IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GRAHAMSTOWN)

CASE NO: 297/2025

DATE HEARD: 18/02/2025

DATE DELIVERED: 25/02/2025

In the matter between

BULELWA MZALAZALA	**APPLICANT**
and	
THE EASTERN CAPE DEPARTMENT OF ARTS, SPORTS AND CULTURE	**1st RESPONDENT**
DIRECTOR OF HUMAN RESOURCES, PHELISILE KONDILE	**2nd RESPONDENT**

JUDGMENT

ROBERSON J:

Introduction

[1] The applicant is an employee of the respondent. In this application she seeks an order interdicting the respondent from making certain deductions from her salary on the grounds that there has been non-compliance with s 34 of the Basic Conditions of Employment Act 75 of 1997 (the BCEA). This section provides:

*"**Deductions and other acts concerning remuneration***

34. (I) An employer ma}' not make any deduction from an employee's remuneration 15 unless—

(a) subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or

(b) the deduction is required or permitted in terms of a lav'. collective agreement. court order or arbitration award.

(2) A deduction in terms of subsection (1)(a) may be made to reimburse an employer for loss or damage only if—

(a) the loss or damage occurred in the course of employment and was due to the fault of the employee;

(b) the employer has followed a fair procedure and has given the employee a 25 reasonable opportunity to show why the deductions should not be made;

(c) the total amount of the debt does not exceed the actual amount of the loss or damage; and

(d) the total deductions from the employee's remuneration in terms of this subsection do not exceed one-quarter of the employee's remuneration in 30 money.

(3) A deduction in terms of subsection(1)(a) in respect of any goods purchased by the employee must specify the nature and quantity of the goods.

(4) An employer who deducts an amount from an employee's remuneration in terms of subsection (1) for payment to another person must pay the amount to the person in 35 accordance with the time

period and other requirements specified in the agreement. law. court order or arbitration award.

(5) *An employer may not require or permit an employee to –*

(a) *repay any remuneration except for overpayments previously made b~ the employer resulting from an error in calculating the employee's remuneration; or*

(b) *acknowledge receipt of an amount greater than the remuneration actually received."*

Background

[2] The applicant has been employed by the respondent for ten years. During 2024 she applied for temporary incapacity leave for the periods 26 March to 28 June 2024, and 1 July to 30 September 2024, but this leave was declined for lack of compliance with the required supporting medical information. The applicant's normal sick leave had been exhausted. The respondent followed a procedure in terms of a policy document entitled Policy and Procedure on Incapacity Leave and Ill-health Retirement, which was determined in terms of section 3(2) read with section 5(6) of the Public Service Act, 1994.

[3] After each period of temporary incapacity leave was declined, the respondent wrote to the applicant, on 13 August 2024 and 24 October 2024 respectively, providing the reasons for such decision and explaining the nature of the supporting medical information which was required to support the application. She was further advised that she had five working days to elect whether the unapproved period of leave should be allocated as unpaid leave or taken as annual leave. If the applicant failed to make such election, the unapproved leave would be converted to unpaid leave and she would not then be able to convert such unpaid leave to annual leave. The applicant was also informed of her right to lodge a grievance in terms of the standard internal dispute resolution procedures.

[4] The applicant lodged a grievance in respect of one of the periods of leave, but re-assessment was declined. In the letter of 27 November 2024 advising her of this

outcome, the nature of supporting medical information for her particular condition was fully explained. She was again given five working days to elect whether the unapproved period of leave should be allocated as unpaid leave or taken as annual leave, with the same caveat.

[5] In relation to a further period of absence, the applicant was advised that if there was no submission for temporary incapacity leave by 13 December 2024, leave without pay would be implemented.

[6] The applicant lodged another grievance in respect of both periods of leave. A re-assessment was declined. In the letter of 9 December 2024 informing her of the outcome, the nature of the supporting medical information was again explained. The applicant was informed that the full period of 128 days would be allocated as follows: 30 days to be deducted from her annual leave, and the balance of 98 days would be treated as leave without pay, which would be deducted from her salary monthly commencing January 2025.

[7] The applicant's gross monthly salary is R42 245.30, and her nett salary, according to her December 2024 pay advice, is R27 405.31. R6 651.08 was deducted from her January 2025 salary and two amounts of R6 651.08 were deducted from her February 2025 salary.

[8] In her founding affidavit the applicant said that her attorneys were assisting her with a referral of her matter to the Bargaining Council. A letter from the General Public Service Bargaining Council dated 12 February 2025 indicates that the applicant's referral of a dispute has been captured and a reference number allocated.

The present application

[9] The application was brought as one of urgency. Urgency was disputed by the respondent. The applicant is a single parent of a minor child. Section 34 (2) (d) of the BCEA provides that total deductions do not exceed one quarter of the remuneration in money. The February deduction exceeded one quarter. If the relief

the applicant seeks is not granted on an urgent basis, a deduction will be made in March 2025 and succeeding months, until she can be heard, and such deductions might exceed one quarter of her remuneration. This is leaving aside the question of whether or not the respondent has adopted the correct procedure to make the deductions.

[10] I am satisfied that the matter was urgent. As was held in *Bux v Minister of Defence and Military Veterans and Others* [2018] ZALCCT 21 at paragraphs [5], [6] and [7]:

> "[5] Ms *Botma* argued that the matter is not urgent, as the applicant has known since 2016 that deductions would be made and they have been made since December 2017.
>
> [6] The short answer is that the harm is ongoing. Col Bux does not seek any relief with regard to past deductions; he only seeks to interdict any <u>further</u> deductions, the first of which is to take place today, Friday 15 June 2018. The respondents have taken ten court days to deliver an answering affidavit. There is no prejudice to them.
>
> [7] I am satisfied that the matter must be dealt with on an urgent basis."

Discussion

[11] This court cannot decide on the merits of the refusal of temporary incapacity leave. That is for the Bargaining Council and any further appropriate forum. There are no details of the dispute which has been referred to the Bargaining Council but I assume it is whether or not temporary incapacity leave should have been approved. If the applicant is successful in the Bargaining Council or further fora, the question of deductions for unpaid leave falls away. If she is partially successful the total amount of deductions will be adjusted. Either party may take the dispute further to an appropriate forum.

[12] The core complaint of the applicant is the refusal to approve temporary incapacity leave. The making of deductions is inextricably linked to this core complaint. I raised with counsel my concern that whatever decision I make in the present application may be in conflict with the outcome of the Bargaining Council proceedings, and there could be possible prejudice to either party. The matter stood down for the parties to try to reach agreement on a postponement of the application with an order interdicting further deductions, pending the outcome of the Bargaining Council proceedings. Agreement was not reached. Counsel for the applicant in argument suggested such an order, and the merits of the application itself were fully argued.

[13] In my view a stay of further deductions pending the finalisation of the labour dispute is the appropriate order to make. As I said the applicant's core complaint is the refusal to approve temporary incapacity leave. Both parties will be heard at the Bargaining Council or further fora. It would in my view be undesirable to hear separately the correctness or otherwise of the procedure by which deductions flowing from such refusal are made. It must be remembered that the complaint of the applicant in this application is that the respondent has not followed the correct procedure in making deductions. This still leaves open the right of the respondent to make deductions. A decision on this right is still pending.

[14] **The following order will issue:**

1. **Pending the finalisation of the dispute between the applicant and the respondent in the General Public Service Sector Bargaining Council under reference number GPBC174/2025, and in further appropriate fora, the respondent is interdicted from making any further deductions from the applicant's remuneration in relation to such dispute.**

2. **After the dispute is finalised, either party may re-enrol the application on notice.**

3. **The costs of the application are reserved.**

J.M ROBERSON

JUDGE OF THE HIGH COURT

APPEARANCES

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