



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-096639

In the matter between:

MASIXOLE BANGENI

Applicant

and

LOCAL GOVERNMENT SETA

Respondent

Date of order: 1 July 2025

Reasons issued: 28 August 2025

REASONS FOR ORDER

DANIELS J

Introduction

[1] On 1 July 2025, I granted the applicant final relief in an urgent application before me under this case number.

[2] In essence, I interdicted the respondent from proceeding with an internal disciplinary hearing and ordered that, following the completion of its internal investigation, the respondent must proceed with the hearing contemplated by section 188A(11) of the Labour Relations Act No 66 of 1995 (the “LRA”). I also ordered the respondent to pay the applicant’s costs.

Material facts

[3] The applicant is employed as the provincial manager of the respondent for its North-West province. Clause 12 of the applicant’s employment contract requires that he promotes and protects the interests of the respondent, including its goodwill and reputation, and that he conducts himself with the utmost good faith and highest ethical standards.

[4] The Auditor General of South Africa (“AGSA”) in its report for 2023/2024, red-flagged the relationship between the respondent and PKNT Risk and Governance (Pty) Ltd (“PKNT”). The AGSA notes that the chairperson of the respondent’s Audit and Risk Committee (“ARC”) is also a director of PKNT, an entity doing business with respondent, and the independence of ARC is thus impaired. Para 39 of the report states, without providing details, that the respondent has not adequately complied with legislation.

[5] Despite the AGSA’s findings, the respondent thereafter paid PKNT an amount of R655 500, 00.

[6] The applicant became aware of the payment and was provided with a copy of the invoice and proof of payment. The applicant has chosen to keep the details of who leaked the information to him secret.

[7] On or about 28 August 2024, the applicant emailed the invoice and the proof of payment to his private email address. The applicant took this step to preserve the information related to conduct that he believed to be unethical and criminal.

[8] On 8 October 2024, the applicant consulted with his attorney, during which he disclosed that, despite the AGSA's findings, the respondent had made payment to PKNT in the amount of R655 500, 00. The applicant provided his attorney with the invoice and proof of payment and informed his attorney that he believed such conduct to be unethical and fraudulent.

[9] The respondent has a whistleblowing policy, which provides that disclosures may be made via its hotline. The report of the AGSA indicates that the board of the respondent, through the ARC, oversees implementation of the whistleblowing policy. Clause 14.2 of the policy permits a whistleblower to make disclosure to his or her legal representative. Clause 14 does not make the right of disclosure to a legal representative conditional.

[10] On 15 November 2024, the applicant was given notice of disciplinary charges against him (the "first notice"). He was charged with emailing confidential information to his personal email address and disclosing such information to the media. The first notice provided no date for the disciplinary hearing but advised that an external chairperson had been appointed.

[11] Nothing of significance transpired until 15 March 2025 when the respondent issued a further notice (the "second notice") to the applicant informing him that the charges in the first notice were replaced by the charges in the second notice. The first charge was that, by emailing the invoice and proof of payment to himself, the applicant breached his employment contract and the Code of Conduct. The respondent alleged that the applicant sent the email (to himself) in bad faith because, soon afterwards, the Sunday Times contacted the respondent to enquire about its relationship with PKNT. The gist of the second charge is that the applicant breached his employment contract and the Code of Conduct, by using his work laptop and the data provided to him by the respondent, to email the invoice and proof of payment.

[12] In the covering note to the second notice, the applicant was informed that his hearing was scheduled for 2 April 2025.

[13] On 31 March 2025, the applicant's attorney addressed a letter to the respondent stating that the intended disciplinary hearing was in breach of section 3 of the Protected Disclosures Act No. 26 of 2000 (the "PDA"). The attorney requested that the respondent conduct the hearing, through the CCMA, in terms of section 188A (11). The attorney stated that the applicant "requires" the respondent to invoke section 188A. The attorney reserved the applicant's right to seek an appropriate ruling from the chairperson if the respondent did not invoke section 188A(11).

[14] On 9 May 2025, the applicant's attorney made representations to the chairperson arguing that the matter should be referred to the CCMA in terms of section 188A (11).

[15] On 6 June 2025, the chairperson issued his ruling that the internal hearing would proceed. The chairperson found *inter alia* that there was no proof that any disclosure had been made by the applicant to his attorney.

[16] On or about 20 June 2025, the respondent emailed the applicant and informed him that his hearing would proceed on 2 July. The applicant and his attorney only became aware of the email on 23 June 2025. The application was launched on 24 June 2025 and enrolled for hearing on 1 July 2025.

Urgency

[17] It is clear from the authorities¹ that a party seeking urgent relief must set out the circumstances which render the matter urgent, and the reasons why substantial redress cannot be obtained in due course. The degree to which the ordinary applicable rules should be relaxed is dependent on the degree of urgency. An applicant seeking urgent relief must approach the court with the necessary haste, or

¹ *Jiba v Minister: Department of Justice and Constitutional Development and Other* (2010) 31 ILJ 112 (LC) at para 18; *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2012] JOL 28244 (GSJ) at para 6; *Dynamic Sisters Trading (Pty) Limited and Another v Nedbank Limited* (081473/2023) [2023] ZAGPPHC 709 at para 18; *Public Servants Association of SA and Another v Minister of Home Affairs and Others* [2016] ZALCJHB 439 at paras 12 to 18; *Moyane v Ramaphosa and Others* [2019] 1 All SA 718 (GP) at para 33

as soon as the cause of discontentment arises.² Equally of importance are the interests of the respondent and any prejudice it may suffer if urgency is granted.

[18] The respondent contended that urgency was self-created because the applicant had been notified of the disciplinary charges as far back as November 2024 but did nothing. The applicant contends that he took the necessary steps to protect his rights under the LRA and the PDA as soon as it became clear that the respondent would not accede to his request that the hearing be conducted in accordance with section 188A(11).

[19] In my view, it was appropriate to launch these proceedings after 20 June, once the date of the hearing was determined. Had the applicant come to court earlier, it would have acted prematurely. Accordingly, urgency was not self-created, and the applicant brought the application at the first available opportunity. The applicant gave the respondent adequate notice of the hearing, and it was not unduly prejudiced by the shortened time periods. The respondent filed answering papers and appeared before the court to argue the matter. It is evident that the applicant could not have obtained adequate redress in the normal course. If the applicant launched the application in the normal course, his hearing would have been quickly finalized, and his rights under section 188A(11) extinguished.

[20] Accordingly, in the exercise of my discretion, I heard the application as one of urgency and condoned non-compliance with non-compliance with the periods applicable under the rules.

Issues arising

[21] The applicant sought a final interdict, alternatively an interim interdict. I granted a final interdict. In order to obtain a final interdict, the applicant must establish a clear right or, more accurately, a right clearly established on a balance of probabilities, an injury actually committed or reasonably apprehended, and the

² *Association of Mineworkers & Construction Union & others v Northam Platinum Ltd & another* (2016) 37 ILJ 2840 (LC) at para 26

absence of any other satisfactory remedy. A final interdict should only be granted in motion proceedings if the facts stated by the respondent together with the admitted facts in the applicant's affidavits justifies such an order, unless the court is justified in rejecting the allegations or denials by the respondent on the papers.³

[22] The respondent contends that:

22.1 The applicant has not made a protected disclosure because the issue was already in the domain of the AGSA, and the charges are unrelated to the disclosure. The alleged misconduct, it says, is unrelated (to the disclosure) because it relates to a breach of the employment contract and the Code of Conduct. Furthermore, the respondent says, it was unaware of the disclosure at the time it issued the charges.

22.2 The applicant made no disclosure to his attorney because the letter from his attorney on 31 March 2025 failed to state exactly what the disclosure was. Furthermore, the applicant failed to declare whether the disclosure was in writing or verbal. In addition, in his confirmatory affidavit, the applicant's attorney failed to state exactly which averments he was confirming in the founding affidavit.

22.3 The applicant has failed to establish a causal connection between the disclosure and disciplinary charges, because the respondent only became aware of the disclosure on 31 March 2025.

Legal principles

Protected disclosures

[23] A perusal of the Protected Disclosures Act reveals that:

³ *Plascon-Evans Paints v Van Riebeeck Paints* 1984 I (3) SA 623 (A) at 634F-635D

23.1 A “disclosure” relates, inter alia, to any information regarding the conduct of an employer, or an employee of that employer, which an employee has reason to believe shows or tends to show that a criminal offence has been committed, is being committed or is likely to be committed.⁴

23.2 No employee may be subjected to an occupational detriment, which includes disciplinary action, on account of or partly on account of having made a protected disclosure.⁵

23.3 An employee is permitted to make a protected disclosure to his or her legal practitioner for the purpose of obtaining advice.⁶

23.4 Any provision in a contract of employment or other agreement is void insofar as it purports to preclude the employee, or has the effect of discouraging the employee, from making a protected disclosure.⁷

23.5 When making a disclosure to his or her employer, the employee must act in good faith⁸ and must have substantially complied with the procedure established for the reporting of disclosures.

[24] An employee making the disclosure is not required to demonstrate that the information disclosed is correct.⁹ All that is required is that the employee genuinely believes that the information is correct.

[25] Our courts have held that there must be nexus between the disclosure and the occupational detriment, though it is unnecessary to demonstrate a direct link.¹⁰

⁴ Section 1 of the PDA

⁵ Section 3 of the PDA

⁶ Section 5 of the PDA

⁷ Section 2(3)(b) of the PDA

⁸ Section 6(1)(a) of the PDA

⁹ *Radebe & another v Premier, Free State Province & others* (2012) 33 ILJ 2353 (LAC) at paras [33] and [34]

Furthermore, the court must remain alive to the possibility that an unscrupulous employer could create another pretext for the occupational detriment.

Section 188A(11) of the LRA

[26] Section 188A(11) provides: “*Despite subsection (1), if an employee alleges in good faith that the holding of an inquiry contravenes the Protected Disclosures Act, 2000 (Act 26 of 2000), that employee or the employer may require that an inquiry be conducted in terms of this section into the allegations by the employer into the conduct or capacity of the employee*”.

(own emphasis)

[27] The requirement of “good faith” must be assessed contextually and on a case-by-case basis, taking into consideration all the factors at play in the case. Our courts have distinguished the conduct of an employee acting with an “ulterior motive” from someone acting in bad faith. Acting in bad faith relates to a dishonest intention or a corrupt motive.¹¹

[28] In *Nxele v National Commissioner: Department of Correctional Services & others*¹² (“Nxele”) at para 32 it was held:

“Basically, following a s188A(11) request by the employee, the employer is enjoined to institute a pre-dismissal arbitration in terms of s 188A. The internal disciplinary enquiry that would have commenced and is pending must terminate. It must be emphasised that, since it is the employer’s managerial prerogative to exercise discipline that gets delegated in terms of a s188A process, the employer remains responsible for referring the request to the relevant dispute-resolution institution and attending to the payment for the services of that institution.” (own emphasis)

¹⁰ *Communication Workers Union v Mobile Telephone Networks (Pty) Ltd* (2003) 24 ILJ 1670 (LC) at para [19]

¹¹ *Baxter v Minister of Justice & Correctional Services & others* (2020) 41 ILJ 2553 (LAC) at para [83]

¹² (2018) 39 ILJ 1799 (LC)

Analysis

[29] The respondent argues that the applicant has not made a protected disclosure because the issue was already in the domain of the AGSA. This is incorrect. In its final report, the AGSA red flagged the relationship between the respondent and PKNT but the payment which troubled the applicant was made after the AGSA had already released its report.

[30] The respondent argues that the alleged misconduct is unrelated to the disclosure because it relates to a breach of the employment contract and its Code of Conduct. I cannot accept the submission. On their own terms, the charges relate directly to the disclosure. In any event, as previously explained, any provision in a contract of employment or other agreement is void insofar as it purports to preclude the employee, or has the effect of discouraging the employee, from making a disclosure. The sensitivity, or 'confidentiality,' of information does not operate to deny the whistleblower of the protections granted by PDA.¹³

[31] The respondent contends that it was unaware of the disclosure at the time it issued the charges during November 2024; or prior to 31 March 2025. This contention is far-fetched and falls to be rejected. The respondent was aware of, and would have seen, the email which the applicant addressed to his private email. It would have been aware that the applicant had sent himself the invoice and proof of payment relating to PKNT, a relationship that had been red flagged by the AGSA. It requires no rocket science to appreciate why the applicant would have sent the email. The PDA prohibits the occupational detriment even if the detriment is "partly on account of" the employee having made a disclosure. Importantly, the respondent decided to continue with the hearing even after it became aware of the disclosure. This indicates that the disciplinary action is a retaliatory measure motivated by the protected disclosure. At the very least, the disclosure is part of the reason for the occupational detriment.

¹³ *Potgieter v Tubatse Ferrochrome & others* (2014) 35 ILJ 2419 (LAC)

[32] The respondent submits that the applicant failed to establish, in his founding papers, that he made a disclosure to his attorney. The respondent points out that his attorney, in his letter dated 31 March 2025, failed to state the exact terms of the disclosure and the applicant failed to state if the disclosure was in writing or verbal. Finally, in his confirmatory affidavit, the applicant's attorney failed to state which averments he was confirming in the founding affidavit. There can be no doubt about the nature of the disclosure. It was clarified in reply that the disclosure was made verbally, in the consultation between the applicant and his attorney. These submissions lack force, and places form over substance.

[33] The disclosure was made by the applicant to his legal representative for the purpose of obtaining advice. Accordingly, there is no requirement that the applicant must have substantially complied with the whistleblowing policy. Even if this is incorrect, the policy permitted the applicant to make the disclosure to his legal representative.

Requirements for a final interdict

[34] On the common cause facts, the applicant established his right, by reference to the relevant provisions of the PDA and the LRA. The applicant alleges that he made the disclosure to his attorney in terms of section 5 of the PDA, and his attorney confirmed this under oath. The denial by the respondent that the applicant made the disclosure to his attorney is a bald denial, is far-fetched and untenable. There is no reason to apprehend that the disclosure was either unreasonable, or male fide. The applicant's belief that the payment to PKNT was irregular or unlawful, founded on the AGSA report was perfectly reasonable. Having invoked section 188A(11), and "required" the respondent to commence a hearing before the CCMA, the applicant was entitled to such relief. As this court indicated in *Nxe/e*, the election to proceed by way of section 188A(11) may be unilaterally exercised by the employee and it is peremptory. Accordingly, the continuation of the internal hearing was in breach of section 188A(11) as well as section 3 of the PDA.

[35] The applicant has already been subjected to an occupational detriment in that he faces disciplinary charges - relating to the disclosure. Absent an interdict, the disciplinary hearing would have proceeded with the distinct possibility of the applicant's dismissal, as indicated by the charge sheet. The continuation of the disciplinary hearing would have deprived the applicant of his rights under section 188A(11).

[36] There is no other satisfactory remedy, and none was suggested by the respondent.

Costs

[37] It is trite that in this court costs do not follow the result.¹⁴ However, this is a matter which should never have come to court and occupied judicial resources which are strained. Any cursory consideration of the applicable legal principles would have told the respondent that it ought to abandon the disciplinary process and comply with section 188A(11). Given the feeble nature of the opposition, funded by the public purse, I conclude that the opposition amounted to an abuse of process. The requirements of law and fairness warrant a cost order in these circumstances.¹⁵ Accordingly, I ordered the respondent to pay the applicant's costs, including the costs of counsel.

Conclusion

[38] For these reasons, I granted the applicant final relief as prayed for in the notice of motion, with costs.

R Daniels

Judge of the Labour Court of South Africa

¹⁴ *Zungu v Premier of the Province of KwaZulu-Natal & others* (2018) 39 ILJ 523 (CC) at paras [24] and [25]

¹⁵ *Department of Correctional Services v General Public Service Sectoral Bargaining Council & others* (2025) 46 ILJ 310 (LAC) at para 16

Appearances:

For the Applicant:

Adv. Naomi Wagemaker

Instructed by: Welman Attorneys

For the Respondent:

Adv. [...]

Instructed by: Ndou Attorneys

LABOUR COURT