



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case No: 2025-045110

In the matter between:

**MUNICIPAL EMPLOYEES AND CIVIL SERVANTS UNION
(MECSU) obo VUKILE MLUNGWANA & OTHERS**

Applicant

and

EKURHULENI METROPOLITAN MUNICIPALITY

Respondent

Heard: 4 April 2025

Delivered: This judgment was handed down electronically by uploading on *Caselines*, circulation to the parties' legal representatives by email and publication on the Labour Court's website. The date for hand-down is deemed to be 19 April 2025.

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

[1] The Court is once again called upon on an urgent basis, to declare unlawful, the suspension with pay of the individual applicants, who are officials of the Union (MECSU). They seek that the suspensions be uplifted and that they be allowed to resume their duties, or alternatively, that the conditions attached to their suspensions be declared unlawful.

Background:

[2] The individual applicants, Messrs, Vukile Mlungwana and Nkosana Gould are respectively the General Secretary and National Chairperson of MECSU. Mlungwana acted as their representatives in these proceedings and had also filed heads of argument on their behalf.

[3] It is common cause that the two individual applicants were served with notices of suspension on 25 March 2025. The suspension was with pay for three months, effective from 24 March 2025 to 24 June 2025. The basis of the suspensions was that the individual applicants had individually or with others, participated in actions that had the effect of disrupting the employer's operations.

[4] It is common cause that MECSU is not recognised at the workplace nor does it have organisational rights. The respondent's case against Mlungwana and Gould is that it came to its attention that both were attending to MECSU's activities during working hours without any approval or authorisation by the line managers. It was said that they were in dereliction of their duties as employees as they were attending to these activities during working hours. Such activities included attending bargaining council, CCMA and Labour Court proceedings during working hours.

[5] It was further alleged that they had encouraged other employees who are Union members, to attend those proceedings notwithstanding that they were not party to those proceedings. In addition, they were alleged to have attended to other similar proceedings, which were unrelated to and did not involve the respondent.

[6] The respondent further contend that it had reason to believe that Mlungwana was involved in instigating an unprotected strike embarked upon by its EMPD

employees on 19 March 2025. This was based on information received that at a special general meeting of MECSU held on 01 March 2025, the EMPD employees had attended, where various items of dispute were discussed, leading to the unprotected strike by these employees.

[7] The basis of the challenge to the suspensions was that there were no reasons given for their suspension; that the suspension letters did not refer to the individual applicants being suspended pending an investigation; that there was non-compliance with the provisions of clause 16.4 of the applicable Disciplinary Procedure Collective Agreement⁵ (DPCA); that the representatives of the respondent who authorised and signed the letters of suspension did not have delegated authority to do so; and further that they were not party to any strike embarked upon by the EMPD employees.

Urgency:

[8] Whether a matter deserves the urgent attention of this Court depends on whether the requirements for urgent relief have been met. Such requirements are trite emanating from the now familiar authorities¹. This Court under the provisions of Rule 38 of its Rules may dispense with the forms and manner of service provided for in the Rules of Court where urgent relief is sought. The applicants must demonstrate explicitly why the matter is said to be urgent and why they will not be afforded substantial redress at a later hearing.

¹ See *Jiba v Minister: Department of Justice and Constitutional Development and Others* (2010) 31 ILJ 112 (LC) at para 18; *Luna Meubel Vervaardigers v Makin and Another* 1977 (4) SA 135 (W) at 136H-137F; *East Rock Trading 7 (Pty) Limited and another v Eagle Valley Granite (Pty) Limited and others* (2012) JOL 28244 (GSJ) at para 6 and 7, where it was held: -

“The import thereof is that the procedure set out in Rule 6(12) is not there for the taking. 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 the application in due course. The rules allow the court to come to the assistance of a litigant because of the latter, were to wait for the normal course laid down by the rules, it will not obtain substantial redress. It is important to note that the rules require absence of substantial redress. This is not equivalent to irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course, but it may not be substantial. Whether an applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his case in this regard.”

[9] One of the fundamental requirements when seeking urgent relief is to approach the Court at the first available opportunity². This in my view implies that where harm, prejudice or unlawfulness is likely to arise from a set of facts, a party must take immediate action to protect its rights. The consequence of self-created urgency is fatal to an application³. Urgency which is self-created in a sense that an applicant is supine despite the alleged harm, can on its own lead to a decision that a matter is struck off the roll⁴. Further considerations the Court must take into account are the interests of the respondent party, and any prejudice it may suffer if the matter is disposed of on an urgent basis.

[10] From the founding affidavit, urgency is claimed on the basis that the individual applicants were served with notices of suspension on 25 March 2025 whilst they were attending an organisational rights dispute hearing at the premises of the CCMA. They contend that no conditions of their suspension were imposed on them which related to private business, and further submitted that Matjokotja was not delegated to deal with suspensions in the respondent. They further averred that the matter was urgent as they had met the requirements of final relief they sought. They further contend that upon their suspension, they had on 26 March 2025 sought advice of counsel and had drafted the application on 31 March 2025.

[11] The respondent correctly pointed out that the applicants have abused the urgent court's process in having brought their unnecessary voluminous application with extremely truncated time periods, and for it to oppose the application to its extreme prejudice and inconvenience.

[12] As a point of departure, the applicants have not justified the truncated periods nor have they explained the reason for abusive nature with which this

² *Association of Mine Workers and Construction Union and others v Northam Platinum Ltd and another* [2016] 11 BLLR 1151 (LC).

³ See *Public Servants Association of SA and Another v Minister of Home Affairs and Others* [2016] ZALCJHB 439 at paras 12 - 18; *City of Tshwane Metropolitan Municipality v Afriforum and Another* 2016 (6) SA 279 (CC) at paras 24 – 25; *IL&B Marcow Caterers (Pty) Ltd v Gretermans SA Ltd and Another; Aroma Inn (Pty) Ltd v Hypermarkets (Pty) Ltd and Another* 1981 (4) SA 108 (C)

⁴ *Roets N.O. and Another v SB Guarantee Company (RF) (PTY) Ltd and Others* [2022] ZAGPJHC 754 (6 October 2022) at para 26.

application was brought before the Court. They had brought the application on an extremely urgent basis by serving unsigned papers on the respondent via email at 12h54 on 01 April 2024, requested that the opposing papers be filed on the same day before 17h00, and thereafter proceeded to set the matter down for 03 April 2025. Clearly there was no justification for this posture which clearly placed the respondent under considerable pressure, let alone the fact that the papers as initially served were not even properly before the Court nor ready for enrolment.

[13] The abuse of the respondent nonetheless continued when having set the truncated time periods in the manner that they did, the applicants then emailed to the respondent on 1 April 2025 at 18h33, the signed and commissioned founding affidavit with annexures and more supplementary annexures at about 21h58. Thereafter on 02 April 2025 at 14h07, the applicant emailed an amended notice of motion and further annexures, now moving the set-down date to 04 April 2025, and afforded the respondent until 11h00 on 03 April 2025 to deliver an answering affidavit.

[14] The flurry of service of various documents and annexures together with the amended notice of motion, and the manner in which the matter was simply removed from the roll without consideration of the Court's urgent roll during recess or even seeking an indulgence from the respondent or the Registrar of this Court, is clearly inexcusable and an outright abuse of the court process and the respondent, and is clearly deserving of a punitive costs order. Inasmuch as it is appreciated that litigants have a right under the provisions of section 34 of the Constitution to access this Court, that right is nonetheless not unfettered nor open to abuse.

[15] Against the clearly unreasonable and abusive truncated periods set by the applicants, they had nonetheless not demonstrated explicitly why the matter deserves the urgent attention of this Court, nor have they even pleaded the basis upon which it should be concluded that they will not be afforded substantial redress at a later hearing.

[16] What was placed before the Court was merely that they had received their notices of suspension on 25 March 2025. It is irrelevant where they were served with

those notices. The fact remain that they were served. It is not clear since when does mere service of a notice of suspension creates urgency, especially where no foundation was laid for any such a claim.

[17] Of significant however, which on the face of it appears to be a calculated omission, the applicants failed to disclose in the founding affidavit, that the notices of suspension was not merely served on them without cause. The history behind the suspensions according to the respondent is that following the strike action of the EMPD employees on 19 March 2025, the individual applicants were issued with pre-suspension notices on the same date. They were then afforded an opportunity to make written submissions within 48 hours, to show cause why they should not be suspended based on allegations of 'instigating or participating individually and with others, in any form of action, which will have/have the effect of disrupting the operations of the employer, other than actions contemplated by the LRA.'

[18] The individual applicant had submitted their written submissions on 20 March 2025. This however did not stop the respondent from proceeding with the suspensions and it had furnished reasons in that regard. This process of notifying them of the intention to suspend, affording them an opportunity to make written submissions, and furnishing them with reasons why a suspension was appropriate, was clearly in compliance with the provisions of Clause 16 of the DPCA. It was not even necessary for the notices to indicate that the suspensions were pending investigations, which is nonetheless implicit in the provisions of Clause 16 1 of the DPCA, in terms of which the individual applicants were suspended.

[19] The basis of the alleged unlawfulness of the suspension is that the individual applicants are office bearers of MECSU, and that their suspension prevented them from conducting the business of their Union, as they do not have access to the premises. They alleged that the suspensions were a violation of the right to freedom of association and the right in terms of section 23 of the Constitution. They contend that they were unlawfully precluded from work, and were accordingly prejudiced and suffer reputational harm due to suspension

[20] Of course, these are consequences that flow from any suspension of an employee, irrespective of their status and standing in their unions. Worst still, MECSU does not enjoy any organisational rights at respondent's premises, and it cannot allege any infringement of those rights. A litigant cannot claim an infringement of a right that it does not enjoy, nor can any sustainable allegation of unlawfulness arise therefrom.

[21] Whilst suspended, they remain employees of the respondent, and are not legally permitted to work for their private union prior to obtaining consent from the respondent to do so. The conditions of their suspension were that they were precluded from engaging in any remunerating work without prior consent and that included remunerating work for MECSU. Although union work per se does not include remunerative work, this however is not what the applicants have pleaded, nor was there any indication that they had sought and were denied consent to perform such duties whilst under suspension. Equally so, it is not known what the basis of the allegation of any infringements of their rights under section 4 of the LRA is. Their conditions of suspension requires them to seek permission to conduct their private union activities on condition that they seek consent. There is nothing unlawful about those conditions, as they remain the respondent's employees, under its supervision and control.

[22] Against the above observations, it is apparent that the applicants have not demonstrated explicitly in the founding affidavit, why this application deserved to be treated with extreme urgency. It is equally the court's view that the urgency claimed in this case is self-created. If ever there is any urgency, it arose at least on 25 March 2025 with confirmation of their suspension. It has already been indicated that the mere suspension on its own could not have created urgency. The haste with which the Court is approached is also an important factor. Instead, the applicants wrote meaningless correspondence to the respondent on 27 March 2025 instead of approaching the court. They only did so at their leisure on 1 April 2025, and subsequently setting unreasonable and abusive truncated time periods for the respondent

[23] The contention that the suspension is without cause and stands to be declared unlawful as they will not be afforded substantial redress in due course is mere red herring. Even if the Court accepts flowing from *East Rock Trading* ⁷⁵ that a delay in instituting proceedings is not on its own a ground for refusing to accord a matter urgency, the applicants have however not demonstrated why it should be concluded that they cannot be afforded substantial redress at the hearing in due course.

[24] I did not understand it to be in dispute that after the suspensions, and upon the commencement of investigations from 2 April 2025 by the respondent's Investigating Officer, the individual applicants were then requested to leave the premises of the respondent pending the investigations, lest they tampered with evidence or interfered with witnesses of the respondent. Ordinarily, being asked to leave the premises for these reasons can neither be unreasonable nor unlawful. To hold otherwise would defeat the purpose of suspensions where they are warranted.

[25] There were reasons provided by the respondent why the individual applicants were placed on suspension and they were afforded an opportunity to make representations in that regard. The suspension with pay for a period of three months was not thumb-sucked, but is in accordance with the provisions of Clause 16.4 of the DPCA. Any substantial redress can clearly be obtained at the end of the three months suspension period. In any event, to the extent that the applicant may allege that they are deprived of the right or opportunity to provide a service to the union members at the respondent's premises, this cannot be correct, unless it was being suggested that only the two of them were capable of providing services to their members.

[26] Ordinarily this application ought to be struck off the roll on account of lack of urgency and its requirements being met. However in the light of the clearly meritless nature of this applicant the Court deems it appropriate to finally dispose of it lest it found itself on its ordinary motion roll.

⁵ *Supra* at paras 8 – 9.

Jurisdiction:

[27] Even if the Court were to find reason to accord this application urgency, the applicant had nonetheless dismally failed to demonstrate the basis of this Court's jurisdiction. Inasmuch as it is appreciated that this Court ordinarily enjoys jurisdiction and the discretion to intervene in such case⁶, the proviso however remains that the applicants must demonstrate that exceptional circumstances exists necessitating such intervention, and to also demonstrate factors giving rise to such exceptional circumstances, such as that grave injustice will result should the Court not intervene⁷. It needs however be repeated that an extremely high threshold has been set for this Court's to intervene in such instances.

[28] As I understood the pleadings, the exceptional circumstances are said to arise from the applicants' suspension without reasons. I have already indicated that those reasons were furnished after the individual applicants had made their written submissions, and it was clear that the suspensions for three months with pay were in effect pending investigations that commenced on 2 April 2025. Any reliance on the provisions of section 32 of the Constitution is a red herring, particularly since the applicants do not enjoy any organisational rights in the absence of the Union's

⁶ *Jiba v Minister: Department of Justice and Constitutional Development* at para 11 – 12, and also para 17, where it was held;

"Although the court has jurisdiction to entertain an application to intervene in uncompleted disciplinary proceedings, it ought not to do so unless the circumstances are truly exceptional. Urgent applications to review and set aside preliminary rulings made during the course of a disciplinary enquiry or to challenge the validity of the institution of the proceedings ought to be discouraged. These are matters best dealt with in arbitration proceedings consequent on any allegation of unfair dismissal, and if necessary, by this court in review proceedings under s 145."

⁷ See *Booyesen v Minister of Safety and Security and others* [2011] 1 BLLR 83 (LAC); (2011) 32 ILJ 112 (LAC) at para 54, where it was held;

"To answer the question that was before the court a quo, the Labour Court has jurisdiction to interdict any unfair conduct including disciplinary action. However, such an intervention should be exercised in exceptional cases. It is not appropriate to set out the test. It should be left to the discretion of the Labour Court to exercise such powers having regard to the facts of each case. Among the factors to be considered would in my view be whether failure to intervene would lead to grave injustice or whether justice might be attained by other means. The list is not exhaustive."

See also *City of Cape Town v South African Municipal Workers Union obo Abrahams & others* [2012] 6 BLLR 535 (LAC) at para [16]; *Magoda v Director-General of Rural Development and Land Reform and another* [2017] 12 BLLR 1267 (LC); *Zondo and Another v Uthukela District Municipality and Another* (2015) 36 ILJ 502 (LC) at para 38; *Phahlane v National Commissioner of the South African Police Services and Others* [2020] ZAGPPHC 159 (4 May 2020) at paras 25 – 29.

recognition. The fact that the applicants do not agree with the reasons furnished for their suspensions is of no moment.

[29] A further basis of exceptional circumstances being that the signatories to the notices of suspension did not have delegated authority is equally without merit. In the answering affidavit, it was explained that in terms of the respondent's delegation of authority, the Head of Department: Human Resources being Ms Gxasheka had signed the pre-suspension enquiry letters and the notices of suspension. Matjokotja had merely issued the notices in his capacity as the Caretaker DH: Employee Relations. In the belated replying affidavit, the respondent's averments in regard to the delegation of authority were merely denied without more. Clearly in these circumstances, service of these notices cannot lead to their invalidity necessitating that the entire process followed in suspending the individual applicants be declared unlawful.

Requirements of the relief sought not met:

[30] It follows from the above that there is no basis for any conclusion to be reached that the requirements of the relief the applicants seek have been met. A declaratory order is ordinarily one by which a dispute over the existence of some legal right or entitlement is resolved. The right can be existing, prospective or contingent⁸. To the extent that the applicants sought a final order, they cannot have a claim to any right not to be suspended. Their suspensions in any event were in compliance with the provisions of Clause 16 of the DPCA.

[31] The applicants can further not allege any injury or harm reasonably apprehended in circumstances where they are suspended with pay. Impairment of dignity or reputational harm allegedly arising from a suspension cannot amount to irreparable harm where that suspension is to expire in three months. The contention that union members will be prejudiced by their suspension is as disingenuous as it is self-serving. The two individual applicants cannot claim to be the only leaders in the

⁸ *Suid Afrikaans Onderlinge Brand en Algemene Versekerings Maatskappy Bpk v Van der Berg en Andere* 1976 (1) SA 602 (AD); *NAPTOSA and Others v Minister of Education Western Cape Government and Others* 2001 (2) SA 112 (C).

Union to provide their members with the necessary services. In any event, to the extent that they need to provide service to their members pertaining to their pending disputes at various fora, all that they need to do is to seek consent from the respondent as per the conditions of their suspension. As already indicated, there is no allegation that they have done so.

[32] The applicants cannot seriously claim absence of any other satisfactory remedy, to have necessitated that they should approach this Court in the manner that they did. Stripped of all legalese and verbose posture, their claim is quintessentially one that falls squarely within the ambit of section 186(2)(b) of the LRA, notwithstanding their disavowal of those provisions. One need only look at Clause 5 of the PDCA, which provides that its intention is to have and implement a *fair*, common and uniform procedure for the management of employee discipline. Under Clause 6.2. it is provided that disciplinary action shall *inter alia* be implemented *fairly*. What permeates throughout the PDCA is the principle of *fairness*. The concept of unlawfulness in this case, is merely one conjured up by ingenious litigants, with the sole purpose of circumventing the dispute resolution mechanisms of the LRA, and by design, jumping the proverbial litigation queue. It follows that to the extent that the provisions of the PDCA were followed in effecting the suspensions, one cannot ordinarily speak of unlawfulness where any of its provisions in their implementation were not properly complied with.

[33] Against the above observations, it is trite that it is impermissible for an applicant to seek a declaratory order related to any alleged unfairness in disciplinary processes, in circumstances where the dispute resolution mechanisms under the LRA are readily available where a remedy can be obtained⁹. To that end, nothing prevented the applicants from approaching the SALGBC under the provisions of section 186(2)(b) of the LRA. Contrived arguments based on alleged unlawfulness of the suspensions do not entitle the applicants to any relief by this Court.

Costs:

⁹ *Mantzaris v University of Durban - Westville and Others* [2000] 10 BLLR 1203 (LC) at 1212; *MEC for Education, North West Provincial Government v Gradwell* [2012] ZALAC 8; [2012] 8 BLLR 747 (LAC); (2012) 33 ILJ 2033 (LAC) at para 46.

[34] The respondent sought a dismissal of the applicants' application with costs on the attorney and client scale, with such costs to include the costs of three counsel. This it was argued, was based on the manner of service of the application, the non-disclosure of material facts by the applicants, and the misconceived and misguided nature of the application in view of the fact that at its core is a complaint about unfairness.

[35] It was submitted on behalf of the applicants that the costs sought by the respondent were only awarded in exceptional circumstances. I agree with this submission. Costs on an attorney and client scale are to be awarded where there was fraudulent, dishonest, vexatious conduct, and conduct that amounts to an abuse of court process. Such an order was justified where the conduct concerned was 'extraordinary and worthy of a court's rebuke'¹⁰. Furthermore, and within the context of labour disputes, the Labour Appeal Court has since held that the scale of attorney and client is an extraordinary one which should be reserved for cases where it can be found that a litigant conducted itself in a clear and indubitably vexatious and reprehensible manner. Such an award is exceptional and is intended to be very punitive and indicative of extreme opprobrium.¹¹

[36] The facts and circumstances of this case are truly exceptional to warrant such punitive costs. As already pointed out elsewhere in this judgment, the respondent is clearly aggrieved with the manner with which this meritless application had compelled it to mount a defence under extreme pressure and inconvenience, as much as this Court should show its displeasure at the blatant abuse of its processes. It is against this conduct which is indeed extraordinary and worthy of a court's rebuke, that it is deemed appropriate that a punitive costs order, but not inclusive of costs of three counsel as sought by the respondent, should be awarded.

[37] Accordingly, the following order is made;

¹⁰ *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) at para 8.

¹¹ *Plastic Convertors Association of SA on behalf of Members v National Union of Metalworkers of SA and Others* (2016) 37 ILJ 2815 (LAC) at para 46.

Order:

1. The Applicants' application is dismissed.
2. The applicant (MECSU), is ordered to pay the Respondent's costs, on attorney and client scale.
3. Costs awarded as above shall be limited to include those of the employment of one Counsel.

Edwin Tlhotlhemaje
Judge of the Labour Court of South Africa

Appearances:

For the Applicants: Mr. V Mlungwana, MECSU Official

For the Respondent: Adv. L Hollander with Adv T. Ntoane and Adv F Missi,
instructed by Lusenga Attorneys Incorporated.