IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case No: 2025-032845

In the matter between:

MONICA MASEGO JANSEN	**Applicant**
and	
NORTH WEST DEPARTMENT OF EDUCATION	**First Respondent**
HEAD OF DEPARTMENT (NORTH WEST DEPARTMENT OF EDUCATION)	**Second Respondent**
MEC: NORTH WEST DEPARTMENT OF EDUCATION	**Third Respondent**

Heard: **20 March 2025**

Delivered: **17 April 2025**

This judgment was handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's website. The date and time for hand-down is deemed to be on 17 April 2025.

JUDGMENT

MAFA-CHALI, AJ

Introduction

[1] In this opposed urgent application, the applicant seeks a final relief and an order declaring the purported termination of the Applicant's contract of employment with effect from 1 March 2025, on account of early retirement to be unconstitutional, inconsistent with the principle of legality, in breach of the applicant's contract of employment; and therefore null and void *ab initio*; and further reinstating the Applicant as the 1st respondent, Chief Director: Financial Services with immediate effect; and ordering the 1st and 2nd respondents to allow the applicant to resume her duties in that position and to forthwith comply with the applicant's contract of employment.

Background

[2] The applicant was previously employed by the 1st respondent as the Chief Director: Financial Management Services from 1 July 2018. On 9 September 2020, the applicant gave the 1st respondent notice that she was taking retirement as she was reaching the age of 60 on 27 September 2024 and gave notice until the end of February 2025. The notice was directed to Mr Seshibe, the Acting Superintendent General (Head of Department or HOD).

[3] The applicant subsequently sent communication to the 1st respondent for attention, Mr Seshibe, withdrawing the notice of retirement dated 9 September 2024 due to the circumstances beyond her control. She did not specify such reasons. On 20 January 2025, Mr Seshibe addressed communication to the applicant advising her that her notice for retirement notice has already been approved and therefore her application for withdrawal of the notice of retirement could not be rescinded.

[4] On 5 February 2025, the applicant wrote to the Acting Superintendent General, Mr P Mashilo, with reference to the correspondence of Mr Seshibe to her dated 20 January 2025 requesting reasons for the decline of the withdrawal retirement notice, with a follow-up letter on 15 February 2025 as there was no response to her letter.

[5] The applicant wrote to the MEC, the 3rd Respondent, on 27 February 2025, bringing to her attention the above-mentioned correspondences and further bringing to the attention of the MEC that the 1st respondent did not have the approved delegation of authority in line with the Public Service Act[1] (PSA), Public Service Regulations and 2014 Directives on Public Administration and Management Delegations, as such responsibility lies with the MEC.

[6] On 28 February 2025, the MEC issued an appointment letter to Mr Suliman as Acting Chief Director: Financial Management Services, the position previously occupied by the applicant with effect from 1 to 31 March 2025.

[7] The Applicant does not seek a relief against the MEC but has cited her as a party to the proceedings on account of her oversight role and statutory powers in terms of *inter alia* the PSA.

<u>Submissions</u>

[8] The applicant contended that when she attempted to render her services she was informed that she was no longer an employee of the 1st respondent, and the purported termination of her employment contract is in violation of the rule of law and offends the principle of legality as the 2nd respondent's approval of her application for early retirement was contrary to the provisions of section 16(4) of the PSA.

[9] It was the contention of the applicant that the early retirement application was never approved, as the HOD does not have the authority to approve such an application because it had to be approved by the MEC in terms of section 16(4) of

[1] Proclamation 103 published in GG 15791 of 3 June 1994.

the PSA. Further that by refusing to allow her to render her services repudiated her contract and afforded her an election to accept the termination of the contract or seek specific performance as, up to this stage the MEC has not taken a decision and the 1st respondent simply refuses to allow the applicant to continue to render her services.

[10] The respondents contended that the applicant reached the prescribed normal retirement age of 60 years on 27 September 2024 and not early retirement and therefore her notice for retirement approved on 7 October 2024 cannot be withdrawn; once made and approved, the applicant is retired.

[11] The respondents also argued that the erstwhile Acting Superintendent General was duly authorised to give such approval to the applicant under section 16(4) of the PSA in terms of the applicable written delegation of authority; and has offered no reasonable explanation as to why she did not withdraw her retirement earlier to 10 January 2025. The respondents also argued that the applicant changed that she requested an early retirement whilst she did not, as she put notice for normal retirement at 60 years of age. The delegation of authority of January 2025 does not apply to the events which took place prior to 30 January 2025.

[12] The respondents further argued that the erstwhile Acting Superintendent General had authority to approve the applicant's normal retirement and competently refused the applicant's application for withdrawal with authority to do so, therefore the 1st respondent's refusal to allow the applicant to render services is constitutional, and not in material breach of her employment contract.

[13] It is the respondent's arguments that there is no merit in the applicant's allegations and arguments concerning the issue of urgency as the applicant knew from 7 October 2024 that her normal retirement was approved until the date she filed her urgent application and she did not apply to the Court for an urgent relief and no reasons given for such inaction on her part. Further, the Applicant knew from 20 January 2025 that her normal retirement withdrawal was not consented to, and since that date until she filed her urgent application, the applicant did not approach the Court for an urgent relief; therefore, this is a self-created urgency. The applicant has

no right to any substantial redress now or in due course because she is no longer an employee after she voluntarily retired, and the Court lacks jurisdiction over the applicant. The applicant may be advised to file a review application in compliance with Rule 37 of the Rules of the Labour Court[2] (Labour Court Rules) or invoke section 191 of the Labour Relations Act[3] (LRA) or section 77(3) of the Basic Conditions of Employment Act[4] (BCEA) in order to receive adequate remedies.

[14] It was also argued by the 1st respondent that the economic/financial hardship does not constitute grounds for urgency as the applicant opted to terminate her employment through normal retirement by operation of law due to effluxion of time, and that does not amount to a breach of the employment contract or to a dismissal. The applicant is the author of her own misfortunes, therefore, she is not entitled to the final relief under the circumstances as she has failed to meet the requirements for a final order and a well-grounded apprehension of irreparable harm in this matter. The 1st respondent also argued that the applicant has not demonstrated a clear right to be granted any of the relief prayed for in the notice of motion nor absence of any other satisfactory remedy.

[15] The 1st and 2nd respondents prayed that the application be struck off from the roll with punitive costs for lack of urgency.

[16] The urgent application was enrolled for hearing in this Court on 20 March 2025 and was opposed by the 1st and 2nd respondents. I will have to consider whether, based on the facts placed before this Court, I am satisfied that the application is an urgent one to be dealt with as such and whether the application has met the requirements of a final relief to be granted.

<u>Applicable legal principles: Urgency</u>

[17] Rule 8 of the Labour Court Rules provides for urgent applications. An applicant that approaches the Court on an urgent basis essentially seeks an

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2 GN 4775 of 3 May 2024: Rules Regulating the Conduct of the Proceedings of the Labour Court (effective 17 July 2024).
3 Act 66 of 1995, as amended
4 Act 75 of 1997, as amended

indulgence and to be afforded preference, in order to prevent the prejudice and harm that may materialise or persist if the conduct complained of continues. Central to a determination of whether a matter is urgent is whether the applicant has, in the founding affidavit, set forth explicitly the circumstances which render the matter urgent and the reason why substantial relief cannot be attained at a hearing in due course. Thus, it is required of an applicant to set out adequately in his or her founding affidavit the reasons for urgency and to give cogent reasons why urgent relief is necessary.

[18] In *Jiba v Minister: Department of Justice & Constitutional Development & others*[5], the Court applied Rule 8 of the Labour Court Rules as follows:

> 'Rule 8 of the rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and why urgent relief is necessary. It is trite law that there are degrees of urgency, and the degree to which the ordinarily applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self-created when seeking a deviation from the rules.'

[19] It was succinctly described by the Court in *Maqubela v SA Graduates Development Association & others*[6] that:

> 'Whether a matter is urgent involves two considerations. The first is whether the reasons that make the matter urgent have been set out and secondly whether the applicant seeking relief will not obtain substantial relief at a later stage. In all instances where urgency is alleged, the applicant must satisfy the court that indeed the application is urgent. Thus, it is required of the applicant adequately to set out in his or her founding affidavit the reasons for urgency, and to give cogent reasons why urgent relief is necessary…'

[20] The factors the applicant must show are set out in *Mojaki v Ngaka Modiri Molema Municipality & others*[7], in which the court referred with approval to the

[5] (2010) 31 ILJ 112 (LC); [2009] 10 BLLR 989 (LC) at para 18.
[6] (2014) 35 ILJ 2479 (LC); [2014] 6 BLLR 582 (LC) at para 32.
[7] (2015) 26 ILJ 1331 (LC); [2014] ZALCJHB 433 at para 17.

following dictum from *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*[8]:

> '… An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.'

[21] The applicant argued that the urgency of the application is based on the underlying constitutional principle of legality and the rule of law; and the fact that the applicant will not obtain substantial redress in due course as she will reach the mandatory retirement age of 65 on 27 September 2029; and substantial redress cannot be obtained in due course which will bring about the termination of her contract. Further that the applicant acted swiftly in not more than a week after she was denied the right to continue to work as that was the time when the cause of action arose.

[22] The applicant also argued that she would have to resort to withdrawing her pension benefits in order to maintain her lifestyle should the Court decline to intervene in the matter on an urgent basis. It was also argued that due to the Court's congested of 65 year retirement, it has sufficiently demonstrated why the matter must be heard on an urgent basis as she has no alternative remedy, and no right to pursue a referral to the CCMA or Bargaining Council as the termination of her contract does not constitute a dismissal within the contemplation of section 186(1) of the LRA.

[23] The applicant submitted that should the Court decline to intervene in this matter on an urgent basis, she would have to resort to withdrawing her pension

[8] [2011] ZAGPJHC 1962.

benefits in order to maintain her lifestyle, and the pension benefits will decline, placing her social security at risk. As a result, she will be worse off under the circumstances when she reaches the mandatory retirement age. She would also forfeit performance bonus incentives due to her inability to perform.

[24] According to the applicant, the reason why she decided to withdraw her application for retirement is that she has a son that is at the University of Witwatersrand, and she is the sole source of income with responsibilities for basic needs of food, transport, clothing, tuition fees, accommodation etc. She lives in a bonded house registered with ABSA, and she is responsible for the bond monthly payments. As a result of the termination of her contract, she will be unable to service the bond and runs the risk of falling behind on payments and may consequently be evicted from the house, leaving her household homeless. In addition, she has a financed vehicle, and if she fails to pay the monthly instalments, the vehicle may be repossessed. She suffers from diabetes, hypertension and arthritis and her medical expenses are covered by the medical aid which she may not be able to afford due to the termination of her services. She is partially disabled with a prosthetic left eye that requires regular maintenance, which is not covered by medical aid. She furthermore has credit accounts and service providers and her inability to comply with the financial obligations will adversely affect her credit record as she may be blacklisted affecting her ability to secure credit in the future.

[25] The applicant further submitted that the damages she may suffer financially are incalculable in that it is impossible to quantify the loss of income for performance bonus, damages for being blacklisted, for eviction and loss of the vehicle and interest of her personal accounts and unpaid debit orders. Therefore, specific performance as a remedy will afford her the redress rather than a claim of damages to alleviate the consequences of emotional and financial distress.

[26] However, the 1st respondent submitted and argued that the applicant had exercised her right to retire from the public service in terms of section16(4) of the PSA as she was reaching 60 years on 27 September 2024, and her retirement was approved by the executive authority in terms of section 16(6) of the PSA as Mr Seshibe, the Acting Superintendent General was duly authorised to approve or not

approve her normal retirement from the public service and it was not an early retirement in terms of the then applicable written delegation of authority dated 28 September 2022.

[27] In *Tshwaedi v Greater Louis Trichardt Transitional Council*[9], the Court said:

> '… an applicant who comes to court on an urgent basis for final relief bears an even greater burden to establish his right to urgent relief than an applicant who comes to court for interim relief…'

[28] The Court must also further consider the interests of the respondents' party, and in particular, the prejudice the respondents may suffer if the matter is urgently disposed of.

[29] In *Association of Mineworkers & Construction Union & others v Northam Platinum Ltd and Another*[10] *(Northam Platinum)*, the Court held as follows:

> 'But it is not just about the applicant. Another consideration is possible prejudice the respondent might suffer as a result of the abridgement of the prescribed time periods and an early hearing.'

[30] Finally, urgency must not be self-created by an applicant as a consequence of the applicant not having brought the application at the first available opportunity, as the Court said in *Northam Platinum supra* at paragraph 26:

> '… the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. But the longer it takes from the date of the event giving rise to the proceedings, the more urgency is diminished. In short, the applicant must come to court immediately, or risk failing on urgency…'

[31] In *Sihlali & others v City of Tshwane Metropolitan Municipality & another*[11], the Court dealt with an urgent application to interdict and restrain the City from taking further steps in recruiting, interviewing and appointing candidates to the advertised

[9] [2004] 4 BLLR 469 (LC) at para 11.
[10] (2016) 37 ILJ 2840 (LC); [2016] 11 BLLR 1151 (LC) at para 24.
[11] (2017) 38 ILJ 1692 (LC); [2021] ZALCJHB 199 at para 21.

posts, pending the final determination of another dispute between the parties. The Court refused to entertain the application and held that:

> 'There is what is termed self-created urgency. The situation herein is a classic case of such. By the time the advertisements arose, the applicants had a gripe already, which gripe they expressed in no uncertain terms to the mayor on 8 November 2016. The applicants should have, if there was any urgency, approached this court then. Why they did not do so, is not explained. Instead what is apparent is that they sat back, took their time until they obtained a legal opinion after almost three months.'

Analysis

[32] Emanating from the provisions of Rule 8 of the Labour Curt Rules and the principles set out in the in the authorities above, it is evident that urgency is not there for taking and an applicant seeking an urgent relief must adequately and in details set out in the founding affidavit the reasons why the matter before the Court should be treated with urgency.

[33] In *casu,* the question is whether the applicant has made out a case for urgency. For any argument to be sustained, the applicant must have acted with due haste when knowledge of the respondents' prejudicial behaviour or actions is gained, as it is trite that an applicant is not entitled to rely on urgency that is self-created.

[34] It is evident from the applicant's own version that he was informed by the 1st respondent already on 20 January 2025; by Mr Seshibe that her notice for retirement notice has already been approved and therefore her application for withdrawal of the notice of retirement could not be rescinded. However, the applicant filed this application on 10 March 2025. There is no indication that the applicant has acted with haste immediately after 10 March 2025. It took more than a month to bring an application to court. The question that one will ask is why the application was only filed on 10 March 2025. Instead, the applicant wrote two correspondences to the 1st respondent on 5 February 2025 and 15 February 2025 requesting reasons for the decline of the withdrawal retirement notice, and ultimately, she wrote to the MEC on 27 February 2025.

[35] The applicant argued that the urgency of the application is based on the underlying constitutional principle of legality and the rule of law; and the fact that the applicant will not obtain substantial redress in due course as she will reach the mandatory retirement age of 65 on 27 September 2029 and as such the substantial redress cannot be obtained in due course which will bring about the termination of her contract.

[36] The mere fact that the applicant will not obtain substantial redress does not render the application automatically urgent, and the fact that there is an underlying constitutional principle of legality and the rule of law does not necessarily entitle the applicant to jump the queue. This Court has to consider the reasons for urgency and decide if a case for urgency has been made out.

[37] In applying the principles relating to urgency to the facts of this matter, I cannot find that this application can be entertained on an urgent basis, as any urgency that may exist is self-created.

[38] The facts placed before me show that there has been a delay and laxity on the part of the applicant in bringing this application by pursuing the respondents with a request for reasons to decline her retirement notice, which is destructive of any consideration of urgency. The applicant cannot delay to bring an application to Court and later seek the Court's assistance as a matter of urgency. An applicant who comes to Court on an urgent basis for final relief bears an even greater burden to establish his right to urgent relief than an applicant who comes for an interim relief.

[39] I find that the applicant did not approach this Court when it was necessary to do so, notwithstanding that she was aware that her application to withdraw her retirement notice was not accepted by the 1st respondent. The applicable authorities referred to *supra* confirmed that an applicant cannot sit back and do nothing and later seek the Court's assistance as a matter of urgency.

[40] The issue giving rise to this urgent application was known to the applicant since 20 January 2025. This can hardly be regarded as urgent, more so, as this

application could have and should have been brought as far back as immediately after 20 January 2025.

[41] It is not sufficient for a party, when approaching a Court to adopt the approach that it is entitled to preferential treatment, failing which it will suffer prejudice if the urgent application is not granted. A party needs to demonstrate that it had also in asserting its rights, acted diligently and with the urgency that the matter it seeks to pursue requires. I however cannot say the same for the applicant in this matter.

[42] The applicant has not been able to demonstrate adequately and in detail set out the reasons why the matter before the court should be treated with urgency. On that basis, the application will stand to fail.

Costs

[43] The applicant sought a cost order against each other, and the 1st respondent asked for punitive costs.

[44] It is trite that a rule of practice that costs follow the result does not apply in labour matters, but the Court has a wide discretion in respect of costs in consideration of the requirements of law and fairness. In my view, this is a case where the interest of justice will be best served by making no order as to costs. The Court will, therefore, not burden the parties with a costs order.

[45] In the premises, I make the following order:

Order

1. The application is stuck off the roll for lack of urgency.
2. There is no order as to costs.

G. Mafa-Chali

Acting Judge of the Labour Court of South Africa

<u>Appearances:</u>

For the Applicant:	Advocate Nikhiel Deepal
Instructed by:	Scholtz Attorneys
For the Respondents:	Advocate M D Maluleke
Instructed by:	M M Baloyi Attorneys