



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case No: 5559/2023

In the matter between:

THULO MAJOE

Applicant

and

NALA LOCAL MUNICIPALITY

1st Respondent

MOKETE MOKHATI

2nd Respondent

CORAM: NAIDOO, J *et* MHLAMBI, J

JUDGMENT BY: MHLAMBI, J

HEARD ON: 07 OCTOBER 2024

DELIVERED ON: 31 MARCH 2025

- [1] This is an application to review and set aside the ruling by the second respondent, dismissing the points *in limine* which the applicant raised during a

disciplinary against him. On 18 October 2023, the applicant approached this court seeking, inter alia, the following relief:

- "1. *Reviewing and setting aside the decision of the second respondent dismissing the preliminary points raised on behalf of the applicant;*
2. *That the preliminary points be upheld;*
3. *That the disciplinary proceedings held against the applicant are unlawful and invalid and are set aside;*
4. *That the disciplinary notice and charge sheet issued against the applicant were served out of time and are, therefore, declared unlawful and invalid and set aside;*
5. *Ordering and directing the respondent to pay the costs of this application jointly and severally;"*

- [2] The application is opposed and the first respondent raised two preliminary points which the court was requested to deal with before proceeding to the merits of the case. The request was granted. The first preliminary point is that the respondents failed to file a certified record of the proceedings as required by Uniform Rule 53(3). The second point is that the court has no jurisdiction to entertain the application as it had no power to review the decision, which should have been referred to the South African Local Government Bargaining Council (SALGBC) in terms of section 24 of the Labour Relations Act ("the LRA").
- [3] On 18 September 2023, at the inception of his disciplinary hearing, the applicant raised the following points *in limine* to the charge sheet:
- *"That the accused employee at the time of the alleged misconduct he was still acting as the Director of Local Economic Development (LED).*
 - *That there was non-compliance with disciplinary code in relation to the timeframes, alleging that the Employer's representative failed to formulate and serve charges within five (5) days after his employment."*
- [4] Both points *in limine* were dismissed by the second respondent, the chairperson of the disciplinary hearing.

- [5] The applicant is of the view that the ruling is irrational, influenced by bias, unreasonable, arbitrary, and full of irrational considerations. On 24 November 2023, the applicant, after the respondents had dispatched the record to the Registrar, served a notice to the effect that it had filed the transcribed record of the disciplinary hearing of 18 September 2023 with the Registrar and the documents submitted to the chairperson of the disciplinary hearing pursuant to Uniform Rule 53. The respondents stated in their answering affidavit that the applicant did not file certified copies necessary for review purposes to ensure that the record of the proceedings was before the court.
- [6] According to the respondents, the dispute as to whether the employer was entitled to institute disciplinary proceedings outside the five (5) day time frame stipulated in the collective agreement relates to the interpretation and application of the collective agreement, which the SALGBC must resolve under the provisions of the LRA. On the contrary, the applicant filed a notice on 21 February 2024 that it stood by its notice of motion dated 18 October 2023. The applicant relied on the collective agreement and argued that the institution of the disciplinary proceedings against him was not in accordance therewith.
- [7] In his replying affidavit, the applicant stated that failing to attach the collective agreement was not fatal. He had pleaded what the provisions of the collective agreement stated, and that was common cause. The relevant provisions could be handed up to the court if the court wanted to see them. The applicant denied that the interpretation and application of the collective agreement was the issue. According to him, the issue is whether the first respondent served the charge sheet on him, and that did not need the bargaining council to determine.
- [8] Rule 53 of the Uniform Rules of court provide that the registrar shall make available to the applicant the record despatched as aforesaid upon such terms as the registrar thinks appropriate to ensure its safety, and the applicant shall thereupon cause copies of such portions of the record as may be necessary for the purposes of the review to be made and shall furnish the registrar with two copies and each of the other parties with one copy thereof, in each case certified

by the applicant as true copies. The costs of transcription, if any, shall be borne by the applicant and shall be costs in the cause.

[9] It is evident on a perusal of the copy of the collective agreement attached to the application that it is incomplete as a number of pages are missing. The complete collective agreement is therefore not before the court.

[10] Section 24 of the LRA provides that:

"Every collective agreement excluding an agency shop agreement concluded in terms of section 25 or a closed shop agreement concluded in terms of section 26 or a settlement agreement contemplated in either section 142A or 158 (1) (c), must provide for a procedure to resolve any dispute about the interpretation or application of the collective agreement. The procedure must first require the parties to attempt to resolve the dispute through conciliation and, if the dispute remains unresolved, to resolve it through arbitration."

[11] Section 158 (1)(h) of the LRA provides that the Labour Court has the power to review any decision taken or any act performed by the State as employer, on such grounds as are permissible in law.

[12] The applicant contended that he could not attach the transcribed record because the founding affidavit was deposed to before the proceedings were transcribed. It was impossible to append the record when the founding affidavit was deposed to. Regarding jurisdiction, nothing states that a referral to the bargaining council is peremptory, and section 24 of the LRA states that any party to a dispute may refer the dispute to the commission. This is a question of discretion and does not oust the jurisdiction of this court. The SALGBC did not have jurisdiction to entertain the dispute. There was therefore no merit in both preliminary points raised by the respondent, and they should be dismissed with costs. [13] I was referred to *Steenkamp and Others (National Union of Metalworkers of South Africa Intervening) v Edcon Ltd*¹ where it was stated that if a litigant's cause of action is a breach of an obligation provided for in the LRA, the litigant as a general rule, should seek a remedy in the LRA. It cannot go outside of the LRA and invoke the common law for a remedy. A cause of action based on a breach of an

¹ [2016] 4 BLLR 335 (CC).

LRA obligation obliges the litigant to utilise the dispute resolution mechanisms of the LRA to obtain a remedy provided for in the LRA.

- [14] I was also referred to the following passage in *DEMAWUSA and others v City of Johannesburg*² which reads as follows:

"[12] *The basis of the applicants' claim, as I have noted, is that the respondent has breached the terms of the collective agreement that regulates disciplinary procedures in the workplace. Section 24 of the LRA regulates disputes about collective agreements. Section 24 (1) provides that every collective agreement must establish a procedure to resolve any dispute about the interpretation or application of the agreement. The procedure must first require the parties to attempt to resolve the dispute through conciliation, and if the dispute remains unresolved, to resolve it through arbitration. In so far as the dispute between the parties concerning the employees' suspension is based on the respondent's alleged breach of the collective agreement, the dispute is one that is an "LRA dispute" which falls to be resolved under the dispute resolution provisions of the LRA. Indeed, the collective agreement gives effect to s 24. Clause 20 reads as follows:*

"Disputes about the interpretation and application of this collective agreement shall be dealt with in terms of the dispute resolution mechanisms provided for in the Main Collective Agreement."

- [15] It is evident from the perusal of the above passage that the provision of the entire collective agreement would have enabled a contextual reading and interpretation of the agreement by the court. This court was not provided with the entire collective agreement and was not in a position to undertake that interpretative exercise. It is common cause that the conduct of disciplinary proceedings by in the first respondent is regulated by the SALGBC Disciplinary Procedure and Code Collective Agreement, a collective agreement concluded in the bargaining council under which the first respondent operates.

- [16] In *South African Municipal Workers' Union obo Dlamini and Others v Mogale City and Another*,³ a preliminary objection was raised at the disciplinary hearing that the disciplinary proceedings were brought outside the 3 month period prescribed by clause 6.3 of the collective agreement. The disciplinary hearing was irregular

² [2020] 6 BLLR 574 (LC) (07 November 2019).

³ 2014 12 BLLR 1236 (LC).

and could, therefore, not continue. The chairperson of the disciplinary hearing, in a written ruling, disagreed. The court stated the following:

"...The fact is that disciplinary proceedings have been initiated against the applicants in terms of the agreement. It has been participated in by the applicants, albeit in the form of raising an objection in limine. The issue of whether the disciplinary proceedings are irregular or not (being the subject matter of the objection in limine) resorts squarely within the parameters of interpreting what the agreement means, as part and parcel of the disciplinary proceedings. As the agreement is a collective agreement, it has to be interpreted by the council (where I must point out it has its origin) in terms of section 24 of the LRA, and not by the labour Court on review. The applicants' review application is thus ill fated from the outset."

[17] The first respondent argued that the matter was based on collective bargaining and should go to the bargaining council. Rule 53 was concerned with the procedural process and did not grant this court jurisdiction. It appears that the applicant misconstrued section 24 of the LRA when he stated that it dealt with a discretion which did not oust the jurisdiction of this court, and the SALGBC did not have jurisdiction to entertain this dispute. In my view, this court is not clothed with the jurisdiction to hear this matter. Considering the above, I believe the preliminary points raised by the first respondent should be decided in its favour ~~of the first respondent~~, and the application must, therefore, fail.

[18] It is trite that the successful party is entitled to the costs.

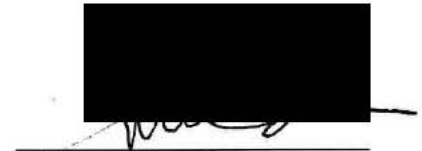
[19] I, therefore, make the following order:

Order:

1. The application is dismissed with costs including counsel's fees on scale B.


MHLAMBI, J

I concur,


NAIDOO, J

On behalf of the Applicant: Adv. Z Feni

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