



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-125891

In the matter between:

MADONSELA, ZANDILE

Applicant

and

THE LEGAL PRACTICE COUNCIL

First Respondent

NZUZA, CHARITY

Second Respondent

SELEKA, PULE SC

Third Respondent

ADAMS, LUZELLE

Fourth Respondent

ASMALL, FAATHIMA

Fifth Respondent

RW ATTORNEYS

Sixth Respondent

TOKISO DISPUTE SETTLEMENT (PTY) LTD

Seventh Respondent

CACHALIA, AHMED

Eighth Respondent

Heard: 21 August 2025

Delivered: 2 September 2025

This judgment was handed down electronically by uploading it on *CaseLines* and/or *Court Online*.

JUDGMENT

MAKHURA, J

[1] More than five months after the applicant was first presented with a charge sheet and called to attend the first sitting of a disciplinary hearing on 28 January 2025, and about six scheduled sittings later, the disciplinary hearing on the merits or substance of the charges had yet to commence. These scheduled hearings were postponed or rescheduled because of the applicant. She was either unavailable or her legal representatives were unavailable, and when they attended the hearing, she raised points in *limine* that were directed at halting the continuation of the hearing.

[2] In a fast and furious move, the Executive Officer of the Legal Practice Council (LPC), Charity Nzuza (Nzuza), issued a letter of termination of employment to the applicant dated 16 July 2025. The relevant part of the letter, sent to the applicant on 17 July 2025, stated, amongst others, that:

‘You have been afforded a fair and reasonable opportunity to present your case before a disciplinary hearing but have willfully avoided the timeous conclusion of the disciplinary proceedings through various malicious and vexatious applications for postponement and ill-conceived applications to the Labour Court, Labour Appeal Court and Constitutional Court.

Your conduct has shown no regard or respect for your employer and have (sic) resulted in significant financial costs for the organisation.

In light of the seriousness of your misconduct and your clear intentional evasion of the disciplinary process, the employer no longer believes that any trust relationship can exist between you and the employer.

For the reasons mentioned above, your employment with the LPC is terminated with immediate effect.'

[3] In this third round of litigation between the parties before this Court, the applicant challenges the above letter, which terminated her employment contract with immediate effect. The applicant contends that her dismissal was in breach of her employment contract and therefore unlawful. She seeks an order setting aside the letter, declaring her dismissal void *ab initio* and her employment contract to be extant, plus a cost order, including the costs of two counsel.

[4] The LPC employed the applicant as a Secretary in the Curators Unit, effective from 3 June 2019. On 11 December 2024, she was placed on precautionary suspension pending finalisation of the disciplinary hearing. On 20 January 2025, the LPC issued a charge sheet against the applicant. She was charged with various allegations of misconduct, including fraud for issuing falsified certificates of good standing and fidelity fund, and falsifying documents. She was also accused of accepting money from and giving money to legal practitioners, as well as engaging in a conflict of interest.

[5] The first sitting of the disciplinary hearing was scheduled for 27 January 2025. The hearing was adjourned or postponed to 30 January 2025 due to the applicant's legal representative's unavailability. On 30 January 2025, the applicant, through her legal representative, requested further particulars, and the matter was postponed to 10 and 11 February 2025. On 10 and 11 February 2025, the hearing could not proceed because the applicant was unavailable due to ill health.

[6] On 11 February 2025, the LPC addressed an email to the applicant's legal representative. The email referenced the meeting held on 10 February 2025 and recorded the parties' agreement to suspend the disciplinary hearing pending the "*fruitful conclusion*" of discussions aimed at resolving the matter amicably. As part of the agreement, the applicant was to provide certain information to the LPC by 14 February 2025. The information was not provided on the agreed date.

[7] On 27 February 2025, the parties met, and the applicant provided the information. The parties shared a draft agreement to be signed upon approval by *inter alia* the Executive Officer, Nzuza, and Ignatious Briel. Nzuza rejected the proposed settlement agreement. The applicant was then informed that the suspension of the disciplinary hearing had been lifted, and the disciplinary hearing would proceed. In response, the applicant alleged that the LPC had breached the settlement agreement, spoliated her evidence, and demanded the return of the evidence. She argued that any continuation of the disciplinary hearing would be in breach of her contract of employment.

[8] The disciplinary hearing was scheduled to proceed on 17 March 2025. However, it could not proceed because the applicant's legal representatives were unavailable. The next hearings were on 2 and 4 April 2025. On 31 March 2025, the applicant filed an urgent application with this Court for a permanent stay of the disciplinary hearing. Although scheduled for 2 April 2025, the hearing could not proceed on that day but was rescheduled for 4 April 2025 to allow the applicant to file a replying affidavit. On 14 April 2025, Tlhohlahemaje J delivered judgment dismissing the application with costs.

[9] The applicant filed an urgent appeal with the Labour Appeal Court (LAC) on 15 May 2025. The Judge President refused to enroll the matter and directed the applicant to apply for leave to appeal. The applicant did not apply for leave to appeal. Instead, on 6 June 2025, she filed an urgent application for direct access to the Constitutional Court.

[10] The disciplinary hearing was set down for 30 June 2025. On this day:
‘... the applicant's legal representative insisted on addressing the chairperson in Shona and an interpreter had to be obtained for translation. The hearing could also not proceed because the applicant brought an application for the stay of the proceedings pending the finalisation of a Constitutional Court application for direct access.’

[11] The applicant challenged the LPC's jurisdiction to proceed with the disciplinary hearing while the Constitutional Court application was still pending. On 8 July 2025, the chairperson of the disciplinary hearing dismissed the applicant's stay application. The applicant then applied to this Court for a stay of the disciplinary hearing pending the determination of the application filed with the Constitutional Court. She enrolled the matter for 24 July 2025. Daniels J dismissed that application on the same day without an order as to costs.

[12] Before the hearing of the application for a stay of proceedings, the LPC terminated the applicant's employment. The letter or notice of termination was dated 16 July 2025 and was served on the employee on 17 July 2025.

[13] In response, the applicant, on 17 July 2025, sent a letter to the LPC through her attorneys of record, arguing that the LPC had breached her employment contract. She claimed that her contract was terminated without being afforded an opportunity to present her case, which she was entitled to under her employment contract. The LPC was urged to restore the employment contract and was given until 16h00 on 22 July 2025 to comply, or else urgent proceedings would be initiated in this Court.

[14] The first to third respondents opposed the application. They raised two preliminary points. They argued that the application was not urgent and that the Court lacked jurisdiction to hear it. Their opposition regarding urgency is set out in paragraphs 4 to 7 of their answering affidavit. They stated the following:

'The applicant's application for reinstatement is in terms of section 77(3) of the Basic Conditions of Employment Act 75 of 1997 ('the BCEA'), alternatively in terms of a number of provisions of the Labour Relations Act 66 of 1995 ('the LRA').

The Court has no jurisdiction to consider an application for reinstatement in terms of section 77(3) of the BCEA. Any application for reinstatement in terms of the LRA must be preceded with arbitration at the Commission for Conciliation, Mediation and Arbitration ('CCMA').

The applicant received her letter of dismissal on 17 July 2025. She had five (5) working days thereafter to have appealed the decisions to dismiss her, to the LPC. She did not appeal the decision.

The applicant's dismissal was also not arbitrated.'

[15] The above submission has no merit. First, the respondents referred to this application as one of reinstatement, despite the applicant making no reference to and seeking reinstatement in her notice of motion. The urgency is attacked on that basis. The applicant has brought this case as one of breach of contract. The respondents' ground for opposing the urgency of the matter is misplaced.

[16] Second, premised on their misconception of the application, they argue that this Court has no jurisdiction to consider a reinstatement application. This Court has jurisdiction to determine this application. This is trite¹ and I need not be detained by this legally misconceived argument any further.

[17] Third, the respondents submit that the applicant should have exhausted internal remedies and lodged an appeal against the first respondent's decision within 5 days. During the hearing, Ms Adams, for the respondents, was unable to address this issue

¹ *Gcaba v Minister of Safety and Security and Others* [2009] ZACC 26; [2009] 12 BLLR 1145 (CC) (*Gcaba*); *Steenkamp and Others v Edcon Limited* [2016] ZACC 1; 2016 (3) SA 251 (CC) (*Edcon*); *Baloyi v Public Protector and Others* [2020] ZACC 27; [2021] 4 BLLR 325 (CC); *Passenger Rail Agency of South Africa and Others v Ngoye and Others* [2024] ZALAC 18; (2024) 45 ILJ 1228 (LAC).

any further. The letter of dismissal dated 16 July 2025 provided the applicant with no such opportunity.

[18] Having considered the application, I have decided to exercise my discretion and deal with the matter on an urgent basis.

[19] It is common cause in the present matter that, in terms of clause 8 of the applicant's contract of employment, she is subject to the LPC's disciplinary code. Clause 4.1.1 of the Code states that the Code forms part of the terms and conditions of employment. The Code further provides that in the event the employee is charged with allegations of misconduct, that employee "*shall be afforded an opportunity to state his or her case*".

[20] Clause 4.1.1(vii), which the first to third respondents sought to rely on in dismissing the applicant without a hearing, contains an exception to the right to be afforded an opportunity. It provides that:

'No Employee shall be dismissed without a disciplinary hearing being held, except in the case where the Employee has been afforded every opportunity to attend his or her hearing; but failed to attend out of his or her own free will. In the event of the failure by the Employee, or a duly authorized representative, to attend a disciplinary hearing without good cause and after proper service of the notice of misconduct was affected, the hearing may be conducted in absentia and discipline affected. Furthermore, the reasons for the dismissal shall be provided to the Employee in writing.'

[21] Clause 5.4.2 sets out some of the applicant's rights as:

- i. to be given warning of any charge and/or allegation against him or her.
- ii. to be advised of the charge and/or allegation.
- iii. to be given time to prepare his or her defence.
- iv. to be allowed a formal hearing or enquiry.
- v. to be present at a formal hearing or enquiry...

[22] The LPC dismissed the applicant for allegations of misconduct. The contractual provisions above make it clear that before dismissal for misconduct, the applicant must be afforded an opportunity to state her case.

[23] What the LPC did in this case was to disregard the above provisions. Having charged the applicant for serious allegations of misconduct, which include falsifying certificates of good standing and fidelity fund (the consequence of the this misconduct being that unfit and improper persons could be practising the law and representing members of the public), the LPC, which is expected to inter *alia* maintain the integrity and status of the legal profession, abandoned the disciplinary hearing against the applicant on the above serious allegations, and elected to dismiss her on allegations emanating from the applicant's conduct during the disciplinary process. The applicant was dismissed for willfully avoiding the timeous conclusion of the disciplinary hearing through her various malicious and vexatious applications for postponement and ill-conceived applications to this Court, the LAC and the Constitutional Court.

[24] The LPC did not allow the applicant to state her case on these additional allegations. The applicant knew for the first time about these allegations of misconduct on 17 July 2025, which is the day she was also informed of her dismissal. The exception in clause 4.1.1(vii) does not apply because the applicant was not afforded an opportunity to state her case or attend the disciplinary hearing in respect of these new allegations of misconduct which form the reasons for her dismissal.

[25] This similar set of facts, where the employer abandons its earlier disciplinary process and dismisses the employee on allegations of frustrating or evading the disciplinary process, is not a new script before this Court. This Court and the LAC have previously dealt with matters where the employer, unhappy with the slow pace of the disciplinary process, abandoned the original disciplinary process and resorted to a process not provided for in the contract or agreement.

[26] In *Ngubeni v National Youth Development Agency & another*² (*Ngubeni*), this Court held that the fact that the disciplinary process is running at a slow pace is not a license for the employer to terminate the process. The Court, whilst appreciating the employer's frustration with the progress, held that the employer was not entitled to abandon the ongoing disciplinary process without notice to the chairperson and the employee, and "*assume the proverbial role of judge, jury and executioner*".³ The Court found further that the employee was offered specific terms on how the misconduct allegations would be processed, which he accepted, and that in those circumstances, it was not open to the employer to "*unilaterally change the terms of the agreement*" or "*to renege on the agreement*".⁴

[27] In the context of a section 188A process, which is no different from an internal disciplinary hearing, the LAC in *SA Broadcasting Corporation SOC Ltd v Phasha*⁵ (*Phasha*) dealt with a matter where the employee brought two recusal applications against the presiding arbitrators. The employer dismissed the employee with immediate effect for bringing the recusal applications, which allegedly contained malicious, false and egregious accusations regarding the relationship between the employer and the arbitrators. The inquiry into the original charges did not get underway as the parties were still locked on preliminary issues, including these recusal applications. The employee was asked to make written representations as to why she should not be dismissed. The LAC, dismissing the employer's submission that the allegations relating to the recusal applications constituted a separate process which entitled it to proceed separately with a new process and dismiss the employee, held that:

'The enquiry never got underway as a result of the two recusal applications which were brought by the respondent. The appellant's case is that the recusal applications constituted a totally separate form of gross misconduct entitling the appellant to ignore the s 188A process and proceed separately to a decision to

² [2013] ZALCJHB 269; (2014) 35 ILJ 1356 (LC).

³ Ibid at para 16.

⁴ Ibid at para 17.

⁵ (2021) 42 ILJ 816 (LAC); [2021] 3 BLLR 270 (LAC).

summarily dismiss the respondent after the exchange of correspondence to which I have made reference.

It is, in my view, possible to conceive of a situation where entirely separate conduct on the part of an employee could justify a separate process of dismissal so that it may be divorced from a prior initiation of proceedings in terms of s 188A(1) [of the] LRA. But in the present case, whatever the merits of the two recusal applications, these applications were directed at the very hearing that was designed to adjudicate upon the charges of misconduct brought by the appellant. To the extent that the claims in such applications raised further allegations of misconduct, given the nexus between the applications and the s 188A process, there was no bar on the appellant seeking to include the determination of that misconduct within the ambit of the agreed s 188A process. This was clearly a case where the appellant relies upon form over substance in that, clearly frustrated by the in limine objections brought by the respondent and ignoring the nexus between these objections and the s 188A process, it classified these objections as an entirely separate form of misconduct, unrelated to the substance of the s 188A process. It did so in order to justify summary dismissal and thereby circumvent the process which had already begun in terms of s 188A of the LRA. Were this conduct to be sanctioned by this court, it could undermine the very idea behind recourse to an independent enquiry pursuant to s 188A of the LRA; more so where the impugned conduct is inextricably linked. In other words, since the s 188A enquiry has been initiated, it should have proceeded to finality.

In summary, there is no justification for an attempt to classify the recusal applications as separate from and unrelated to the s 188A process so as to support an argument regarding two separate processes and by so doing circumvent the agreed s 188A process to summarily dismiss the employee.’⁶

[28] There is nothing that distinguish the above judgments and this matter on the facts. They are very similar in material respects. In the above judgments, employers had

⁶ Ibid at paras 26 – 29.

resorted to dismissing the employee after following an alternative process to that which was agreed. The courts found that the employers were wrong to abandon the agreed process and adopt a unilateral process to deal with the same allegations or allegations incidental to and/or emanating from the disciplinary hearing itself.

[29] In *casu*, the first to third respondents had unilaterally abandoned the contracted or agreed process and adopted a new process, on charges that emanate from and are inextricably linked to the disciplinary hearing into the original charges. If the new complaint is based on the conduct of the employee during the disciplinary hearing, the employer should amend the charge sheet, add the new allegations, and deal with them in that forum. The first to third respondents are not allowed to do what they have done.

[30] I do not, however, understand these judgments to establish an immutable principle that under no circumstances may employers adopt an alternative process. In my view, and provided exceptional circumstances exist, the employer may be justified in adopting and following an alternative process. That process, however, must be adopted after it has become reasonably impossible or impracticable for the employer to proceed with the originally agreed or contracted process, and must still allow the employee an opportunity to respond to the employer's case or evidence presented in support of the allegations of misconduct. Each case must be determined on its own facts. In the present matter, the applicant was informed of the charges on 17 July 2025 and dismissed on the same day. Nzuza assumed the role of the complainant, initiator and chairperson. No exceptional circumstances exist to justify the abandonment of the agreed process in favour of such a drastic and fundamentally wrong process.

[31] Based on the above, I am satisfied that the applicant has established a clear right to a disciplinary process in terms of her contract of employment, that her termination was in breach of contract, and that the letter dated 16 July 2025 falls to be set aside. Although Nzuza's fast and furious move collided with the law, the LPC's right to proceed with the disciplinary hearing remains intact.

[32] I have also considered the other requirements for an interdict. Based on the pleadings, I find that the applicant has also satisfied these requirements. The effect of this decision is that the status *quo ante* is restored, the applicant's contract of employment remains extant and she remains on suspension. Further, the first to third respondents are not barred from proceeding with the disciplinary hearing within the contractual provisions on the original and/or any additional allegations against the applicant.

[33] The applicant sought the costs of her application, including the costs of two counsel. The respondents also sought costs. This Court retains discretion to award costs.

[34] The applicant was charged with serious allegations of misconduct in January 2025. The first sitting of the disciplinary hearing was on 27 January 2025. Further hearings were scheduled for 30 January, 10 and 11 February, 17 March, 2 and 4 April, 30 April, and 30 June 2025. More than five months later, the applicant had not entered her plea. On all the scheduled dates, the disciplinary hearings were postponed because of her and her legal representative's unavailability and her attempts to halt the continuation of the disciplinary hearing.

[35] The fact that the applicant's legal representative sought and insisted on addressing the hearing in an unofficial South African language, Shona, is another factor demonstrates that the applicant and her legal representatives approached the hearing in bad faith and with the intention of frustrating the disciplinary process. Whilst the LPC was not obliged to provide an interpreter for the legal representative, it still offered this assistance, perhaps in an attempt to expedite the process.

[36] The applicant's hands are not clean. She is not the type of litigant who must benefit from this Court insofar as the discretionary issue of costs is concerned. Granting costs in her favour would be tantamount to rewarding her for frustrating the internal process meant to give the opportunity she now complains about. For the above

reasons, I am not inclined, despite her success, to award costs in her favour and against the first to third respondents.

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

Order

1. It is declared that the termination of the applicant's employment is in breach of her contract of employment and void *ab initio*.
2. The letter dated 16 July 2025 is set aside, and the contract of employment between the applicant and the first respondent remains extant.
3. There is no order as to costs.

M. Makhura
Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Mr M. Kufa with Mr F. Tshivase
Instructed by:	Machaba Attorneys
For the Respondents:	Ms L.H. Adams
Instructed by:	RW Attorneys