



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case No: 2025-055130

In the matter between:

KARABO MOKALE RAMELA

Applicant

and

SATHS COOPER (N.O)

First Respondent

JONTY TSHIPPA (N.O)

Second Respondent

THE ROBBEN ISLAND MUSEUM

Third Respondent

**THE MINISTER OF SPORTS, ARTS AND
CULTURE**

Fourth Respondent

Heard on: 25 April 2025

Delivered Electronically on: 05 May 2025

JUDGMENT

LEKHULENI J

Introduction

[1] This is an application brought on an urgent basis in which the applicant seeks protection in terms of section 4 of the Protected Disclosures Act 26 of 2000 (*the PDA*). The applicant seeks an order that the court interdict, in the interim, the first to the third respondent from committing any conduct that causes occupational detriment to the applicant. In addition, the applicant seeks an order that the court direct the first and/or the fourth respondents to effect remedial action as enjoined by the PDA as amended. The first to the third respondents opposed the applicant's application. The fourth respondent did not take part in this application. Instead, he filed a notice to abide by the decision of this Court.

The Parties

[2] The applicant was employed as the Chief Financial Officer ('CFO') of Robben Island Museum ('RIM'), the third respondent in this matter. He is currently under precautionary suspension. The first respondent is Saths Cooper, the chairperson of the RIM Council or board. The second respondent is Johannes Tshipa employed as the acting Chief Executive Officer of RIM. Collectively, Mr Tshipa and Mr Cooper are the applicant's employers and designated as such for any protected disclosures in terms of the PDA emanating from employees such as the applicant. The third respondent is RIM, a juristic entity and public company incorporated in accordance with the Companies Act of South Africa, whose offices are located at the Nelson Mandela Gateway and Clock Tower Building in the V & A Waterfront precinct, Cape Town.

The Applicant's Case

[3] The applicant was initially employed as CFO of RIM during December 2022 on a short-term contract for six months following the departure of the previous CFO, who resigned suddenly. When the position of CFO was advertised, the applicant availed himself for the position and was interviewed by a panel which included the

RIM Council members who bear the overall responsibility and accountability for all RIM's operational and governance issues alongside the chairperson of the Council of RIM. The applicant was successful in his application and was formally appointed as the CFO of RIM for a fixed term contract of five years from 01 June 2023.

[4] His appointment coincided with the formulation and execution of a turnaround strategy for which his primary role as the CFO was critical in the implementation of such a strategy. According to the applicant, the turnaround strategy with the organisational design, development and transformation process at the centre had the following objectives: stabilisation of the entity from going concern issues and reversing the looming retrenchment process. Ensuring that RIM's operations are sustainable from a financial and non-financial perspective. Restoration of and the upholding of the financial integrity of RIM.

[5] The applicant pointed out that at the initial council meeting which he attended following his acting appointment in January 2023, RIM received a letter from the National Treasury reflecting the outcome of an application that RIM had submitted to the treasury to condone the irregular procurement of a boat estimated at R90 million incurred in the financial year 2019/2020 as result of evaluating a bid without the application of the 90/10 preference point system. National Treasury declined RIM's condonation application mainly because RIM did not conduct a determination test or investigation as prescribed by the National Treasury. The determination test is an internal investigative report presenting findings on irregular, fruitless and wasteful expenditure and proposes recommendations for the Council to consider and pass a resolution thereon.

[6] Pursuant thereto, RIM established a Fraud, Risk and Loss Control Committee (*the FRLC Committee*) to receive the determination test and become the management and governance structure to deal with matters relating to fraud, loss control and risk. The CFO, the applicant herein, was part of the FRLC Committee. The FLRC Committee requested a senior risk and performance manager to prepare the determination test report for its consideration and recommendation to the Council of RIM. The report was prepared and finally tabled for recommendation by the RIM Council.

[7] The Council noted various material deficiencies with the report and recommended that the report be returned to the committee. It furthermore resolved that the CFO, the applicant herein, should step in to compile the revised report for consideration by the Council. Following the Council's resolution, the applicant gathered more information through the finance team based on payments previously made to suppliers associated with the boat procurement and completed the revision of the report. The report was ultimately tabled with the RIM Council. On 1 August 2023, the Council endorsed the report and furthermore resolved that consequence management be implemented on individuals mentioned in the determination test report and still within the employment of RIM.

[8] According to the applicant, the individual staff members implicated were in senior managerial positions. As a result, senior managers were placed on precautionary suspension in August 2023, and RIM conducted their disciplinary hearings in January and February 2024. The applicant served as a key witness to the disciplinary actions that flowed from the consequences management which the RIM Council sanctioned.

[9] The applicant notes that the determination test report was also preceded by two forensic investigation reports conducted in 2019/2020 commissioned by the National Department of Sports, Arts and Culture and the erstwhile RIM Council. That investigation by Morar Incorporated, found thousands of cases of irregular, fruitless and wasteful expenditure in RIM. However, in compiling the determination test, the applicant averred that he did not have access, nor did he have a sight of the prior forensic investigation reports. Therefore, the security risks associated with his role in this process, coupled with the historical profile of the organisation, raised serious security concerns for him.

[10] The applicant asserted that given the security situation in South Africa today, he thought it prudent to be proactive in deposing an affidavit at the South African Police Services to ensure that precautionary steps are taken by the authorities to make certain he executes his duties without any fear of harm or intimidation. On 18 December 2024, he deposed to an affidavit after noting several concerning incidents

and occupational hazards in his endeavours to clean up mismanagement and corruption within RIM. On 4 February 2025, given the events of that time, he decided to consult his counsel on the possibility of bringing an application in terms of the PDA. According to the applicant, on the same day, he instructed his legal counsel to assist him in preparing an affidavit for his disclosure to the fourth respondent about the transgressions he uncovered in RIM.

[11] On 14 February 2024, he deposed to a supplementary affidavit wherein he made the alleged disclosure to the Minister of Sports, Arts and Culture. In that affidavit, he disclosed alleged impropriety at RIM. The applicant complained, among others, of tickets alleged fraud reported in April 2024 in RIM. The applicant stated that ticket money meant for RIM was being diverted and siphoned by complicit RIM employees to different accounts. Pursuant thereto, SNG Grant Thornton was appointed to investigate the matter. The investigation was on the alleged fraudulent incident relating to the reusing and rescheduling tickets on the ticket system. The investigation report by SNG Grant Thornton found that the scanning and reusing of tickets was linked to 1,982 tickets, resulting in a revenue loss for RIM of R752,860.38.

[12] The applicant reported that due to the state of the ticketing system, there is a high possibility of RIM employees being complicit in illicit activities in the form of bypassing system controls and exploiting loopholes for personal or mutual gain with external parties such as tour operators. The applicant also reported (disclosed) to the Minister on forensic investigation about private tours. In this regard, the applicant stated that payments of bookings made by private tours were deposited in different bank accounts and not that of RIM. According to the applicant, the investigation of this fraudulent conduct established that sufficient evidence exists to substantiate the fraud allegations to which consequence management was recommended.

[13] In his alleged disclosure, the applicant also reported poor management and collusion within RIM on boat operations to the fourth respondent. He stated that in 2023, RIM appointed a service provider, Africa Ferry, to assess the ferry operations at RIM in the following areas: Marine assets (boats), Marine employees (crew), and Ferry-related matters, including maintenance and technical issues. According to the

applicant, the report revealed and re-emphasised poor maintenance and lack of care for the RIM boats. Following much deliberation of the report at the RIM Council meeting, the Council resolved to seek a second opinion on the report from the South African Navy. As such, the report was never implemented as the Council did not adopt it.

[14] The applicant asserted in his alleged disclosure that he noted highly suspicious and collusive behaviour between Falcon Marine and RIM management staff in ferries and marketing tourism. This began with the arrival of Falcon Marine's boat, Madiba 1, in October 2023. The arrival of Falcon Marine's boat was at a period leading to the inaugural RIM Memorial Run in 2023. At that time, the Sikhululekile, a ferry boat for RIM, had technical breakdowns. The Acting COO, the senior manager of ferries, insisted that no RIM boat should be used in the Inaugural Memorial Run and that an outsourced boat, Madiba 1, would replace the absent RIM boat.

[15] In his report to the Minister, the applicant asserted that he objected to this by addressing it with his CEO, who engaged the COO privately to request the Navy to deploy its engineers to repair the RIM boat on time for the event, which they successfully executed. According to the applicant, since then, there has been more undue pressure on him to allow the appointment of Madiba 1 onto the panel of outsourced boats. As a result of the alleged disclosure to the fourth respondent of alleged malfeasance at RIM, the applicant implored the court to grant the relief sought in the notice of motion.

The Respondents' Case

[16] The respondents opposed the applicant's application and asserted that the applicant did not establish that he made a disclosure and that such disclosure amounts to a protected one. The respondents averred that the applicant failed to place both primary and secondary facts in his affidavit to establish a cause of action and to establish urgency. The respondents pointed out that the information in the affidavit and supplementary affidavit (the alleged disclosure made to the Minister) do not meet the definition of a protected disclosure in the PDA. According to the respondents, the information was already in the public domain and subject to

external investigation. The respondents also posit that the information was already known to RIM. In the respondents' view, informing anyone about events or incidents that RIM is already aware of or that are contained in reports RIM commissioned, cannot be a disclosure as contemplated in the PDA.

[17] The respondents asserted that on 12 February 2025, RIM addressed a letter titled notice of intention to suspend. The notice recorded that the purpose of the letter was to inform the applicant that RIM was considering placing him on precautionary suspension. Furthermore, the notice stated that an investigation was being conducted on the allegations of serious misconduct against the applicant. The allegations against the applicant, among others, pertained to fraudulent misrepresentation of the applicant's professional credentials. The notice also alleged that the applicant is not a chartered accountant in good standing registered with the South African Institute of Chartered Accountants ('SAICA') in that the applicant last held the designation in 2017 despite listing such credentials in official documents.

[18] The notice also informed the applicant that it was alleged that between 6 January 2025 and 7 February 2025, he was erratically not physically present at work without his line manager's express consent to work remotely or otherwise. While the recommendations for why the applicant should not be suspended were due on 14 February 2025, on 12 February 2025 at 18h21, the applicant asked that the deadline for him to deliver his representations on why he should not be suspended should be extended to 21 February 2025. His request for an extension as requested was refused. Notwithstanding, RIM was willing to give the applicant an extension until Tuesday, 18 February 2025, at 08h30 to file his representations. According to the respondents, it is apparent that the applicant requested this extension because the applicant was going to use the 12, 13, and 14 February 2025 to prepare the supplementary affidavit that he sent to the Minister as an alleged disclosure in terms of the PDA.

[19] In the respondents' opinion, this makes it plain that the alleged protected disclosure is nothing but a clear strategy by the applicant to avoid the possible suspension and any disciplinary hearing that may have followed. The respondents asserted that in the written representations, the applicant attempts to hide under the

blanket of the protected disclosure to say that he should not be suspended and all disciplinary actions against him should be stopped. In the respondents' view, the application is nothing other than an attempt by the applicant to achieve this purpose.

[20] The respondents further stated that topics covered by the applicant in his alleged disclosure to the Minister, particularly on the boat procurement expenditure, were known not only by the executive of RIM but also to the public due to being in the media. The respondents opined that SNG Grant Thornton investigated the alleged fraud in ticketing. As such, it was not a disclosure as contemplated in the PDA. The respondents asserted that all the alleged disclosures that the applicant made were known to them, and some investigations are underway. As a result, there is no disclosure as contemplated by the PDA. The respondents contended that the information disclosed to the Minister was part of ongoing external investigations and had already been addressed in media reports. The information was already in the public domain. It was made in an attempt to avoid disciplinary proceedings. The respondents implored the court to dismiss this application with costs.

Principal submissions by the parties

[21] Mr Alcock, the applicant's counsel, submitted that the applicant, even though already under siege, relied on the PDA giving him a clear right. Counsel asserted that there is simply no limitation placed on this right. The trigger is only a suspicion of criminality. Counsel argued that from the tenor of the PDA, what is needed is simply an apprehension and the conduct does not necessarily have to commence.

[22] In counsel's view, the drafters' intention here was to provide for the negative sanctioning of negligent acts in both private and public entities. In augmenting his argument, Mr Alcock submitted that the PDA specifically requires the disclosure of any information and, therefore, does not exclude information purely on the basis that it is already in the public domain or known to key functionaries, as the respondents suggest. According to counsel, the fact that the applicant is sitting at home instead of fulfilling his obligations in terms of his employment contract harms his dignity and professional reputation.

[23] Counsel asserted that there is a real threat that the applicant's professional standing could be decimated, thus leading to the same occupational detriment the Act seeks to discourage. Not to mention the very real possibility of a loss of income and future employability. Mr Alcock contended that a valid case for the order requested in the notice of motion has been established. He earnestly urged the court to grant the relief sought in the notice of motion.

[24] On the other hand, Mr Mndebele, the counsel for the respondents, impugned the urgency with which this application was brought. Counsel argued that the applicant does not even begin to state why this matter is urgent and why he will not obtain substantial redress at a hearing in due course. According to Mr Mndebele, it is evident that the applicant seeks to halt the disciplinary hearing that is scheduled to commence on 7 April 2025. It was the counsel's submission that the disciplinary process in itself is not a harm to the applicant. According to counsel, no employee has the right not to be disciplined without demonstrating that the disciplinary process is meritless, as no one knows the outcome of the disciplinary process.

[25] On the merits, Mr Mndebele argued that for an occupational detriment to exist, there must have been a protected disclosure made in good faith. In counsel's view, none of these factors are present in this case. Mr Mndebele asserted that the reading of the affidavits deposed to by the applicant and transmitted to the Minister do not fit the rubric set by the PDA. In the counsel's view, the application doesn't specify the disclosure. The affidavit and the supplementary affidavit transmitted to the Minister on 14 February 2025 do not even allow for the extrapolation of the disclosure.

[26] At best, counsel argued that the affidavits amount to a narration of facts that have occurred. In expanding his argument, Mr Mndebele pointed out that before invoking the protection afforded by the PDA to employees in terms of section 6, the first hurdle that must be crossed is establishing that a disclosure has been made. In counsel's view, the applicant has not passed this hurdle. Mr Mndebele submitted that all the information that the applicant allegedly disclosed in the affidavit and supplementary affidavit is information that is already within the knowledge of RIM or

the RIM Council and, in some instances, even the public at large. Counsel implored the court to dismiss the applicant's case with costs.

Issues in dispute

[27] Pursuant to the discussion set out above, this court, in my view, is enjoined to determine the following four disputed issues:

- (a) Is the application urgent?
- (b) Did the applicant make a protected disclosure envisaged in the PDA?
- (c) If so, whether such protected disclosure was made in good faith, or was it a stratagem to avoid disciplinary proceedings?
- (d) Whether the applicant has been subjected to an occupational detriment?

Discussion

[28] For completeness and diligence, I will consider the disputed issues cited above sequentially.

Urgency

[29] The legal principles applicable to the question of urgency are well-established in our law. Urgency in applications involves mainly the abridgement of times prescribed by the rules and, secondarily, the departure from established filing and sitting times of the court.¹ Rule 6(12) of the Uniform Rules of Court confers courts with a wide discretion to decide whether an application justifies enrolment on the urgent court roll based on the facts and circumstances of each case.² An application is urgent when an applicant cannot obtain substantial redress in due course.³ The degree of departure from the modes of service and time frame in the Uniform Rules

¹ See Rule 6(12) (a) and (b) of the Uniform Rules.

² *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo* [2014] 4 All 67 (GP) para 63; *Caledon Street Restaurants CC v D'Aviera* 1998 JDR 0116 (SE) at 8.

³ *Dlamini v City Manager of the City of Ekurhuleni Metropolitan Municipality* [2023] ZAGPJHC 147 para 27.

must be commensurate with the urgency in each case.⁴ An applicant is not allowed to create its own urgency.⁵

[30] In the present matter, I have considered the reasons and circumstances advanced by the applicant for bringing this application on an urgent basis, and I am of the opinion that they are deficient and fall short of the threshold set out in Rule 6(12) of the Uniform Rules. This conclusion is borne out by the following reasons: The applicant averred in his founding affidavit that on 18 December 2024, out of concern for his safety given his role as a functionary of the third respondent, he deposed to an affidavit after noting several concerning incidents and occupational hazards of his endeavours to clean up mismanagement and corruption within RIM. At the time of his deposition, he was assisted by legal counsel, as he had come to understand that his aversion to the wasteful use of taxpayer funds, would likely be met with considerable resistance.

[31] Subsequent thereto, on 4 February 2025, given the events up to that time, he consulted his legal counsel on the possibility of bringing an application in terms of the PDA. On the same day, the applicant instructed his counsel to assist him in preparing an affidavit for his alleged protected disclosure to the fourth respondent. On 25 March 2025, the applicant's counsel addressed a letter and threatened to institute an urgent application against the respondents if the respondents did not take steps to address the applicant's personal safety concerns following his alleged protected disclosure to the Minister.

[32] Notwithstanding, the applicant did not institute the alleged application. Notably, the applicant was suspended on 27 February 2025. The applicant did not launch the intended urgent application more than a month after his suspension. All indications are that the urgent application was triggered by a notice delivered on 15 April 2025 from the second respondent stating his intention to bring disciplinary proceedings against the applicant. Clearly, the applicant waited for two months and only brought this application on 22 April 2025 on an urgent basis.

⁴ *Republikeinse Publikasie (Edms) Bpk v Afrikaanse Pers Publikasie (edms) Bpk* 1972 (1) SA 773 (A) at 782A-G.

⁵ *Venter v Els* 2024 (4) SA 305 (WCC) para 19.

[33] In my view, the urgency with which this application was brought was entirely self-created. It is apparent that the primary rationale for the applicant's submission of this application on an urgent basis is to circumvent the disciplinary proceedings that have been instituted by the respondents, which are scheduled to take place on 7 May 2025. This cause of action may be perceived as an attempt to delay or disrupt the necessary consequence management and accountability process. I must stress that the Labour Court has jurisdiction to interdict any unfair conduct including disciplinary action. However, such an intervention should be exercised in exceptional cases.⁶

[34] Demonstrably, the applicant herein is trying to thwart the right of the third respondent to discipline him. As I see it, even an employee who has made a protected disclosure is not immune from being disciplined. To ensure that employers retain the right to implement disciplinary measures against employees who have made protected disclosures under the PDA, significant amendments were made to the Labour Relations Act 66 of 1995 ('LRA') in 2015. These amendments were enacted through Section 32 of the Labour Relations Amendment Act 6 of 2014, which introduced sections 188A(11) and (12) into the framework of the LRA. This legislative change underscores the balance between protecting employee rights and maintaining employer oversight in the workplace.

[35] Section 188A(11) of the LRA reinforces the protection offered by the PDA to whistleblowers by providing that if an employee alleges, in good faith, that holding a disciplinary inquiry contravenes the PDA, the employee or employer may require that an arbitrator conduct such a disciplinary inquiry. This section was introduced to protect an employee who has, in good faith, made a protected disclosure and feels that a disciplinary hearing that the employer is embarking on is an occupational detriment.

[36] The applicant was required by Rule 6(12)(b) of the Uniform Rules of Court to set forth explicitly in his founding affidavit the circumstances which he averred

⁶ *Booyesen v Minister of Safety and Security* [2011] 1 BLLR 83 (LAC) para 36.

rendered this matter urgent and the reasons why he claims that he would not be afforded substantial redress at a hearing in due course.⁷ In summary, the applicant has failed to provide a full explanation, let alone a reasonable explanation, for his delay in instituting this application. The urgency asserted by the applicant is entirely a self-created urgency.⁸ There is no justification for the applicant's failure to bring this application earlier.

[37] Accordingly, the applicant's application must ordinarily fail due to his decision to wait from December 2024 and only approach this court in April 2025 on an urgent basis for the relief sought in the notice of motion.

[38] Ordinarily, the above finding on urgency would lead to the applicant's application being struck off the roll. However, I will address the remaining issues in dispute for completeness and certainty.

Did the applicant make a protected disclosure envisaged in the PDA?

[39] The PDA regulates the protected disclosures. According to the Act, 'disclosure' means 'any disclosure of information regarding any conduct of an *employer*, or of an *employee* or of a *worker* of that *employer*, made by any *employee* or *worker* who has reason to believe that the information concerned shows or tends to show one or more of the following:

- (a) That a criminal offence has been committed, is being committed or is likely to be committed;
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) that the health or safety of an individual has been, is being or is likely to be endangered;
- (e) that the environment has been, is being or is likely to be damaged;

⁷ *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137E-G.

⁸ *Big Blue Marketing CC v King Sabata Dalindyebo Local Municipality* 2017 JDR 0302 (ECM) para 10; *Windsor Hotel (Pty) Ltd v New Windsor Properties (Pty) Ltd* 2013 JDR 1989 (ECM) para 9.

(f) unfair discrimination as contemplated in Chapter II of the Employment Equity Act, 1998 (Act No. 55 of 1998), or the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000); or
(g) that any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed.’

[40] The preamble of the PDA provides the mechanisms or procedures in terms of which employees or workers may, without fear of reprisal, disclose information relating to suspected or alleged criminal or other irregular conduct by their employers whether in the private or public sector. Every employer and employee have a responsibility to disclose criminal and any other irregular conduct in the workplace. The preamble of the PDA notes that every employer has a responsibility to take all necessary steps to ensure that employees who disclose such information are protected from any reprisal because of such disclosure.

[41] The protection granted to an employee making a protected disclosure is set out in section 3 of the PDA. In terms of this section, no employee may be subjected to any occupational detriment by his or her employer on account or partly on account of having made a protective disclosure. It is, however, also clear from the provisions of the PDA that the protection afforded by the PDA is not unconditional and that certain requirements must be met before an employee may be entitled to the protection afforded by the PDA.⁹ The protection afforded to an employee must, therefore, be understood by reference to the definition sections, which define what is a disclosure and what constitutes a protected disclosure. These sections should also be understood against the general purpose of the PDA, which is to encourage a culture of whistleblowing. The fostering of a culture of disclosure is a constitutional imperative as it is at the heart of the fundamental principles aimed at the achievement of a just society based on democratic values.¹⁰

[42] Before invoking the protection afforded by the PDA to employees, the employee must first establish that a disclosure has been made. To enjoy protection, the employee who made the disclosure must bona fide have believed that the

⁹ *Randles v Chemical Specialities Ltd* [2011] JOL 26803 (LC) para 21.

¹⁰ *Potgieter v Tubatse Ferrochrome* (2014) 35 ILJ 2419 (LAC) para 14.

information disclosed was true. The employee must prove that he had reason to believe that the employer had or was about to commit a criminal offence, was evading a legal obligation, was perpetrating or about to perpetrate unfair discrimination or a 'miscarriage of justice' or was endangering the health and safety of any person or the environment. The disclosure is protected only if made in good faith to a legal advisor, a member of Cabinet or the executive Council of a province, or to an employee of the employer concerned.¹¹

[43] In the present matter, the applicant asserts that he has made a protected disclosure to the Minister of Arts, Culture and Recreation. The disclosure relates to alleged wrongdoing in the administration of RIM. I must record that the issues raised by the applicant in his affidavit made to SAPS for the purposes of a threat assessment report and the subsequent supplementary affidavit made to the Minister as a disclosure in terms of the PDA raises issues of very serious concerns. However, those issues are in the public domain and in the knowledge of RIM. In fact, the RIM Council has taken measures to address these problems. Several investigations are currently underway to address these issues. It is anticipated that the underlying misconduct will be exposed and that those implicated will be held accountable for their actions.

[44] I do not intend to deal with all issues raised (alleged disclosures); however, the investigations of the alleged malfeasance have been acknowledged by the applicant in his founding affidavit. In paragraph 74 of his founding affidavit, the applicant asserted that various interventions have been implemented, and some are works in progress, which have been reported to the Council through the Audit, Risk and IT Committee of Council ('ARC'). The applicant also pointed out that in April 2024, alleged fraudulent incidents relating to the reusing and rescheduling of tickets on the ticket system were reported to the Council through ARC. He attached a copy of that report in support of his disposition.

[45] Importantly, the applicant stated that SNG Grant Thornton was appointed to investigate the ticket fraud matter. The applicant further mentioned that their final

¹¹ *Radebe v Premier, Free State* 2012 (5) SA 100 (LAC).

report should be completed due course, following delays in extracting critical information from the ticketing service provider. On the alleged diversion of ticket funds from private tours, the applicant stated in paragraph 95 of his founding affidavit that the RIM Council instituted a forensic investigation on allegations of fraud within the organisation on private tour bookings. The applicant also explained in detail the genesis of the investigation.

[46] On the boat operation and the repairs of the RIM boats, the applicant stated in paragraph 105 of his founding affidavit that in 2023, RIM appointed a service provider, Africa Ferry, to assess the ferry operations at RIM in the following areas – Marine assets (boats), Marine employees (crew) ferry related matters, including maintenance and technical issues. The applicant explained that for various reasons reported in the Council meeting, RIM is yet to receive a second opinion report from the Navy.

[47] From the foregoing, it is abundantly clear that the RIM Council is aware of these transgressions and has commissioned various investigations to address the contraventions. Notably, the PDA encourages internal procedures and remedies to be exhausted before public disclosure. The purpose of this requirement is for the employer to be allowed to investigate the matter. The employer should be given a chance to explain or correct the situation. In *Tshishonga v Minister of Justice and Constitutional Development and Another*,¹² it was held that the motivation for this approach is not to cover up wrongdoing but because the internal remedy may be the most effective.

[48] As explained elsewhere in this judgment, the employer has taken steps to address the wrongdoing. Reiterating information that an employer is already aware of and taking the necessary action to remedy the situation cannot be classified as a protected disclosure under the PDA. In these instances, in my opinion, the protection intended by the PDA is not applicable. From a conspectus of all the facts placed before this Court, the disclosure made to the Minister was not bona fide. It was a

¹² 2007 (4) SA 135 (LC) paras 199 – 200.

disclosure of information that is subject to external investigations commissioned by the employer. The information was already in the public domain.

[49] During argument and in his written submissions, Mr Alcock, the applicant's legal counsel, argued that the PDA specifically requires the disclosure of *any* information and, therefore, does not exclude information purely on the basis that it is already in the public domain or known to key functionaries as the respondents herein suggest. This argument, with respect, is mistaken and cannot be correct. It is important to note that the Act refers to any disclosure of information and not to the disclosure of any information. There is a difference between the two.

[50] Furthermore, I must emphasise that for the protection envisaged by the PDA to be triggered, the information disclosed must not have been common knowledge or known to the employer.¹³ It would be a different case if the disclosure was clearly indicative of a breach of legal obligations and possibly criminal conduct on the part of the employer concerned, and the employer did nothing about it. In such a case, in my view, the employee would enjoy the protection envisaged in the PDA when he discloses the alleged transgressions. In the present matter, the information disclosed is common knowledge, and the employer has commissioned external investigations into those transgressions. The applicant is aware of these investigations and does not impugn or challenge them. As it will be demonstrated hereunder, the alleged disclosure made by the applicant was made to avoid disciplinary action being taken against the applicant.

Was the disclosure made in good faith?

[51] Section 7 of the PDA requires that a disclosure must be made in good faith. Good faith must be assessed contextually, on a case-by-case basis, according to the specific circumstances in the case. Bad faith, in a strict sense, refers to a 'dishonest intention or a corrupt motive'.¹⁴ Good faith is a finding of fact. The court must

¹³ *Xakaza v Ekurhuleni Metropolitan Municipality* [2013] 7 BLLR 731 (LC) paras 55 and 56.

¹⁴ *Baxter v Minister of Justice & Correctional Services* (2020) 41 ILJ 2553 (LAC) para 83.

consider all the evidence cumulatively to decide whether there is good faith or an ulterior motive, or, if there are mixed motives, what the dominant motive is.¹⁵

[52] Ordinarily, in dismissal cases, protected disclosures happen before disciplinary steps are commenced against an employee. The employer must act against the employee in reaction to the disclosure. In other words, the occupational detriment must be retaliatory in form and be connected to the making of the protected disclosure. Expressed differently; by subjecting an employee to an occupational detriment, the employer punishes the employee for having exposed their wrongdoings.

[53] In this case, a notice was given to the applicant on 12 February 2025, to give reasons as to why he should not be suspended. Two days later, after the applicant was served with the said notice, the applicant allegedly made a protected disclosure to the Minister of Sport, Arts and Culture. Evidently, the applicant made the alleged protected disclosure after being given a notice contemplating his suspension and setting the misconduct allegations against him. The employer did not act out of vengeance when it instituted disciplinary proceedings against the applicant. I am mindful that the disciplinary proceedings are pending; however, I believe that the employer did not retaliate when it instituted the proceedings against the applicant.

[54] This principle was aptly explained by the Labour Court in *Mamudi v Property Practitioners Regulatory Authority and Another*,¹⁶ where the court held that the protected disclosure must come before the disciplinary process starts. In other words, the employee must first make a protected disclosure. Following that, the employer must impose an occupational detriment on the employee because of that disclosure. The reason for the employer's decision to take such action must be directly linked to the employee having made the protected disclosure.

[55] In summation, there must be a causal nexus between the protected disclosure made by the applicant and the subsequent occupational detriment imposed by the

¹⁵ *Ramsammy v Wholesale and Retail Sector Education and Training Authority* (2009) 30 ILJ 1927 para 53.

¹⁶ (J68/23)[2023] ZALCJHB 19 (13 February 2023).

employer. There is none in this matter. In my view, the alleged disclosure was made as a stratagem to circumvent the disciplinary proceedings that the employer instituted against the applicant. The disclosure in my view was not made in good faith. While the PDA should be interpreted generously to vindicate its purpose, courts should not condone an employee's attempt to invoke the Act's protection to avoid the consequences of shortcomings in their own conduct.¹⁷

Whether the applicant has been subjected to an occupational detriment?

[56] An 'occupational detriment' includes prejudice going beyond the forms of unfair labour practice identified in the LRA.¹⁸ In terms of the PDA, 'occupational detriment, in relation to an employee or a worker, means—

- (a) being subjected to any disciplinary action;
- (b) being dismissed, suspended, demoted, harassed or intimidated;
- (c) being transferred against his or her will;
- (d) being refused transfer or promotion;
- (e) being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;
- (f) being refused a reference, or being provided with an adverse reference, from his or her *employer*;
- (g) being denied appointment to any employment, profession or office;
- (h) being subjected to any civil claim for the alleged breach of a duty of confidentiality or a confidentiality agreement arising out of the *disclosure* of—
 - (i) a criminal offence; or
 - (ii) information which shows or tends to show that a substantial contravention of, or failure to comply with the law has occurred, is occurring or is likely to occur;
- (i) being threatened with any of the actions referred to in paragraphs (a) to (h) above; or

¹⁷ *National Institute for the Humanities and Social Sciences v Lephoto* [2020] 3 BLLR 257 (LAC) para 37.

¹⁸ Grogan J *Workplace Law* 13th Ed (2020) at 69. See also definition of unfair labour practice in section 186(2) of the LRA.

(j) being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities, work security and the retention or acquisition of contracts to perform work or render services.’

[57] The institution of disciplinary action itself is not an occupational detriment. As foreshadowed above, for the institution of disciplinary action to be an occupational detriment, it must be in response to a protected disclosure, and a causal connection must exist between the protected disclosure and the disciplinary action. It is common cause in this matter that the disciplinary action started before the alleged protected disclosure. The alleged protected disclosure that the applicant allegedly made in the middle of a disciplinary action does not give rise to an occupational detriment. The disciplinary action instituted against the applicant is not a retaliatory action by the RIM Council against the applicant.

[58] I have considered the charges levelled against the applicant, and I am of the opinion that they are not a sham and are not a direct result of the purported protected disclosure made by the applicant. I am of the view that the charges faced by the applicant are genuine misconduct that ostensibly breaks the relationship of trust and confidence required in an employment relationship. The applicant is charged with misrepresentation of his SAICA accreditation status, which was one of the minimum requirements for the role of the CFO position when he applied for this position. On the papers, the applicant does not dispute that he was not a member of SAICA in good standing when he was appointed the CFO of RIM. Without delving into the merits of those charges, I am of the view that they are serious, and the applicant must be given an opportunity to respond to them at the appropriate platform.

[59] What I also find highly concerning is that the RIM Council has gone out of its way to protect the rights of the applicant, and in return, the applicant has spurned the olive branch extended to him. The charge sheet preferred against the applicant ensures that his rights are protected by ensuring that he receives a fair procedure at the disciplinary hearing. To this end, RIM made a tender to the applicant to consent to have the matter referred to arbitration at the Commission for Conciliation, Mediation and Arbitration (‘CCMA’) and to elect an independent chairperson who has

not done work for RIM. In terms of this section, the employee must provide written consent for the inquiry unless the inquiry process is part of a collective agreement.¹⁹ As discussed above, the referral of the disciplinary hearing to the CCMA is a legislative measure created to safeguard employees like the applicant who alleges to have made a protected disclosure. For completeness, the relevant part of sections 188A(11) and (12) of the LRA state that:

‘(11) Despite subsection (1), if an employee alleges in good faith that the holding of an inquiry contravenes the Protected Disclosures Act, 2000 (Act 26 of 2000), that employee or the employer may require that an inquiry be conducted in terms of this section into allegations by the employer into the conduct or capacity of the employee.

(12) The holding of an inquiry by an arbitrator in terms of this section and the suspension of an employee on full pay pending the outcome of such an inquiry do not constitute an occupational detriment as contemplated in the Protect Disclosure Act, 2000 (Act 26 of 2000).’

[60] In the notice to attend the disciplinary hearing, the applicant is asked to make an election within 24 hours. The applicant did not make the election. On 21 April 2025, after this application was launched, the first to the third respondents again invited the applicant to make an election. In that correspondence, it was stated that whilst RIM has commenced and finalised the process to appoint an independent chairperson, RIM continues to be amenable to the disciplinary hearing being referred to the CCMA in terms of section 188A (11) of the LRA. The applicant was informed that should he wish for the matter to be referred to the CCMA; he must inform RIM accordingly by no later than 18h00 on Tuesday, 22 April 2025. The applicant did not respond to these correspondences.

[61] Despite the proposed measures to protect the applicant's rights, the applicant proceeded with this application. In doing so, the applicant claims to have experienced occupational detriment, notwithstanding that the allegations are not

¹⁹ Section 188A(1)(b) of the LRA.

supported by evidence. In my view, the applicant suffered no occupational detriment in this matter. In view of all these considerations, I am of the opinion that the applicant's application must fail.

Costs

[62] As a general rule, costs follow the result, and successful parties should be awarded their costs.²⁰ I have considered, the complexity of the issues raised in this matter, and I am of the view that costs should be awarded in favour of the respondents on scale B.

Order

[63] In the result, the following order is granted:

63.1 The applicant's application is hereby dismissed.

63.2 The applicant is ordered to pay the respondents' costs including the costs of counsel on scale B.

LEKHULENI JD
JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant: Adv Alcock

Instructed by: Phungula Sibusiso Attorneys

For the First, Second and Third Respondents: Adv Mndebele

²⁰ *Union Government v Gass* 1959 4 SA 401 (A) 413.

Instructed by: Molatudi Attorneys