputed payment of Kuhlmann's salary from the date of the judgment, the court ordered Joprop to resume paying her salary from the date of the order. No order was made as to costs.
- [5] The written reasons provided for making this order were recorded as:
- It was evident that the applicant remains in the employment of the first respondent at least at the time the order was made. Accordingly, since the payment of remuneration is a basic reciprocal contractual obligation of an employer upon tender of services by someone who remains in its employment, no good reason was advanced why the respondent should not resume paying the applicant's salary whilst the applicant remains in its employment. Obviously, the quantum of the salary actually due to the applicant will be subject to any contractual or statutory provisions governing the determination thereof, such as lawful deductions.

Application for leave to appeal

- [6] In essence, the Joprop contends that there was no basis for granting the remunerative relief on an urgent basis because Kuhlmann did not set out grounds justifying that it was a matter of urgency, neither did she pray for relief in those terms, nor set out the factual pre-requisites therefor.
- [7] Having considered the grounds of appeal, I am satisfied there is a reasonable prospect another court might come to a different conclusion.

Order

- [1] The late filing of the Applicant's answering submissions in the application for leave to appeal is condoned.
- [2] The First Respondent is granted leave to appeal against the following order in the judgment:
- “(t)he First Respondent must resume paying the Applicant's salary from the date of the Order’
- [3] Costs shall be costs in the appeal.

Lagrange J
Judge of the Labour Court of South Africa