



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: 2025 – 082814

In the matter between:

SELLO MOLAPANE MOTHOTOANA

Applicant

and

JOHANNESBURG SOCIAL HOUSING CO. (SOC) LTD

First Respondent

THEODORE DHLAMINI NO

Second Respondent

THANDEKA TSHABALALA NO

Third Respondent

MUSA SHIBAMBO NO

Fourth Respondent

THULANI MDADANE NO

Fifth Respondent

TABISA POSWA NO

Sixth Respondent

ZAMIKHAYA XALISA NO

Seventh Respondent

LAWRENCE NDLOVU NO

Eighth Respondent

NTOKOZO MJIYAKO BAYIPHIWE SIMELANE NO

Ninth Respondent

JASON SOBEKWA NO

Tenth Respondent

Heard: 10 June 2025

Delivered: 24 June 2025

Summary: Application brought in terms of section 77(3) of the Basic Conditions of Employment Act. Breach not established. Application dismissed.

JUDGMENT

DANIELS J

Introduction

[1] This is an urgent application, brought under section 77(3) of the Basic Conditions of Employment Act No. 75 of 1997 as amended ("BCEA") in which the applicant seeks final relief.

[2] The applicant alleges that his services were terminated by the first respondent in breach of his employment contract, which entitled him to a hearing before termination. He seeks specific performance of his employment contract. He alleges, in addition, that his termination was not authorised by the Board of the first respondent. The latter argument was not pursued when first respondent produced a resolution of the Board.

Urgency

[3] The applicant approached the court on an urgent basis, but allowed sufficient time for the filing of opposing papers by the respondents. The applicant set out the grounds of urgency, in detail, in its founding papers, which I see no reason to repeat. I accept that the applicant proceeded with expedition while taking appropriate steps

to try to avoid litigation. Having considered the submissions, and the applicable principles,¹ I am satisfied that the applicant has made out its case for urgency.

Material facts

[4] This being an application for final relief, essentially the application falls to be determined on the basis of the version set out by the respondents.²

[5] The material facts are as follows:

5.1 The applicant was employed by first respondent, the Johannesburg Social Housing Company (SOC) Ltd (“JOSHCO”) as its Chief Executive Officer (“CEO”) in November 2022. He was engaged on a five year contract commencing on 12 September 2022.

5.2 The applicant’s employment contract required that, prior to dismissal for alleged misconduct, he was entitled to a hearing, conducted in terms of section 188A of the Labour Relations Act No. 66 of 1995 as amended.

5.3 During February 2023, the Board became concerned about the conduct of the applicant. It decided to suspend the applicant as the CEO and second him to a post in the Group Information and Communications Technology (“Group ICT”). The secondment was made with the consent of the applicant. The secondment was extended on several occasions, ultimately being extended to 30 June 2025.

5.4 On 8 December 2023, the applicant was subjected to a disciplinary process conducted in terms of section 188A. This process was expressly provided for in terms of clause 17.5 of the applicant’s employment contract.

¹ See *East Rock Trading 7 (Pty) Ltd & another v Eagle Valley Granite (Pty) Ltd & others* [2011] ZAGPJHC 196; [2012] JOL 28244 (GSJ) at para [6]; *Jiba v Minister: Department of Justice & B Constitutional Development & others* (2010) 31 ILJ 112 (LC); *AMCU & others v Northam Platinum Ltd & another* (2016) 37 ILJ 2840 (LC) paras [20] to [26]

² See *Wightman t/a JW Construction v Headfour (Pty) Ltd and another* 2008 (3) SA 371 (SCA) at para 12

5.5 On or about 26 March 2024, through the section 188A process, the applicant was found guilty of a single charge of insubordination and issued with a final written warning valid for nine months. This meant that applicant was on a final written warning until the end of December 2024.

5.6 The Board discovered that the applicant had failed to report for duty at Group ICT from 1 January 2025 until 31 March 2025, during which time he drew his full salary. The issue was reported to the Board on 16 May 2025.

5.7 On 20 May 2025 Board sent the applicant a letter affording him an opportunity to make submissions during the next three days. The letter from the Board was titled "*Notice to show cause why further disciplinary action steps should not be taken against you*". The applicant, through his attorneys, responded to the letter but failed to make submissions.

5.8 At the Board meeting, held on 26 May 2025, it took the view that the applicant's conduct, by failing to report for duty for three months while continuing to draw remuneration, constituted a material breach of his employment contract, one so serious that it amounted to the repudiation of his contract. The Board resolved to accept the applicant's repudiation of his employment contract and informed him of this on 29 May 2025.

Legal principles and analysis

[6] Given that the applicant seeks final relief, I may only grant relief if those facts averred by the applicant and admitted by the respondent, together with facts alleged by the respondent, justify the relief sought. Accordingly, this matter must be determined on the basis that the applicant failed to tender his services, without being excused from doing so, for a period of three months. Furthermore, when afforded an opportunity to explain his conduct, the applicant failed to do so.

[7] The employment contract is an agreement that embodies reciprocal obligations. The primary obligation of the employee is to tender his services, as stipulated in the contract, and place his labour at the disposal of the employer. The primary obligation of the employer is to remunerate the employee in the form and manner agreed upon. This was explained in *National Electronic Media Institute of South Africa v Buthelezi*³ as follows:

“At common law, until an employee’s services have lawfully been terminated, an employer is obliged to remunerate the employee upon the tender, by the employee, of his or her services but the employer is not, however, obliged to make use of the employee’s services. (See, for example, *Smit v Workmen’s Compensation Commissioner* 1979 (1) SA 51 (A); at 56F-G; *Toerien v Stellenbosch University* 1996 (1) SA 197 (C) at 201B-C; *National Union of Textile Workers v Jaguar Shoes (Pty) Ltd* 1987 (1) SA 39 (N) at 45H-46I.”

[8] The failure or refusal of the applicant to tender his services to the first respondent for a period of three months, without reason, is indeed a material and serious breach of the contract. It is, in my view, a breach so serious that it amounts to a repudiation of the employment contract. The conduct of the applicant evinced a clear and unequivocal intention not to continue with the contract of employment which entitled the first respondent to rescind the contract.⁴ The employer was entitled to accept the applicant’s repudiation of the contract, which it did. Having repudiated the contract, the applicant cannot now seek to enforce it.

[9] The applicant has failed to prove that the first respondent breached his contract of employment, and the application falls to be dismissed.

Costs

³ (JA19/03) [2004] ZALAC 7 (9 July 2004) at para [9]

⁴ See *Council for Scientific & Industrial Research v Fijen* (1996) 17 ILJ 18 (A); *Stewart Wrightson (Pty) Ltd v Thorpe* 1974 (4) SA 67 (D); *NUMSA & others v Abancedisi Labour Services* (2013) 34 ILJ 3075 (SCA); *Everson v Moral Regeneration Movement* (2008) 29 ILJ 2941 (LC); *Valla v SA Broadcasting Corporation SOC Ltd & another* (2024) 45 ILJ 350 (LC)

[10] The applicant to care to craft his application as one brought under the BCEA. It is arguable therefore that the criteria of fairness, as contemplated in section 162 of the LRA, does not govern the issue of costs. Nevertheless, in my view, the application was so devoid of merit that fairness demands that the applicant bear the costs.

Conclusion

[11] For the reasons set out above, the application falls to be dismissed, with costs.

RN Daniels
Judge of the Labour Court of South Africa

Appearances

For the Applicant:

Adv V Ndebele

Buthelezi Inc

For the Respondents:

Mr J Norval

ENS Africa Attorneys