



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-167534

In the matter between:

**MUNICIPAL EMPLOYEES & CIVIL SERVANTS
UNION obo VUKILE MLUNGWANA AND
NKOSANA GOULD**

Applicants

and

EKURHULENI METROPOLITAN MUNICIPALITY

First Respondent

MABITLENG MOKWENA N.O

Second Respondent

Heard: 19 September 2025

Delivered: 30 September 2025

JUDGMENT

BALOYI AJ

Introduction

- [1] This application was argued on the urgent Roll of 18 September 2025. The two applicants, Vukile Mlungwana and Nkosana Gould, are adult male employees of the first respondent. The applicants, assisted by the trade union, Municipal Employees and Civil Servants Union, approached this Court seeking an order interdicting the disciplinary hearings against themselves. The hearings in question were scheduled to proceed on 19 and 22 September 2025. Upon receipt of notices to attend disciplinary hearings, the applicants attempted to secure the first respondent's consent to postpone the hearings pending the determination of the section 188A(11) application at the Bargaining Council, on account of having made protected disclosures. The first respondent refused the request, hence, the applicants resorted to filing this application. The first respondent opposed the application. Urgency is not contested, and I am satisfied that the matter is urgent. More on this appears hereunder.

Background

- [2] Mr Mlungwana and Mr Gould are office bearers of the trade union known as Municipal Employees & Civil Servants Union (MECSU). Mr Mlungwana is the General Secretary, whilst Mr Gould is the President. MECSU is a registered trade union organising within the first respondent, however, it is not recognised. Relevant to this application is that the first respondent was not pleased with the applicants' conduct of carrying out union activities during working hours. On 20 February 2025, the head of the human resources department, Ms Linda Gxasheka, wrote a letter to Mr Mlungwana advising him to refrain from the union activities.
- [3] On 17 March 2025, Mr Mlungwana wrote a letter to the Acting City Manager raising allegations about Ms Gxasheka's *biased* marketing of the Sizwe medical aid scheme to the newly employed personnel without introducing other medical aid scheme options available within the first respondent. Further allegations were made against Ms Ngxasheka regarding the appointment of

certain employees to positions that were never advertised, and that a recruitment process did not precede these appointments.

- [4] On 18 and 19 March 2025, the first and second applicants were served with pre-suspension notices, respectively issued by Ms Gxasheka. They were eventually suspended on 24 March 2025. They viewed their respective suspensions as an occupational detriment arising out of the protected disclosures made through the letter of 17 March 2025. The applicants approached this Court to challenge the suspensions, but they were unsuccessful. They then resorted to referral of the unfair labour practice dispute to the Bargaining Council and did not secure a successful result.
- [5] In addition to the letters of alleged improprieties against Ms Gxasheka, the applicants wrote two other letters to the City Manager. On 5 August 2025, they raised allegations against the HOD: Corporate Legal Service, Mr Behari, for instructing a single law firm multiple times and ignoring others in the first respondent's constituted panel of attorneys. On 4 September 2025, the applicants submitted an allegation against a former Acting City Manager, Mr Kagiso Lerutla, regarding what they termed an invalid and unlawful appointment of the Group Chief Financial Officer:
- [6] On 5 September 2025, the first respondent served the notice to attend a disciplinary hearing notice with the charges appearing therein on Mlungwana, whose hearing, according to the notice, was scheduled to proceed on 19 September 2025. Gould received a similar notice, with 22 September 2025 recorded as the date of the hearing. On 5 September 2025, the applicants submitted a written request for a postponement pending the determination of the application lodged with the Bargaining Council for the hearings to be conducted in the form of an inquiry by the arbitrator within the scheme of Section 188A(11) of the Labour Relations Act. The first respondent replied on 12 September 2025 and rejected the request with some case law in support of the decision to decline the request cited therein.
- [7] On 16 September 2025, the applicants filed this application, which was ultimately argued on 18 September 2025, with the first respondent opposing

it. The first respondent's main contention is that the allegations made do not constitute protected disclosures as the union communicated them through its General Secretary. For an allegation to constitute a disclosure, a disclosure must be made in terms of section 1 of the Protected Disclosures Act. The allegations were submitted by the trade union, not the affected employees. Mr Sithole, for the first respondent, relied on *Letakgomo v Johnson Matthey (Pty) Ltd* to the effect that orders to assert a right in terms of section 188A(11) are not for taking. The applicants' case does not raise exceptional circumstances calling for the Court's interference with an incomplete hearing. He further argued that the applicants were deploying all mechanisms to delay the disciplinary proceedings. They have litigated before this Court and the Bargaining Council on this aspect without success. There is no nexus between the allegations made and the disciplinary action taken by the first respondent against them. The application should be dismissed with costs.

- [8] The applicants, on the other hand, argued that the action taken against them came as a reaction to the protected disclosures. No rule prohibits employees from being represented when making protected disclosures. The first respondent had not made any effort to investigate the allegation in the past six months. The disciplinary process is driven by Mr Gxasheka, who is implicated in the wrongdoings. She has even expressed a view in an email correspondence that was copied to a number of people, including those implicated in the allegations made by applicants. Ms Gxasheka expressed her frustration with the first respondent's legal representative and went on to state that if things were to go her way, she would have dismissed Mlungwana long ago. This strengthened the applicants' argument that there exists no chance of a fair hearing in the internal disciplinary hearing.

Evaluation

- [9] The Court's intervention sought by the applicants undoubtedly stems from a request for postponement of the disciplinary hearing to allow the Bargaining Council to consider the section 188(A)(11) application. The first respondent declined the postponement. The first respondent acknowledged the permutation arising from this exercise. If the application before the Bargaining

Council is granted, the hearing will be conducted at the Bargaining Council within the scheme of section 188A. The internal disciplinary inquiry gets terminated only when the CCMA accepts jurisdiction¹. If the Bargaining Council does not accept jurisdiction, the disciplinary hearing will be conducted internally. Despite this analogy, the first respondent still insists that the applicants are bent on delaying the processes by hiding behind the non-existent protected disclosures.

[10] It is undisputable that the applicants are seeking an interim order. They are not asking the Court to shield them from facing disciplinary action. The applicants are required to present a *prima facie* case about whether the information so disclosed constitutes protected disclosures. In *Mohlala-Mulaudzi v Properties Practitioners Regulatory Authority*², the Court held at paragraph 44 as follows:

‘[44] It must follow that the allegation of contravention must have an element of honesty and sincerity. The veritable question is how does a Court faced with an application of this nature test honesty and sincerity of the allegation of contravention? To my mind a contravention must not only be alleged it must *prima facie* factually exist. I say so because in terms of section 1 of the PDA an occupational detriment in relation to the working environment of an employee means amongst others being subjected to any disciplinary action.’

[11] In *Tsibane v Estate Agency Affairs Board and Others*³, the Court held as follows at paragraph 64:

‘[64] Section 188A(11) entitles an employee, who is about to be subjected to an internal disciplinary process and who alleges in good faith that the intended disciplinary hearing contravenes the PDA, to instead request an inquiry be conducted in terms of section 188A. I see no reason why, if an employer, under circumstances where the employee complies with the requirements of section 188A(11), refuses to have

¹ See *Letakgomo v Johnson Matthey (Pty) Ltd* [2025] ZALCJHB 240 at para 8.

² [2023] ZALCJHB 19.

³ [2021] ZALCJHB 150 (24 June 2021).

the inquiry into the conduct or capacity of the employee conducted in terms of section 188A, the employee would not be entitled to approach this Court for an order interdicting the impending internal disciplinary hearing and an order directing that the inquiry pertaining to the employee's conduct or capacity be conducted in terms of section 188A of the LRA.'

- [12] It should be emphasised that the Court is not seized with the determination of whether the employees' allegations satisfy the requirements of protected disclosures or whether they constitute protected disclosures. This can only be ventilated at the disciplinary hearing, either internally or under section 188(A) at the Bargaining Council. The Court's role in such circumstances is primarily to determine whether, on a *prima facie* basis, there is an allegation of impropriety made. Unlike in disputes adjudicated under sections 186(2)(d) and 187(1)(h), determining the veracity and good faith will remain a challenging task for the Court to undertake within the confines of an interim interdict, such as this one.
- [13] The contentious argument advanced by the first respondent seeks to call upon the Court to decide on the veracity and good faith of such allegations at this point. It is not the first respondent's case that the allegations were investigated and found to be lacking in substance, or that the applicants failed to support the accusations with evidence when called upon to do so. The first respondent has not opposed the application before the Bargaining Council.
- [14] The conduct displayed by Ms Gxasheka in her email referred to above reveals *bias* as she mentioned the name of her preferred representative, who could probably expedite the happening of things her way. It has to be taken into account, firstly, that she is one of the persons implicated in some of the allegations raised by the applicants. Secondly, the first respondent took no steps to investigate the allegations. Thirdly, the first respondent did not at least call upon the applicants to produce evidence to substantiate the allegations. It is therefore premature for the first respondent to raise technicalities about the disclosures which it has elected not to verify when received by the City Manager. The cumulative effect of the above is that a

prima facie case exists to warrant the making of an application in terms of section 188(A)(11) by the applicants.

- [15] I must hasten to point out that the determination of the application in terms of section 188A(11) falls within the competencies of the Bargaining Council. The first leg of which is to accept the jurisdiction or otherwise. The second leg is about the ventilation of the merits of the dispute, if jurisdiction is accepted. Alternatively, the internal disciplinary hearing will deal with the issue if the Bargaining Council does not accept the jurisdiction. The relief sought by the applicants is purely to compel the respondents to hold the internal hearing in abeyance, allowing the Bargaining Council to consider the application. Whilst the Court is concerned with the influx of cases of this nature, it is imperative to stress that each case has to be treated based on its own merit.
- [16] The order sought is interim in its nature. Considering the *Tsibane* decision, the first respondent will not suffer any prejudice by waiting for the Bargaining Council to decide on the matter. It will thus be unreasonable for this Court to uphold the first respondent's refusal to have the disciplinary hearing postponed. Exceptional circumstances exist for this Court to interfere with the incomplete disciplinary proceedings by making an order preventing the respondents from proceeding with the hearings pending the application before the Bargaining Council. In the circumstances, this Court finds no reason to refuse this application.
- [17] The first respondent sought costs against the applicants in their personal capacity, together with the trade union, for abusing the legal processes. The applicants saw no need for a cost order in view of the relationship between the trade union and the first respondent. It is indeed not within the requirements of law and fairness to make a cost order whilst the parties are still engaged in a dispute resolution exercise in the form of a disciplinary hearing. This Court aligns itself with the submissions made on behalf of the applicants.

- [18] In the premises, the following order is made:

Order

1. The applicants' non-compliance with the ordinary Rules of Court, including the manner of service, is condoned, and the matter is heard as one of urgency.
2. The first and second respondents are interdicted from proceeding with the internal disciplinary inquiry presided over by the second respondent pending finalisation of Section 188A(11) of the LRA application for an inquiry by an arbitrator under the auspices of the South African Government Bargaining Council.
3. There is no order as to cost.

MM Baloyi

Acting Judge of the Labour Court of South Africa

Appearances

For the Applicants: Mr V. Mlungwana, Union official

For the First Respondent: Adv E. Sithole

Instructed by: Jose & Associates