



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case No: 2025-093808

In the matter between:

FAHIM DOCRAT

Applicant

and

UNIVERSITY OF CAPE TOWN

Respondent

Heard: 25 June 2025

Delivered: 1 July 2025

JUDGMENT

PHEHANE, J

Introduction

[1] This is an opposed urgent application in which the applicant seeks interim interdictory relief, in essence, restraining the respondent from demoting him from his current position pending the outcome of four disputes:

1.1. The first is an unfair labour practice dispute in terms of section 186(2)(a) of the Labour Relations Act¹ (LRA) before the Commission for Conciliation, Mediation and Arbitration (CCMA) under case number WECT 9137-25;

1.2. The second is an unfair labour practice dispute in terms of section 186(2)(d) of the LRA already conciliated before the CCMA under case number WECT 9136-25;

1.3. The third is an unfair labour practice dispute in terms of section 186(2)(b) of the LRA before the CCMA under case number WECT 22217-24; and

1.4. The fourth is a referral launched in this Court on 4 April 2025 under case number C51/2025. In this referral, the applicant seeks the following relief:²

‘140.1 An order directing the Respondent committed an unfair labour practice by subjecting the Applicant to occupational detriments flowing from his protected disclosures.

140.2 An order directing the Respondent to cease any demotion of the Applicant as this would constitute an occupational detriment and an unfair labour practice.

140.3 An order directing the employer to place the Applicant on the same pay scale for the position that he was denied s promotion.

140.3 [sic] Ordering the Respondent to pay compensation to the Applicant as the court deems fair and reasonable.

140.4 Ordering the respondent pay actual damages suffered by the applicant, being the difference between what he was earning prior to the demotion and after demotion.’

[2] The applicant avers that the demotion will have the effect of downgrading his post and salary.

[3] The applicant further seeks a *mandamus*, directing the respondent to finalise his internal grievance process and the internal review process relating to the

¹ Act 66 of 1995, as amended.

² Founding affidavit at para 65 on p 001-17.

evaluation of his position, and that such processes be conducted by a committee comprised of individuals who have no prior involvement in the evaluation of his position to date.

[4] The applicant seeks an order that, pending the aforesaid *mandamus* and finalisation of his four disputes, the respondent should be interdicted and restrained from implementing the demotion.

[5] In conclusion, the applicant seeks an order directing the respondent to comply with its agreements of 3 August 2022 and 23 May 2025 not to downgrade his seniority status and salary, irrespective of the outcome of the evaluation or grading process.

The applicable legal framework

[6] Rule 38³ provides that an affidavit in support of an urgent application must contain averments setting out the reasons for urgency and why urgent relief is necessary.

[7] In *East Rock Trading 7 (Pty) Ltd and Another v Valley Granite (Pty) Ltd and Others*⁴, the Court stated that an applicant in urgent proceedings must set out explicitly in his or her affidavit the circumstances she or he avers render the matter urgent. Failure to approach the court without delay constitutes an automatic ground to refuse to hear the application on an urgent basis. An applicant must persuade the court that he or she will not be afforded substantial redress at the hearing in due course.

[8] Section 186(2)(a), (b) and (d) of the LRA read thus:

‘(2) “Unfair labour practice” means any unfair act or omission that arises between an employer and an *employee* involving—

³ Rule 38 of the Rules Regulating the Conduct of the Proceedings of the Labour Court published in GN 477a in GG 50608 of 3 May 2024.

⁴ 2011 JDR 1832 (GSJ) at para [9].

- (a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding *disputes* about dismissals for a reason relating to probation) or training of an *employee* or relating to the provision of benefits to an *employee*;
- (b) the unfair suspension of an *employee* or any other unfair disciplinary action short of dismissal in respect of an *employee*;
- ...
- (d) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act 26 of 2000), on account of the *employee* having made a protected disclosure defined in that Act.'

[9] An 'occupational detriment' is defined in section 1 of the Protected Disclosures Act⁵ (PDA) to include a demotion or the threat to demote an employee.

[10] In terms of section 1 read with section 6 of the PDA, a protected disclosure is defined as the disclosure by an employee made in good faith, to his or her employer, concerning an impropriety.

[11] Section 4 of the PDA provides for the remedies available to an employee where there has been a breach of section 3 of the PDA. Such remedies include a referral of a dispute in terms of the provisions of section 191 read with section 186(2) of the LRA, where the occupational detriment constitutes an unfair labour practice.

Submissions

[12] The applicant is employed in a senior managerial position of fundraising in the respondent's Development and Alumni Relations Department.

[13] The applicant alleges that he made several protected disclosures in terms of the PDA to the respondent regarding improprieties committed by the Executive Director of his department, Ms Sarah Archer. In his founding affidavit, the applicant

⁵ Act 26 of 2000.

lists no less than eight protected disclosures he made to the respondent spanning the period from September 2022 to November 2024. The protected disclosures range from improprieties he avers were committed by Ms Archer to the 'disclosures' in which the applicant objected to the post grading evaluation process and related recruitment processes, all conducted under a restructuring process that commenced in the Department, which process was approved by the respondent on 5 December 2023.

[14] The applicant avers that, in retaliation for making such protected disclosures, he has been victimised, subjected to unfair labour practices in the form of an unfair suspension and demotion, which constitute occupational detriments.

[15] The applicant was placed on precautionary suspension on 17 September 2024. He subsequently launched an unfair suspension dispute at the CCMA under case number WECT 22217-24. On his own version, the suspension was lifted on 3 February 2025, and he returned to work.

[16] On his return to work, the grading of his post continued. He raised several objections to the process, and ultimately, on 9 May 2025, he was informed that his review of the job evaluation process was unsuccessful, and his demotion would proceed.

[17] On 9 May 2025, the applicant referred the aforesaid disputes to the CCMA under case number WECT 9137-25 in terms of section 186(2)(a) of the LRA and under case number WECT 9136-25 in terms of section 186(2)(d) of the LRA. The certificate of outcome under the latter case number is dated 4 June 2025.⁶

[18] In correspondence dated 18 June 2025, the respondent confirmed its stance of 8 and/or 9 May 2025 in that the applicant would be demoted forthwith, and he was informed that he would receive his letter of appointment.⁷

⁶ p 002-30.

⁷ p 002-69.

[19] The applicant served this application on the respondent on 20 June 2025 and afforded the respondent 48 hours to file its answering affidavit, and himself one day to file a replying affidavit. The notice of motion records that the application was to be heard on 24 June 2025. It is unclear why the application was not heard on that date, but on the day that followed.

[20] The applicant fears that the effect of his demotion is that his salary will be downgraded, contrary to previous assurances by the respondent that he would retain his current salary should he be demoted. On his own version, in correspondence dated 23 May 2025, he has been assured by the Director: Employee Relations that his salary will not be affected by the downgrade, following written communication on 8 May 2025, that his position will be downgraded.

[21] The applicant avers that his demotion is with effect from 1 July 2025.⁸ It is unclear where he obtains the date of 1 July 2025 as the date of implementation, as firstly, he has not referred this Court to any appointment letter before this Court setting this date as the effective date for his demotion, secondly, the correspondence by the respondent of 8 and/or 9 May 2025 and 18 June 2025 does not state that the implementation date is 1 July 2025 and thirdly, the respondent avers that the responsible committee is yet to determine the impact of the demotions on the employees, irrespective of the assurances by the Director: Employee Relations.⁹ The date of 1 July 2025 is accordingly not one that is set by the respondent and appears to be a figment of the applicant's imagination.

[22] The applicant further avers that he has instituted a review process relating to the evaluation of his role, the outcome of which was adverse to him. This process is yet to be exhausted in terms of the respondent's procedures; however, the respondent refuses to finalise this process. In the circumstances, the applicant seeks an order directing the respondent to finalise the review process and incidental relief, relating to an order directing the respondent on the composition of the panel that should conclude the review process. The respondent contends that this Court has no

⁸ Founding affidavit at para 72 on p 001-19 and 109 on p 001-26. See email of 8 May 2025 at p 002-27.

⁹ Answering affidavit at para 13 on p 003-7.

power to dictate to it as to how it should compose its structures. I find no fault in this submission.

[23] In my view, it is not necessary, for the purposes of determining this application, to delve into the merits of the review proceedings being exhausted.

[24] The crux of the dispute for determination before this Court is as follows: the applicant brings this application on an urgent basis to interdict the respondent from demoting him, pending the outcome of his unfair labour practice disputes referred to the CCMA and a referral instituted in this Court.

[25] The respondent contends that the restructuring process, involving approximately 90 employees, has been ongoing for three years. He has known about the restructuring process affecting his position since 2024. In addition, after he referred his dispute in terms of section 186(1)(d) to the CCMA on 9 May 2025, he took more than a month and a half to launch this application, giving the respondent 48 hours to oppose the relief sought, without any justification for the severely truncated time frames. Therefore, this application is devoid of urgency.

[26] Further, that this Court lacks the power to direct it on how to structure its internal committee to review the applicant's job evaluation and to direct it to afford the applicant a second bite at the cherry at reviewing his job grading.

[27] The respondent further contends that the applicant is litigious and has several related disputes before the CCMA and before this Court pertaining to his dispute that his demotion constitutes an occupational detriment. Therefore, the applicant has alternative relief, and this application must fail. In addition, this application itself lacks merit as the applicant has no basis in law to request this Court to halt a restructuring process that has been ongoing for three years pending the determination of several disputes, which could take years to finalise, just because the applicant is not happy with the process.

Evaluation

[28] This application is not urgent.

[29] On the applicant's own version, as early as July 2024 and August 2024, he was aware that his position would be demoted. At that stage, he laboured under the view that his position would be downgraded due to the several protected disclosures he made, yet, he did not approach the CCMA for relief in terms of section 186(1)(d) of the LRA, and did he approach this Court for urgent interdictory relief at that stage, pending such referral to the CCMA.

[30] When the applicant referred a dispute to the CCMA in terms of section 186(1)(d) of the LRA on 9 May 2025, he did not approach this Court to interdict the implementation of his demotion pending the outcome of the CCMA dispute. The certificate of outcome issued on 4 June 2025 directs the applicant to refer his dispute to this Court for adjudication. It appears that he did not. The reason is glaring, and that is because he has already referred a similar dispute to this Court, seeking essentially the same relief by way of an action proceedings on 4 April 2025. Yet, even at that stage, he did not approach this Court for interdictory relief.

[31] The applicant's referral before the CCMA in terms of section 186(2)(a) of the LRA should run its course. This Court has no jurisdiction in terms of section 157(5) of the LRA to adjudicate an unresolved dispute. The applicant has launched a number of disputes – the respondent finds itself in a maze making head or tail of these many disputes – as I understand the chronology, it appears that the applicant's dispute at the CCMA under case number WECT 22217-24 in terms of section 186(2)(b) of the LRA relates to the applicant's unfair suspension. On his own version, the suspension has been lifted.

[32] In addition to not approaching this Court without delay, the applicant has not set out explicitly in his founding affidavit why he will not obtain substantial redress if his dispute is heard in the normal course. He has not set out why he should jump the queue and why his matter deserves to be heard on an urgent basis. A decision has not been taken to downgrade his salary. The applicant has alternative relief in the CCMA and has a pending dispute in this Court. The test for urgency is not met.

Costs

[33] This application is brought within extremely truncated time frames with no justification for this. The application is not urgent. It is also frivolous. The applicant has burdened this Court with a meritless application and has caused a storm in a teacup by filing pages and pages averring a string of protected disclosures. His delay in approaching this Court diminished any urgency. The respondent has incurred costs in defending a hopeless application.

[34] In the premises, the following order is made:

Order

1. The application is struck off the roll for lack of urgency.
2. The applicant is to pay the costs.

M. T. M. Phehane
Judge of the Labour Court of South Africa

Appearances:

For the applicants: Mr Parker of Parker Attorneys

For the respondents: Mr Geldenhuys

Instructed by: ME Attorneys