



- (1) Reportable: ~~Yes~~/NO
(2) Of interest to other Judges: ~~Yes~~/No
(3) Revised

Signature

Date

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-250203

In the matter between:

ZANELE LESLEY MTHUMKHULU

Applicant

and

STANDARD BANK OF SOUTH AFRICA LIMITED

Respondent

Heard: 06 January 2026

Delivered: This judgment was handed down electronically by uploading on *Caselines*; circulation to the parties' legal representatives by email, and publication on the Labour Court's website and *SAFLII*. The date for hand-down is deemed to be on 09 January 2026.

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

- [1] The Applicant approached the Court on an urgent basis, seeking interdictory relief under the provisions of section 6 and 60 of the Employment Equity Act (EEA)¹, read with sections 157 and 158 of the Labour Relations Act (LRA)².

¹ Act 55 of 1998

- [2] The Applicant effectively seeks an order that her precautionary suspension on allegations of insubordination is unlawful and/or retaliatory; to restrain any intended investigations or disciplinary steps pending the provision of particulars forming the basis of the any discipline against her; to restore her access to her work place and work tools, and further for the Respondent to comply with the provisions of section 60 of the EEA. She further seeks to interdict and restrain the Respondent from engaging in any further harassment, victimisation, intimidation, and retaliation against her, pending finalisation of the proceedings.
- [3] At the hearing of the matter, counsel for the Applicant had abandoned any relief regarding a declaratory order that her suspension was procedurally unfair as initially sought under prayer 2 of the Notice of Motion. Equally abandoned was relief under prayer 4 seeking to interdict or restrain the Respondent from engaging in any further unfair labour practices against her.
- [4] In the end, the Applicant relied solely on the alleged harassment and retaliatory nature of the suspension, with regard to the provisions of sections 6(3) and 60 of the EEA, it being submitted that the jurisdiction was founded further under section 50 of the EEA read with section 158 of the LRA.
- [5] Of course the concession and abandonment of reliance any unfairness or on the provisions of section 157 of the LRA was wise. This was so in the light of the legal position emanating from *Cibane and Another v Premier of Province of Kwazulu-Natal*³ that in the absence of any statutory provision conferring jurisdiction on this Court both in respect of employer conduct alleged to be unlawful and in employment-related matters generally, there was no general rule that the Court has jurisdiction to intervene *in medias res* to restrain any alleged illegalities, irregularities or unfairness in incomplete disciplinary proceedings⁴. Furthermore, the LAC in *Cibane* had held that jurisdiction to intervene in uncompleted disciplinary proceedings could not be sustained by

² Act 66 of 1995

³(DA15/2024) [2025] ZALAC 44; [2025] 10 BLLR 1004 (LAC); (2025) 46 ILJ 2587 (LAC) (15 July 2025)

⁴ At para 27

section 157(1) of the LRA, since each case had to be determined based on the pleadings⁵.

Background:

- [6] The background to this application is fairly common cause. The Applicant is in the employ of the Respondent since January 2021. She occupies the position of Business Service Lead – IT Service Management (ITSM) in the Infrastructure & Operations Division. Her primary responsibilities include IT Service Management, Change Management, Incident Management and participation in Major Incident Resolution Teams.
- [7] The Applicant alleged that she has been subjected to various forms of hostile treatment, victimisation and harassment by the Respondent since 2023. When her grievances were not resolved internally, she had referred a dispute to the CCMA in June 2025. Attempts at conciliation failed and a certificate of outcome was issued in October 2025.
- [8] The Applicant then lodged a claim before this Court under Case Number: 2025-18494, alleging harassment, discrimination and breach of section 60 of the EEA. As relief⁶, she *inter alia* sought an order declaring that the Respondent's conduct constituted harassment and unfair discrimination under the EEA, and further directing the Respondent to desist from any further harassment or discrimination.
- [9] The Respondent has since filed an Exception to the claim, contending that the statement of claim lacked averments necessary to sustain a cause of action based on the provisions of section 6 of the EEA.
- [10] On 15 August 2025, the Applicant was issued with a written warning on account of allegations of insubordination and failure to follow processes. An appeal that she had lodged internally was unsuccessful. On 5 November 2025, the Respondent issued the Applicant with a final written warning for insubordination and disrespectful conduct. It is common cause that a dispute

⁵ At para 32

⁶ Paragraph 85 of the Statement of Claim, *Caselines* 146

under section 186(2)(b) of the LRA was not referred to the CCMA in respect of these warnings.

- [11] On 28 November 2025 (Black Friday), the Respondent had experienced a major IT outage affecting its operations. The Respondent contended that the Applicant failed to participate in the crisis call or incident process notwithstanding numerous attempts by her superior to telephonically contact her. After emails on both 29 November and 2 December 2025 were sent to her, her response was that the 'matter was sub-judice', and that any communication with her should be through her attorneys.
- [12] In the light of the Applicant's alleged failures to perform her duties during the outage, the Respondent asserted that her conduct had placed its operations at risk. A virtual meeting meant to discuss the Applicant's contemplated precautionary suspension was then held on 9 December 2025. The Applicant is said to have refused to meaningfully engage the Respondent in any discussions surrounding her contemplated suspension, citing procedural irregularities and failure to disclose particulars of the allegations against her. The Respondent took a decision to immediately place her on precautionary suspension with pay. Upon her suspension, the Respondent disabled her access to its systems and tools of trade.
- [13] Following the Applicant's suspension, meetings scheduled to be held on 12, 17 and 22 December 2025 to discuss the logistics surrounding the convening of a disciplinary hearing did not proceed. A similar meeting has since been scheduled to take place on 7 January 2026.
- [14] Given the timing of this hearing and since judgment was reserved, it was agreed at the end of these proceedings that the meeting as scheduled would not proceed pending the delivery of this judgment.

The issues:

- [15] The primary issue for consideration is whether this application deserves the urgent attention of this Court. It follows that where urgency has not been established, that ought to be the end of the matter. Where however urgency is

established, the Court must decide whether there is a case made out for it to intervene in the yet to commence disciplinary hearing. Aligned to these issues are whether the precautionary suspension is retaliatory and constitutes harassment, and further whether this Court should consider other ancillary relief and the directives sought under sections 6(3) and 60 of the EEA.

- [16] The Respondent's primary contentions are that the application is premature, jurisdictionally flawed and factually misconceived. The Respondent also challenges the urgency of the application and its merits.

Urgency:

- [17] The requirements to be met when urgent relief is sought are trite emanating from now familiar authorities⁷. Under Rule 38 of the Rules of this Court, an applicant seeking urgent relief must in her founding affidavit, set out the reasons for urgency; why urgent relief is necessary; and the reasons why the requirements of the rules were not complied with. Aligned to these requirements is that an applicant cannot claim urgent relief, where on the facts and circumstances of the case, it is apparent that the urgency claimed is self-created. Even if urgency can be established, it will not be indulged where such urgency is self-created. Accordingly, the consequence of self-created urgency is fatal to an application⁸.

Further considerations the Court must take into account when considering urgent relief are the interests of the respondent party, and any prejudice it may suffer if the matter is disposed of on an urgent basis. Equally so, an applicant must also explicitly advance the reasons why it claims that it will not be afforded substantial redress in due course if it had brought the matter to Court by way of an ordinary non-urgent procedure. The question of whether a matter is sufficiently urgent to be enrolled is underpinned by the issue of the

⁷ See *Jiba v Minister: Department of Justice and Constitutional Development and Others* (2010) 31 ILJ 112 (LC) at para 18; *Tshwaedi v Greater Louis Trichardt Transitional Council* [2000] 4 BLLR 469 (LC) at para 11; *Dynamic Sisters Trading (Pty) Limited and Another v Nedbank Limited* [2023] ZAGPPHC 709 (21 August 2023); *Luna Meubel Vervaardigers v Makin and Another* 1977 (4) SA 135 (W) at 136H-137F; *Ntozini and Others v African National Congress and Others* [2018] ZAGPJHC 415 at para 10.

⁸ See *City of Tshwane Metropolitan Municipality v Afriforum and Another* 2016 (6) SA 279 (CC) at paras 24 and 25; *Lindeque and Others v Hirsch and Others (In Re: Prepaid24 (Pty) Limited)* (2019/8846) [2019] ZAGPJHC 122.

absence of substantial redress in an application in due course. Where an applicant fails to establish that substantial redress is not available in due course, the matter must be struck from the roll⁹.

Evaluation:

- [18] A concern needs to be raised to the extent that this application was brought during court recess and the manner with which it was brought before the Court. It is trite that the urgent intervention of a court must also be considered against the haste with which an applicant acted in order to obtain urgent relief. It does not assist applicants to be supine in the face of the alleged harm or prejudice, and only to act at their own leisure. The more time that an applicant takes to approach the Court for urgent relief, the more any urgency dissipates¹⁰. This principle is premised on the fact that an applicant that approaches the Court on an urgent basis essentially seeks an indulgence, and to be afforded preference in order to prevent prejudice and harm that may materialise or persist if urgent relief is not granted.
- [19] In this case, the Applicant having been suspended on 9 December 2025, the application was brought some ten days later on 19 December 2025. No attempt at all was made anywhere in the founding affidavit, to explain that delay or why it should be condoned. The lack of any explanation for the delay in approaching the Court, points to self-created urgency.
- [20] Equally worrisome are the truncated time periods set for the Respondent to deliver an answering affidavit when the matter was enrolled for 6 January 2026. Upon the filing of the application on 19 December 2025, the Respondent had pointed out to the Applicant's attorneys of record that the papers were defective in that they were not properly served; had an incorrect case number; were unsigned, and that the affidavit was not commissioned.
- [21] It was only on 23 December 2025 that the errors were rectified, and even then, the Respondent was afforded time periods in the middle of the public

⁹*SARS v Hawker Air Services (Pty) Ltd* [2006] ZASCA 51; 2006(4) SA 292 (SCA)

¹⁰*Association of Mineworkers & Construction Union & others v Northam Platinum Ltd & another* (2016) 37 ILJ 2840 (LC) at para 26; *Valerie Collins t/a Waterkloof Farm v Bernickow NO and Another* [2001] ZALC 223 (7 December 2001) at para 8.

holidays between 24 and 29 December 2025 to deliver answering papers. Clearly the truncated periods were unreasonable given the timing of the filing (during *dies non*), and the defects in the original papers.

- [22] A ground relied upon by the Applicant in seeking urgent relief was that the suspension on 9 December 2025 came into effect without prior disclosure of allegations, evidence, or a fair opportunity to be heard. Of course there is no merit in the last ground relied on. This is so in that flowing from *Long*¹¹ the legal position in regards to pre-suspension hearings is that an employer is not required to give an employee an opportunity to make representations prior to a precautionary suspension. The issue of further particulars in respect of the allegations is to be addressed further below in this judgment.
- [23] In claiming urgency, the Applicant's contention was that the suspension was retaliatory and constituted harassment within the meaning of the Code¹²(which provides the framework for determining what constitutes harassment under section 6(3) of the EEA). In reliance on the proposition that the Applicant's claim in regards to the alleged harassment was to be determined from the pleadings, it was submitted that the harassment came about after she had insisted on procedural fairness; or after the service of the Section 60 EEA Notice by her attorneys of record, and further in the light of her pursuing her claim before this Court.
- [24] The above contention is without merit in the light of the events leading to the suspension. Even if regard was had to the pleadings in this case, there is nothing to indicate the basis of the alleged harassment claimed under the provisions of section 158 of the LRA, read with section 50 of the EEA, for the purposes of granting urgent relief. A mere perfunctory reference to these provisions without more does not assist in pointing urgency.
- [25] The events of 28-29 November 2025 as gleaned from the pleadings disclosed that the Respondent was confronted with an employee who was unavailable

¹¹ *Long v South African Breweries (Pty) Ltd and Others; Long v South African Breweries (Pty) Ltd and Others* (CCT61/18) [2019] ZACC 7; (2019) 40 ILJ 965 (CC); 2019 (5) BCLR 609 (CC); [2019] 6 BLLR 515 (CC)

¹² Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, 2022

during a crisis, and when called upon to account, had merely referred the Respondent to her attorneys. On the facts, the Applicant at a meeting held with her on 9 December 2025 prior to the suspension, had refused to participate.

- [26] In the light of the seriousness of the conduct complained of related to the events of 28 November 2025, clearly the Respondent was within its rights to act in the light of operational risks arising from her conduct. In *Long*¹³, it was confirmed that where there was a fair reason for the suspension (i.e. for the purposes of investigations), and where the employee would not suffer any prejudice, there was no cause to fault the employer's decision.
- [27] In this case, the precautionary suspension was with full pay and for the purposes of investigations in the light of the Applicant's conduct. She cannot complain of any cognisable prejudice. It would clearly be untenable for this Court to intervene on an urgent basis at every turn, whenever employees are suspended from duty based on allegations of misconduct, simply because they construe such suspensions as harassment.
- [28] The complaints raised by the Applicant about procedural issues and failure to provide further particulars of the allegations prior to the suspension can equally not form the basis of any harassment for the purposes of urgent relief. It was sufficient at the time and given her posture at the meeting of 9 December 2025, that she was informed that the basis of the suspension was alleged insubordination, which was under investigation.
- [29] The disciplinary enquiry is still to be held once a meeting is held with her to arrange logistics in that regard. It is at that meeting or at most, at the disciplinary enquiry, where the applicant can raise all the procedural issues surrounding the intended disciplinary process. This is not an issue that ought to burden this Court on an urgent basis.
- [30] The Applicant's reliance on issues surrounding access to the Respondent's system including email and Microsoft Teams, and removal of her work laptop

¹³ At para 25

and LTE router for urgency are equally a red herring. In the end, again these are also issues related to disclosure and further particulars of the allegations to the extent that she seeks access to documents and correspondence necessary for her defence. These are matters that ought to be brought to the attention of the Chairperson of the disciplinary hearing, and it is premature at this stage for the Applicant to seek the Court's intervention in matters that are yet to be dealt with at the disciplinary enquiry.

[31] As to whether the Applicant will not be able to obtain substantial redress at the hearing in due course is an issue which is curiously not even addressed with any clarity under the rubric of urgency in the founding affidavit. The Applicant cannot by any stretch of imagination allege that she will be deprived of substantial redress in due course, when she still have to subject herself to the disciplinary enquiry where her complaints surrounding procedural matters are to be addressed.

[32] Allegations of discrimination, or harassment, are again matters pending before this Court under her separate claim, and the principle of *lis pendens* remains applicable in this instance. To the extent that there might be procedural complaints arising from the disciplinary enquiry, substantive redress in any event remains available to the Applicant through the dispute resolution mechanisms of the LRA.

Summary:

[33] Ultimately, contrary to her submissions, the Applicant has not demonstrated any exceptional circumstances compelling this Court to grant her urgent relief, nor do the pleadings disclose any basis for the Court to assume jurisdiction to intervene in the yet to be held disciplinary enquiry. There is no basis upon which it can be said that the Applicant had set out forth in her founding papers, the facts and circumstances that make the matter urgent.

[34] In this judgment, the Court has outlined the difficulties the Applicant could not surmount, primarily being the issue of urgency. Clearly the urgency, given the timing of the application and the pleaded case, is indeed self-created.

Furthermore, there is no basis for any conclusion to be made that she will be deprived of substantial redress in due course.

- [35] Ultimately, the Applicant cannot complain of any prejudice in circumstances where she remains suspended with pay, and where the disciplinary enquiry is still to be scheduled. On the opposite end, it is the Respondent that will suffer prejudice should urgent relief be granted, given the nature of the relief sought, which will deprive it of its prerogative to take disciplinary action against conduct which was in its opinion, detrimental to its operations. It follows that the application ought to be struck off the roll on account of lack of urgency.

Costs:

- [36] The Respondent had sought a costs order in the light of its contentions that the application was not only ill-conceived but also an abuse of Court process. I agree with these contentions.
- [37] It is trite that this Courts has a discretion upon the consideration of law and fairness, to make cost orders. In *Baloyi*¹⁴, it was held that the purpose underlying costs is to indemnify the successful litigant against the expenditure incurred as a result of having been unjustly compelled to either initiate or to defend litigation.
- [38] Further in *Member of the Executive Council for Finance, KwaZulu Natal v Dorkin NO*¹⁵, it was held that in making decisions on costs orders, a fair balance should be struck between not unduly discouraging workers, employers, unions and employers organizations from approaching the Labour Court to have their disputes dealt with, and being burdened with frivolous cases that should not have been brought in the first place.
- [39] This application falls into the latter category as alluded above. There is no merit in the submissions that the application was triggered by the Respondent's conduct. It has already been indicated that from the

¹⁴ At para 51

¹⁵ 2008 (29) ILJ 1707 (CC)

background material and the Applicant's conduct, there was cause for the Respondent to suspend her.

[40] Furthermore, given the manner with which this application was brought before Court, and what was initially pleaded as opposed to what ultimately had to be determined by the Court, there is cause for the Court to show its displeasure. On the facts, and as correctly pointed out on behalf of the Respondent, this application was speculative and premature, and ought not to have burdened this urgent court, let alone during recess. All that the Applicant needed to do like multitudes of employees who find themselves in similar circumstances, was to attend the pre-disciplinary meeting as planned by the Respondent, go through the disciplinary process, and then exercise her rights under the LRA should she be aggrieved with any adverse outcome of the enquiry. Nothing on the facts entitled her to jump the proverbial litigation queue.

[41] Furthermore, the issues she raised in her urgent application are matters intrinsically linked to her pending claim before this Court. At most, the application was contrived, ill-considered and motivated by self-created urgency, and was hardly in genuine pursuit of vindication of rights. The requirements of law and fairness under these circumstances dictate that the Applicant be mulcted with a costs order, albeit not on a punitive scale as sought by the Respondent.

[42] Accordingly, the following order is made;

Order:

1. The applicants' urgent application is struck off the roll on account of lack of urgency.
2. The Applicant is ordered to pay the costs of the application.

Edwin Tlhotlhemaje

Judge of the Labour Court of South Africa

LABOUR COURT

APPEARANCES:

For the Applicant : Adv. B Bobison-Opoku

Instructed by : AJ Venter and Associates Inc.

For the Respondent : Adv. A Redding SC with Adv. R Itzkin

Instructed by : Webber Wentzel Attorneys.

LABOUR COURT