



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GQEBERHA)**

CASE NO. 187781/2025

In the matter between:

KOLISWA MGIJIMA

APPLICANT

and

MANDELA BAY DEVELOPMENT AGENCY

FIRST RESPONDENT

LEON VOULTSOS N.O.

SECOND RESPONDENT

JUDGMENT

Metu AJ

INTRODUCTION AND BACKGROUND

[1.] This matter served before me on Tuesday, 21 October 2025 as an urgent application. It was launched through Court on Line on 13 October 2025.

[2.] Mr Lithemba Ncanywa, the Applicant's Attorney of record, practising under the name and style LITHEMBA NCANYWA INC. issued a certificate of urgency on 16 October 2025.

[3.] The Notice of Motion dated 10 October 2025 and filed on 13 October 2025 sets out the reliefs sought by the Applicant as follows:

[3.1.] that this application be heard on an urgent basis in accordance with the provisions of Rule 6(12)(a) of the Uniform Rules of Court (“URC”), and that any compliance with the form, manner of service and time limits be abridged and/or dispensed with, and that any non-compliance be condoned accordingly;

[3.2.] that the disciplinary hearing against the Applicant be declared unlawful and void *ab initio*;

[3.3.] that the costs of this application be paid by the First Respondent and any other Respondent who may choose to oppose this application and in that event the Respondents pay jointly and severally one paying the other to be absolved; and

[3.4.] that the Court grants any further and alternative relief.

[4.] Both parties produced and delivered practice notes and heads of argument, for which I am thankful. I pause to mention that during the hearing of this matter the Applicant was invited to produce supplementary Heads of Argument as he insisted that he had authorities which he could not recite off his head and would be able to check in due course. The said supplementary Heads of Argument were filed in the morning of Friday, 24 October 2025.

[5.] The First Respondent employs the Applicant as the Chief Financial Officer, a position that makes her the second-in-command within the organisation's structure.

[6.] On 12 February 2025, the applicant was suspended, as a holding operation pending an investigation into possible misconduct against her.

[7.] On 13 August 2025, the first respondent issued that notice to attend the hearing, which was served on the applicant, setting down the date of a disciplinary hearing for 18 August 2025 at 10:00.

[8.] This notice to attend a disciplinary hearing incorporated charges which the applicant had to meet, namely:

[8.1.] Charge 1: Gross Negligence or dereliction of duty.

It is alleged that in your capacity as CFO, you authorised and or permitted end or failed to exercise offside over the process which led to the unlawful and/or irregular appointment of OS Holdings for the implementation of MSCOA and Caseware on the MBDA Sage Pastel Evolution environment during or about May 2021 and/or breached and/or failed to comply with applicable legislative prescripts and the

MBDA's Supply Chain Management Policy in this regard. Your actions are in breach of Section 105 of the Municipal Finance Management Act, 56 of 2003.

[8.2.] Charge 2: Gross Negligence or dereliction of duty.

It is alleged that in your capacity as the CFO, during all about the period 2023 to 2025, you failed to collect revenue due to the MBDA and/or failed to ensure that they set revenue was collected / reconciled / paid over and/or failed to put systems in place to ensure that:

a) revenue from the informal traders (hawkers) due to the MPDA is effectively and efficiently collected. Some of these amounts had written off.

b) Monies owed to the MBDA by the NMBM relating to the stadium, i.e. reimbursement of the cost that the MBDA in case out of its own budget in order to operate the NMB stadium (in terms of clause 7.3 of the service level agreement) is collected.

c) Mine is collected on behalf of the NMPTM are reconciled, paid over timeously, and not used for any other purpose than what they are intended for

Your actions are in breach of Section 105 of the Municipal Finance Management Act, 56 of 2003 and Section 97 of the Municipal Finance Management Act, 56 of 2003.

[8.3.] Not acting in the best interest of the MBDA/Bringing the MBDA into disrepute/failure to comply with the MBDA's Grievance Policy.

It is alleged that in your capacity as CFO you made contact with the Executive Mayor of the NMBM (shareholder) and/or interacted with officials of the NMBM to solicit and intervention on MBDA related matters. This conduct was not sanctioned by the accounting officer or the accounting authority of the MBDA.

[8.4.] Charge 4: Gross Misconduct

It is alleged that in capacity as CFO, during all about the product August 2023 to March 2024, you act in breach of clause 3.4.2 of the number of agreement ended into between the MBDA and the ECDC. This conduct was not sanctioned by the accounting officer or the accounting authority of the MBDA. Your actions are in Bridge of section 105 of the Municipal Finance Management act of 2003.

[9.] In item 9 of the Notice of Disciplinary Hearing, it is recorded that:

“Your attention is specifically drawn to the fact that Adv Luvuyo Bono, instructed by Pagdens Inc (reference: Ms S Robert), will save as the person leading evidence, and that the MBDA has appointed Adv Leon Voultsos to act as the presiding officer in the hearing.

ISSUES

- [10.] Whether the matter can be heard as one of urgency under the mantle of Rule 6(12) of the Uniform Rules of Court (“URC”).
- [11.] Whether the Applicant is suited for the relief of a declarator that the disciplinary hearing against the Applicant is unlawful and void *ab initio*.

DISCUSSION

- [12.] It is unnecessary to recapitulate the evidence in its entirety, but I will highlight relevant submissions for this judgment.
- [13.] The applicant, with the assistance of her Attorneys and Counsel, participated in the disciplinary proceedings to an extent that on 19 September 2025, the Applicant’s Attorneys wrote to their counterpart responding to the pre-hearing note dated 1 September 2025, placing on record *inter alia* at paragraph 4.2 that:

“[t]he employee requires that the Presiding Officer first make a ruling on the employee’s preliminary points before the commencement of the hearing of the employer’s evidence on the merits.”

- [14.] The Applicant’s preliminary points were:

[14.1.] *That the charges preferred against the Employee and not clear in that they do not disclose any act of misconduct on the part of the Employee;*

[14.2.] *The church is relate to the issues of the Employee’s work performance and not any act of misconduct on the part of the Employee; and*

[14.3.] *That the Employer is not entitled to the representation.*

- [15.] On 26 September 2025, the Chairperson of the Disciplinary Hearing issued a directive that the preliminary issues be dealt with by way of written submissions.

[16.] In compliance with this directive, the Applicant delivered her written submissions on 01 October 2025 and the First Respondent delivered its heads of argument on 03 October 2025.

[17.] On 06 October 2025, the Chairperson of the Disciplinary Hearing issued the ruling on preliminary points raised by the Applicant. For the purposes of this judgment what is relevant is whether or not the Employer is entitled to have legal representation in the disciplinary hearing held under his auspices. The Chairperson dismissed this preliminary point.

[18.] It is apposite that at no given stage was the applicant placed in a position of doubting the fact that the First Respondent had appointed a legal representative to act in its stead in the disciplinary hearing.

[19.] Mr Ncanywa argued that the Applicant had to first give the disciplinary hearing Chairperson an opportunity to rectify the error or mistake made by the employer. He has persisted with this line of argument even in the Supplementary Heads, contending that ‘the Applicant had to first raise the issue on a preliminary basis for determination by the Second Respondent’. On his own *ipse dixit*, Mr Ncanywa at paragraph 5 of the supplementary heads writes:

“With the little time I had to prepare and submit these heads of argument, I unfortunately could not find authority where it is specifically held that an employee has to wait until its preliminary issue is ruled upon by the Chairperson before approaching the Court.

[20.] I am not surprised by this outcome, for I know of no such authority and was affording him an opportunity, as during the hearing of the matter, he had insisted that there was authority, it was just that he did not know it off the top of his head.

[21.] Mr Ncanywa made a bald submission that the Applicant would not be suited to urgent relief before the Disciplinary Hearing Chairperson ruled on legal representation. He vociferously argued that if the applicant had approached this Court on an urgent basis, she could be mulcted in cost as she would be regarded as having an alternative remedy. I find this odd, as the Applicant's

locus standi to institute an urgent application is not dependent on the outcome of the disciplinary proceedings, which are still pending.

[22.] The test for urgency is not whether or not the party has an alternative remedy. A party seeking urgent relief has to explicitly demonstrate why substantial redress cannot be obtained through normal legal channels.

[23.] At paragraph 6 of the Supplementary Heads of Argument, Mr Ncanywa says:
“Having said that, I am with that, as a general principle, litigants must fastest exhaust all internal remedies before approaching the Court. In this case, the Applicant humbly submits the logic dictates that she first raise the issue of the First Respondent’s wrongful legal representation to the Chairperson (the Second Respondent) for his ruling. It is so because the rules of the person in this hearing are binding.”

[24.] Mr Ncanywa was adamant and persistent in his argument that had the Applicant approached this Court earlier, it would have been premature as the matter was not ripe for hearing. I fail to understand the ripeness stance and its logic.

[25.] I therefore find no merit in the argument and reject it.

[26.] Mr Bono retorted that the Applicant had two (2) choices:

[26.1.] either to approach this Court before the commencement of the proceedings; or

[26.2.] to participate in the disciplinary hearing to its completion.

He further advanced his argument that there are exceptional circumstances where the Court would interrupt an ongoing disciplinary process. According to the First Respondent the disciplinary proceedings were already underway and have not been completed.

[27.] Mr Ncanywa submitted that urgency could not have started on 13 October 2025 when the Applicant was furnished with the Notice to Attend Disciplinary Enquiry,

which incorporated charges that the Applicant had to meet. According to Mr Ncanywa, the counting of the period could only commence after the ruling was issued on 06 October 2025.

[28.] Mr Bono, relying on the *dicta* in ***Goba v Rand West Municipality and Another***¹ submitted that disciplinary proceedings commence when the employee is furnished with the charges. Even if it were not so, as in the matter of ***Tshabalala v Moqhaka Local Municipality and Another***² Van Niekerk, in upholding the appeal found that the court in ***Goba*** was wrong in not distinguishing between disciplinary proceedings and disciplinary hearings. This distinction pales into oblivion in this matter, as it is common cause that the disciplinary hearing was conducted, during which the Chairperson issued a directive that the parties must make written submissions and then made a ruling.

[29.] Mr Ncanywa, correctly so, conceded that the disciplinary hearing in this matter had commenced and was pending.

[30.] I agree with this position.

[31.] Mr Bono further submitted that the Applicant was engaged in forum shopping. Having first tested the waters at the disciplinary hearing, the Applicant only rushes to this Court on an urgent basis when the outcome is not favourable to her.

ANALYSIS

[32.] Although the Applicant characterises the application as “extremely urgent”, there still is a need for the application brought before the urgent court to be properly motivated.

¹ (J1069/21) [2021] ZALCJHB 301 (20 September 2021)

² [2025] 2 BLLR 189 (LAC)

[33.] In ***Chung-Fung (Pty) Ltd and Another v Mayfair Residents Association and Others***³, Pullinger AJ aptly writes:

29. *The proposition that any application made to an urgent court must be fully and properly motivated holds true whether or not a matter is described as "inherently urgent", such as in instances of spoliation, restraints of trade, business rescue applications or the like.*
30. *Although this court has recently eschewed the use of the phrase "inherently urgent" in relation to certain causes of action, it has recognised that the harm claimed by an applicant is linked to the nature of the right sought to be enforced and protected rather than any category that the "right" may fall into (i.e. the cause of action relied upon). This may well, in appropriate circumstances, render the relief claimed "inherently urgent", but may have little to do with the cause of action.*
31. *Thus, while it is long established that urgent relief may arise from various and divergent causes including the protection of commercial interests and, I dare say, matters that require expeditious adjudication in the public interest, each case must be determined on its own merits and both the requirement of absence of substantive redress in due course and the reasonableness of the abridgment of time periods must be properly traversed by an applicant approaching the court for urgent relief.*

[34.] In ***Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (ta Makin Furniture Manufacturers)***⁴, the Court held as follows:

³ (2023/080436) [2023] ZAGPJCHC 1162 (13 October 2023) @ para 29 – 31.

“Mere lip service to the requirements of Rule 6(12)(b) will not do, and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down”.

[35.] The Applicant confines the issue of urgency in three (3) paragraphs, wherein she makes submissions justifying why this Court must dispense with the form, manner of service and timelines contemplated in the URC. In short, the Applicant, in respect of urgency, contends:

[35.1.] *This matter is extremely urgent because the disciplinary hearing is scheduled to proceed on 29, 30 and 31 October 2025, regardless of its illegal status...*

[35.2.] *The issue of the First Respondent’s legal representation is dispositive of the disciplinary hearing in that it nullifies the existence thereof, rendering it void ab initio. Any further decision taken by the disciplinary hearing would be incompetent and wrongfully made. The only that would be available to me would be a contractual claim for wrongful dismissal which is a remedy that would not be practically reasonable nor an appropriate remedy in due cause... [sic]*

[36.] Notshe AJ, in ***East Rock Trading (PTY) Ltd and Another v Eagle Valley Granite and Another*** at paragraph 6 postulated⁵:

“The import thereof is that the procedure set out in Rule 6(12) is not for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course”.

[My underlining]

[37.] In paragraph 8 of ***East Rock Trading***, the Court went on to say:

⁵ (11/33767) [2011] ZAGPJHC 196.

“In my view the delay in instituting proceedings is not, on its own a ground, for refusing to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given. The important issue is whether, despite the delay, the applicant can or cannot be afforded substantial redress at a hearing in due course. A delay might be an indication that the matter is not as urgent as the applicant would want the Court to believe. On the other hand a delay may have been caused by the fact that the Applicant was attempting to settle the matter or collect more facts with regard thereto.”

[Emphasis]

[38.] Having taken into cognisance the reasons advanced by the Applicant for the delay (first exhausting alternative remedy and/or ripeness of the matter) and also considering whether the Applicant will be afforded substantial redress at a hearing in due course, I find that urgency is self-created.

[39.] I am of the view that by not approaching the Court at the earliest, and dilly dallying by participating in a process that the Applicant regarded to be improperly constituted and therefore unlawful, was creating her own urgency.

[40.] For reasons outlined above, I find the motivation for urgency wanting.

[41.] In the circumstances, it would be superfluous to delve into the merits of the matter.

FINDING AND ORDER

[42.] An urgent application is an extraordinary measure that inherently requires stringent conditions to succeed.

[43.] The Court in the matter of ***Dynamic Sisters Trading (Pty) Limited and Another v Nedbank Limited***⁶, recently stressed the importance of providing viable reasons for dispensing with the formalities of application proceedings

⁶ (081473/2023) [2023] ZAGPPHC 709 (21 August 2023).

when instituting an urgent application, as set out in Rule 6(12) of the URC. The Court sounded a warning to a party seeking to institute urgent applications without valid substantiation.

[44.] Having regard to the whole conspectus of facts in this matter, I am not persuaded that the Applicant has met the threshold of establishing that she will not get substantive redress at a hearing in due course.

[45.] I must add that this threshold is inextricably linked to the right enunciated in Section 34 of the Constitution, which the Applicant has not shown that it has been trampled upon.

[46.] I find that the Applicant has delayed approaching this Court by appearing in the disciplinary hearing and challenging the employer's right to legal representation, having nailed her colours to the mast.

[47.] It appears the Applicant, in so doing, was "rolling the dice," and when the number she was hoping for — a six — to appear on the top side. When that did not obtain, she then approached this Court seeking urgent relief.

[48.] The Applicant was informed on 13 August 2025 that the First Respondent had engaged Attorneys, who in turn briefed Counsel. Nothing precluded the Applicant from taking steps to hold the First Respondent to the terms of the contract, as it had the belief that this was in line with the terms of the bilateral contract between the Applicant and the First Respondent.

[49.] Viewed objectively, self-created urgency will not satisfy the requirements of Rule 6 (12) of the URC.

[50.] By participating in the process, which the Applicant asserts was unlawful and void *ab initio*, the clock for urgency was ticking time away. *A fortiori*, as it were, the Applicant participated in the proceedings and thereby acquiesced to the ruling. During that time, the Applicant "created" her own urgency.

[51.] Self-created urgency is not constituted solely by delay. Self-created urgency implies a degree of contrivance to queue jump. The Applicant in this matter was wide awake and alive to her rights and of any harm she believes she would suffer in what she construes to be an unlawful disciplinary process. She gambled by playing a game of chance, rolling the dice, hoping the disciplinary hearing Chairperson would find in her favour on the preliminary point that the Employer does not have a right to legal representation.

[52.] By waiting until the last possible moment to launch an urgent application, I find this manner of litigation constitutes an abuse, especially when seeking to jump ship midstream, thereby delaying the completion of the journey until the ship gets to the dock.

[53.] The sanctity of the Urgent Court must be preserved for matters deserving, lest it be flooded with undeserving, self-created, or subjectively oriented cases.

[54.] Having found that the Applicant has not jumped the hurdle of urgency, there is no reason to make any determination on the merits of the matter.

[55.] With the foregoing, I make the following order:

Urgency

[55.1.] The application is struck off the roll for lack of urgency.

Costs

[55.2.] I find no cogent reasons why the costs should not follow the result.

[55.3.] I therefore order that the Applicant pay the costs of this application, including the costs consequent to employment of Counsel on a party and party scale.

B. METU
ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

For the Appellant: *Mr. L Ncanywa*
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For the First Respondent: *Adv L Bono*
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For the Second Respondent: *No appearance*

Dates heard: 21 October 2025

Date delivered: 28 October 2025