



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: 2025 - 079210

In the matter between:

POPCRU OBO MAJOR GENERAL MOODLEY

Applicant

and

NATIONAL COMMISSIONER OF SAPS NO

First Respondent

DIVISIONAL COMMISSIONER CRIME INTELLIGENCE NO

Second Respondent

COLONEL SB NTULI NO

Third Respondent

CAPTAIN A LOURENS NO

Fourth Respondent

MINISTER OF THE SOUTH AFRICAN POLICE SERVICES

Fifth Respondent

Heard: 12 June 2025

Delivered: 27 June 2025

Summary: Application for urgent interim interdictory relief. Interim relief granted.

JUDGMENT

DANIELS JIntroduction

[1] The applicant brought this application, on an urgent basis, seeking the following interim relief (Part A), pending the outcome of its review application seeking the relief in Part B, *inter alia*:

1.1 Declaring that the dismissal of the applicant was in breach of his conditions of employment and therefore invalid;

1.2 Ordering specific performance of the applicant's employment contract by reinstating him into his previous position with retrospective effect from 13 May 2025 without loss of remuneration or benefits;

1.3 Interdicting the respondents from giving effect to the decision of the first and second respondents to dismiss the application;

1.4 Directing the respondents to reinstate the applicant's remuneration and employment related benefits including but not limited to Polmed medical aid cover;

1.5 Directing the applicant to file its application review application, in terms of section 158(1)(h) of the LRA, within ten days, for the relief in Part B;

1.6 That the costs of Part A be costs in the cause of Part B.

[2] In Part B, the applicant seeks a final order reviewing and setting aside the decision of the respondents to convene a Fitness Board of Inquiry in terms of section 34(1) of the South African Police Services Act No. 68 of 1995 as amended ("SAPS

Act”) and reviewing and setting aside the decision to terminate the employment contract of the applicant.

[3] It is trite that this court has jurisdiction in terms of section 77(3) of the Basic Conditions of Employment Act No. 75 of 1997 as amended, to hear and determine the breach of an employment contract. This need not be debated.

Urgency

[4] The applicant approached the court on shortened time frames, but allowed sufficient time for the filing of opposing papers. The applicant set out the grounds of urgency in its founding papers. I accept that the applicant proceeded with expedition while taking appropriate steps to try to avoid litigation. In *Letsholonyane v Minister of Human Settlements and another*¹ this court stated that certain instances of unlawfulness by political heads may warrant treating a matter as urgent stating:

“[30] When political heads are alleged to have subverted the rule of law or undermined the express provisions of valid agreements or binding procedures, and unleashed unlawfulness on the people they are supposed to leave, courts of law should hasten, when called upon, to intervene – on good cause. Failure by courts in that situation would lead to a perpetuation of the lawlessness and embolden those in power to continue acting with impunity”.

[5] The applicant argues that the application is urgent principally because he is seriously ill, requires medical attention, and his medical aid membership has been terminated as a result of the respondents’ unlawful conduct. In general, financial hardship is no guarantee that the matter will be heard on an urgent basis. However, this is no hard and fast rule. In *Harley v Bacarac Trading 39 (Pty) Ltd*,² it was held:

“None of these cases, it seems to me, establishes that financial hardship and loss of income can never be grounds for urgency. If an applicant is able to

¹ (2023) 44 ILJ 2757 (LC)

² (2009) 30 ILJ 2085 (LC) at para 8

demonstrate detrimental consequences that may not be capable of being addressed in due course and if an applicant is able to demonstrate that he or she will suffer undue hardship if the court were to refuse to come to his or her assistance on an urgent basis, I fail to appreciate why this court should not be entitled to exercise a discretion and grant urgent relief in appropriate circumstances. Each case must of course be assessed on its own merits.”

(own emphasis)

[6] In the circumstances, having considered the facts and the applicable legal principles established through the authorities,³ I am satisfied that the applicant has made out its case for urgency.

Material facts

[7] The applicant faithfully served in the South African Police Services (“SAPS”) for more than 30 years until his dismissal on 14 May 2025. At the time of his dismissal, the applicant was a senior member of the SAPS. He had been the Head of SAPS Crime Intelligence: Collection, at least until his transfer to the Division Inspectorate during 2023.

[8] The conditions of employment applicable to the applicant are set out in various legislative, regulatory and policy documents of the SAPS, including the Disciplinary Regulations. The applicant, who was not in possession of his employment contract, instead attached to his founding affidavit a template of the contract which would have been applicable to him. This was accepted by the respondents. Clause 1.1. reflects that his “*employment and conditions of service shall be governed by the South African Police Service Act, the Regulations and any relevant collective agreements or other legal provisions applicable to the employee.*”

³ 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] As previously mentioned, the applicant was transferred to the Divisional Inspectorate on 20 October 2023. Shortly thereafter, the applicant felt unwell and consulted a medical practitioner. The applicant's medical condition persisted. The applicant was absent from work for varying periods between late 2023 and 2025, apparently submitting medical certificates from time to time.

[10] As a result of his absences from work, on or about 4 April 2025, the SAPS issued a notice to the applicant in terms of section 34(1) of the SAPS Act. The notice informed the applicant that a Fitness Board of Enquiry would be convened on 24 and 25 April to determine his fitness for duty, in accordance with section 34(1)(b), (c) and (e) of the SAPS Act.

[11] The applicant, being unwell, consulted with a specialist psychiatrist who issued a medical certificate, booking him off from 7 April to 7 May.

[12] On 16 April, acting on behalf of the applicant, POPCRU wrote a letter to the third respondent, in his capacity as the chairperson of the inquiry, advising him that the applicant had been booked off until 7 May 2025. In the letter, POPCRU requested that the inquiry be postponed.

[13] Despite the request for a postponement, the hearing was convened on 24 April. POPCRU attended the hearing, but the applicant was absent. The representative of POPCRU presented the chairperson with a medical certificate as well as an affidavit from the medical practitioner. By agreement, the hearing was postponed to 5 May, despite the chairperson being advised that the applicant was booked off until 7 May. The chairperson required the parties to make written submissions by 5 May.

[14] From 29 April, POPCRU and the applicant's attorneys attempted to secure an undertaking from the SAPS that the hearing would not proceed, to no avail.

[15] By 5 May, the applicant had failed to make any representations, and the chairperson of the inquiry considered only the representations from the SAPS.

[16] On 6 May, the applicant launched an urgent review application, which came before Acting Judge Matyolo on 13 May. The court accepted that the matter was urgent but dismissed the application on the basis that the application was premature because no finding had yet been made by the fitness board. On the following day, the applicant was notified that he had been dismissed.

[17] In the minutes of the inquiry, the chairperson, the third respondent, despite the absence of the applicant found, on or about 10 May, that the applicant was unwilling to fulfill his employment contract, and unwilling to repent for his lengthy absences from work. In addition, the chairperson stated that the applicant is unconcerned with the employer's operational needs and values.

[18] On 13 May, the second respondent, the convening authority, decided to terminate the applicant's services. The second respondent found inter alia that the applicant had been absent from work since his transfer in late 2023. He noted that the applicant had submitted medical certificates which covered only part of the period of his absence, that the applicant had not secured the security clearance required to perform his duties, and that the applicant had been absent from duty without leave.

[19] The minutes of the Board, and the recommendations of the chairperson, were not forwarded to the applicant. The applicant therefore did not make representations to the convening authority regarding the recommendations of the Board.

Legal principles and analysis

[20] As previously mentioned, section 34(1) of the SAPS Act deals with the establishment of the Fitness Board. Subsection (1)(b) deals with the "fitness or ability of the member to perform his duties or to carry them out efficiently"; subsection (1)(c) deals with the fitness of a member to remain in the Service if his employment constitutes a security risk for the State; and subsection (1)(e) deals with the

instances where the member has been absent from duty without leave for longer than one calendar month.

[21] In terms of section 24(1)(g)(ii) of the SAPS Act, the Minister may make regulations determining the conduct of members which will constitute misconduct. The Minister has done so, and published the SAPS Discipline Regulations.⁴ Importantly, regulation 5(3)(k) states that it is misconduct when an employee absents himself from work without reason or permission. These regulations form part of the applicant's employment contract.

[22] In terms of SAPS National Instruction⁵ No. 5 of 2019 detailed guidelines have been established for the conduct of Boards of Inquiry established under section 34(1). The following clauses are of relevance:

22.1 Clause 5(9) which states: "*A member who deserts (absent without leave for more than one calendar month) must be dealt with in terms of the South African Police Service Discipline Regulations, 2016. Where this is not practically possible (e.g. the member cannot be traced) a Board of Inquiry may be convened in terms of section 34(1)(e) of the Act*".

22.2 Clause 7(9) permits a member to make representations to the convening authority if he is unhappy with the findings or recommendations of the chairperson.

22.3 Clause 7(15) provides that the Board, or the convening authority, is required to "*determine whether the member's absence from duty arises from illness, indisposition, or injury [or] resulted from misconduct or serious and deliberate failure on his part to take responsible precautions and make recommendations in that regard*".

⁴ Published by the Minister in GG 40389 GN R.1361 on 1 November 2016

⁵ Issued by the SAPS National Commissioner under section 25 of the SAPS Act

22.4 Clause 9(1) which stated: *“If during an inquiry or at the conclusion thereof, a Board of Inquiry, established in terms of section 34(1)(b)(c), (d), (e), (h), (j) and (k) is of the opinion that the evidence placed before the Board proves or may prove misconduct contemplated in the South African Police Service Discipline Regulations 2016, the Board may with the approval of the convening authority convert the inquiry into a disciplinary hearing”.*

[23] It was common cause on the pleadings that the applicant was dismissed essentially for desertion and being absent without permission. It was also common cause that a section 34(1) inquiry is not a substitute for a disciplinary procedure. The Discipline Regulations, specifically regulation 5(3)(k), which forms part of the applicant's conditions of employment, stipulate that absence without permission constitutes misconduct. In addition, clause 5(9) of National Instruction 5 of 2019 states that, when the Board is dealing with desertion, or absence without leave, the Discipline Regulations are applicable. The respondents contended that the Board has a discretion to convert the hearing into a disciplinary hearing. This is incorrect, for several reasons. First, the Disciplinary Regulations are clear that the alleged conduct of the applicant, absence without reason or permission, constitutes misconduct. This must therefore be dealt with in a disciplinary process. Clause 5(9) of National Instruction 5 of 2019 confirms this. Finally, the Minister has not published any guidelines in terms of section 34(3) of the SAPS Act catering for the circumstances under which such an inquiry may be converted or deemed to have been converted into disciplinary proceedings.

[24] In *POPCRU and others v Minister of Police NO and another*⁶ this court, per La Grange J held that the Fitness Boards contemplated in section 34(1) were not intended to deal with issues of misconduct. I respectfully agree with his reasoning and interpretation of section 34(1). This must apply when the Board is dealing with misconduct that is contemplated by the Discipline Regulations.

[25] By proceeding with the inquiry and failing to refer the issue to a disciplinary hearing, to be conducted in accordance with the Discipline Regulations, the

⁶ [2014] 8 BLLR 796 (LC) at paras 50 to 52

respondents breached the applicant's contract of employment. By so doing, the respondents deprived the applicant of his rights under the Discipline Regulations. This conduct was therefore unlawful.

Interim relief

[26] 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.

[27] The requirements for the grant of an interim interdict are well established.⁷ 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.

[28] The applicant has proven his prima facie right. The papers reveal that there is a reasonable apprehension of irreparable harm. Absent his medical aid, and continued income, the health of the applicant will be in jeopardy. This cannot be remedied in due course, through an action for damages. In these circumstances, the balance of convenience also favors the applicant. It is plain that the applicant has no alternative remedy.

[29] The applicant has proven the breach of his employment contract and petitioned the court for specific performance of his employment contract. It is trite that an applicant is not obliged to seek damages for the breach of his employment contract.⁸ In *Ngubeni v National Youth Development Agency & another*⁹ Van Niekerk J (as he then was) held:

⁷ *LF Boshoff Investments (Pty) Ltd v Cape Town Municipality* 1969 (2) SA 256 (C) at 267A

⁸ *SAFA v Mangope* (2013) 34 ILJ 311 (LAC) at para 38

“Insofar as it may be contended that the remedy of specific performance is either unavailable or inappropriate, the starting point is to note that s 77A(e) of the BCEA specifically empowers this court to make such orders. In Santos Professional Football Club (Pty) Ltd v Igesund & another 2003 (5) SA 73 (C); (2002) 23 ILJ 2001 (C), the court noted that courts in general should be 'slow and cautious' in not enforcing contracts, and that performance should be refused only where a recognized hardship to the defaulting party is proved.”

(own emphasis)

[30] Here, the respondents did not contend or prove that specific performance was inappropriate. In the circumstances, it does not appear that the respondents will not suffer any hardship resulting from an order of specific performance.

Order

1. The application may be heard as one of urgency, in terms of Rule 38 of the Rules of the Labour Court,
2. Pending the final determination of the review application seeking the relief in Part B, an order is granted as follows:
 - 2.1. Declaring that the respondents' dismissal of the applicant was in breach of his conditions of employment and therefore unlawful,
 - 2.2. Ordering the respondents, within 14 days of this order, to reinstate the applicant into his previous position, with retrospective effect from 13 May 2025, without loss of remuneration or benefits;
 - 2.3. Directing the respondents to reinstate the applicant's remuneration and benefits including but not limited to Polmed medical aid cover;
 - 2.4. Directing the applicant to file his review application, in terms of section 158(1)(h) of the LRA, within ten days of the date of order.

⁹ (2014) 35 ILJ 1356 (LC) at para 19

3. If the applicant fails to file its review application, referred to in para 2.4 above, within ten (10) days of this order, the relief in paras 2.1 to 2.3 above falls away.

4. The costs of this application is costs in the review application for the relief sought in Part B.

R Daniels

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:

Adv S Bismilla

Instructed by: Ngada Attorneys

For the Respondents:

Adv Adams

Instructed by: State Attorney