



**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

Not Reportable

Case no: 2025-084031

In the matter between:

**MARGARET MOLEFE**

Applicant

and

**NATIONAL YOUTH DEVELOPMENT AGENCY (NYDA)**

First Respondent

**MAFIKA DUMA**

Second Respondent

**IKANYENG MASINAMELA**

Third Respondent

**BOARD OF THE NYDA**

Fourth Respondent

**Heard:** 13 June 2025

**Delivered:** 24 June 2025

**Summary:** Application for urgent interim interdictory relief. Requirements not met.  
Application dismissed.

**JUDGMENT**

**DANIELS J**Introduction

[1] The applicant brought this application, on an urgent basis, seeking the following relief:

1.1 The respondents be directed to preserve the post and not to take any action that would render the review proceedings moot or frustrate the relief sought by the applicant in these proceedings;

1.2 That the applicant be permitted to comply with any outstanding conditions precedent in the offer of employment;

1.3 That the fourth respondent be directed to: approve the post of manager for public and private international relations in the NYDA structure; allocate and approve the budget necessary to remunerate the applicant in accordance with the offer of employment dated 5 May 2025;

1.4 That the first and second respondents be directed to: permit the applicant to assume duties immediately in the said post; pay the applicant's full salary and benefits backdated to 28 May 2025, and continue to do so until the final determination of Part B;

1.5 In the alternative, the respondents be interdicted and restrained from appointing, advertising, or otherwise filling the post pending the final determination of Part B.

[2] In Part B, the applicant seeks a final order declaring that the withdrawal of the offer of employment made to the applicant on 5 May 2025 is unlawful and of no force and effect.

### 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,<sup>1</sup> I am satisfied that the applicant has made out its case for urgency.

### Material facts

[4] During February 2025, the applicant applied for the post of Manager for Public and Private International Relations (the “post”), advertised by the National Youth Development Agency (“NYDA” or “the Agency”).

[5] Following an interview, on 13 May, the applicant received a letter dated 5 May from the NYDA’s HR Business Partner, offering her the post. The post was for a five-year fixed term contract, at a gross remuneration of R867 708, 00 per annum.

[6] Importantly, in the letter dated 5 May, the HR Business Partner stated that the appointment would not be effective without both parties signing an employment contract. In addition, the appointment would be subject to a “general records screening process and clearance”.

[7] Later that same day, the applicant wrote to HR Business Partner and accepted the offer.

[8] The applicant does not allege that she signed an employment contract, as contemplated by the letter dated 5 May.

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<sup>1</sup> 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]

[9] The applicant alleges that she gave notice of her resignation to the Department of Higher Education on 14 May, effective from 27 May.

[10] However, on 21 May, the NYDA's Acting Chief Executive Officer addressed a letter to the applicant advising her that "following developments relating to the process of your appointment" the Agency decided to rescind the offer.

[11] On 26 May, the applicant's attorneys addressed a letter of demand to the NYDA alleging that the applicant had been unfairly dismissed. In addition, the attorneys alleged that the NYDA had breached the applicant's contract of employment, which came into being once she accepted the offer.

[12] On 29 May, attorneys representing the NYDA responded to the letter of demand and stated, among other things, that post did not exist on the NYDA organogram approved by the Board, was not budgeted for, and the offer had been made without proper authorization.

[13] In the respondents' answering affidavit, the chairperson of the Board:

13.1 confirms the statements in the response from the Agency's attorneys to the applicant's letter of demand.

13.2 states that the relief sought is incompetent in law, inter alia because the court cannot create a post where none exists.

13.3 states that the post was advertised shortly before a decision was taken at Board level to approve a new organogram, which did not make provision for the post.

13.4 contends that an interdict is not an appropriate remedy for past invasions of rights, and the applicant has a suitable alternative remedy.

13.5 states that the applicant cannot lawfully seek appointment, pending a review application to be filed challenging her non-appointment.

[14] In addition, the respondents stated that the applicant was dishonest during these proceedings. The respondents stated that the applicant did not, in fact, resign from the Department of Higher Education (“DHE”) as she had stated under oath. Instead, her contract with the DHE lapsed by effluxion of time.

### Legal issues

[15] The applicant has thrown everything but the kitchen sink at this matter. The applicant alleges that the Agency breached her contract of employment. But, in addition, she alleges that the conduct of the Agency is unlawful, constitutes administrative action of the State, and is reviewable under section 158(1)(h) of the Labour Relations Act No. 66 of 1995 (the “LRA”).

### *Jurisdiction*

[16] Though stating that the NYDA has breached her contract of employment, the applicant does not seek to pursue this course of action.<sup>2</sup> The applicant intends to file a review application contemplated by section 158(1)(h) of the LRA. Assuming that the applicant is an employee, or former employee of the NYDA, and the conduct of the respondents constitute administrative action, this court would indeed have jurisdiction under section 158(1)(h). However, even in the context of administrative action, securing specific performance could prove challenging. The setting aside of an unlawful administrative action does not necessarily require the court to restore the position immediately prior to the administrative action.<sup>3</sup>

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<sup>2</sup> In *PRASA and others v Ngoya and others* 2025 (2) SA 556 (LAC) the LAC noted that while the Labour Court has jurisdiction to hear alleged unlawful dismissals, arising from breaches of the employment contract, in terms of section 77(3) of the BCEA, this must be approached with caution. Specific performance, in the form of reinstatement, is not easily granted in such matters. When one is dealing with managerial employees, an order of specific performance may be even more difficult to secure.

<sup>3</sup> See *Khumalo & another v Member of the Executive Council for Education: KwaZulu-Natal* (2014) 35 ILJ 613 (CC)

### *Interim relief*

[17] An interim interdict is a temporary order to protect the applicant pending the outcome of a main application or action. The interim order attempts to preserve, or restore, the status quo until a final decision can be made. It is not a final determination of the rights of the parties and it does not, and should not, affect the review court's decision when making its final decision.

[18] The requirements for the grant of an interim interdict are well established.<sup>4</sup> An applicant must establish: (a) a prima facie right even if it is open to some doubt; (b) a reasonable apprehension of irreparable and imminent harm if an interdict is not granted and he ultimately succeeds in proving the right; (c) the balance of convenience must favour the grant of the interdict, and (d) the applicant must have no other satisfactory remedy.

[19] In *National Treasury v Opposition to Urban Tolling Alliance*<sup>5</sup> (“OUTA”) the Constitutional Court set out important principles in relation to interim interdicts, particularly those brought against the exercise of statutory powers. Where an interdict prevents a statutory body from exercising the public powers conferred on it, this impacts on the separation of powers. Accordingly, such relief must only be granted in exceptional circumstances, and only where the court is satisfied that the main review, or action, is likely to succeed. As the Constitutional Court explained in *OUTA*<sup>6</sup> when granting an interim interdict against a state entity – and, in effect, restraining the use of public power – courts should adroitly “*consider the probable impact of the restraining order on the constitutional and statutory powers and duties of the state functionary or organ of state against which the interim order is sought*”.

[20] Using these principles, I find that the applicant has failed to establish her right on prima facie basis. Importantly, she failed to establish that she signed an

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<sup>4</sup> *LF Boshoff Investments (Pty) Ltd v Cape Town Municipality* 1969 (2) SA 256 (C) at 267A

<sup>5</sup> [2012] ZACC 18 ; 2012 (6) SA 223 (CC) ; 2012 (11) BCLR 1148 (CC)

<sup>6</sup> See fn. 5 above at para 46

employment contract with the Agency. The offer made by the Agency was subject to the signature of an employment contract. In addition, the applicant failed to establish strong prospects of success in the main review, which it has not launched yet. Finally, given that an interim order would interfere with a public body and its use of public funds, the balance of convenience favours the respondents. In these circumstances, the court cannot issue an interim ordering the NYDA to take the applicant into employment, for an indefinite period, while awaiting the launch or final outcome of a review application.

[21] In the circumstances, the applicant failed to establish the requirements for interim relief and the application falls to be dismissed. In this court, costs do not ordinarily follow the result and I see no reason in law or fairness to order costs.

#### Order

1. The application may be heard as one of urgency, in terms of Rule 38 of the Rules of the Labour Court,
2. The application is dismissed, with no order as to costs.

**R Daniels**  
**Judge of the Labour Court of South Africa**

#### Appearances:

For the Applicant:

Adv Phasha & Adv W Sithole

Instructed by: Nhlapo Sebothoma Inc

For the Respondents:

Adv L Kalashe

Instructed by: Vimba Law