



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JR679/2021

In the matter between:

DEPARTMENT OF HEALTH, NORTH WEST

Applicant

and

**PUBLIC HEALTH AND SOCIAL DEVELOPMENT SERVICE
SECTORAL BARGAINING COUNCIL**

First Respondent

MJ MOLAPO N.O.

Second Respondent

BERTHA HAMPU MALEKA

Third Respondent

Heard: 21 January 2026

Delivered: 13 February 2026

JUDGMENT

MUNSAMY, AJ

Introduction

[1] This is an application to review and set aside the award of the Second Respondent, in which she found that the suspension of the Third Respondent constituted an unfair labour practice. The Second Respondent ordered that

the Third Respondent's suspension be uplifted and that she be compensated three months' salary.

- [2] The Applicant instituted an urgent application (Part A) and a review application (Part B) on the 4th of February 2021. Part A was heard on the 11th of February 2021, save for the issue of costs, which was reserved for determination in the review application. On the 21st of February 2021, the Court issued an order as follows:

'IT IS ORDERED THAT

1. The forms and services provided in the rules of court are dispensed with and the application is heard as one of urgency.
2. The enforcement of the arbitration award issued by the second respondent in favour of the third respondent under case number PSH381-20/21 is stayed pending the review application as set out in Part B.
3. The applicant is directed to pay security in the sum of R343 450-00 into its attorney's trust account within 30 days of this order and accordingly issue a bond of security with the Registrar, failing which the order staying enforcement shall be deemed to have lapsed.
4. The order in 2 above shall operate as interim staying the orders granted by the second respondent in his award.
5. The costs of this application shall be determined during the hearing of Part B.
6. The applicant as consented is ordered to furnish the third respondent with copies of the documents requested to enable her to prepare for the disciplinary hearing within 7 days of this order.
7. The counter-application is dismissed.'

The reinstatement application

- [3] Part B was set down to proceed on the 21st of January 2026. On the 15th of January 2026 the Applicant filed an application to reinstate the review application (Part B), which had been deemed withdrawn in terms of the then applicable Practice Manual¹. Insofar as the reinstatement application is concerned I have considered the principles set out in *Samuels v Old Mutual Bank*², in which the LAC held that reinstatement applications be considered on the following basis:

[17] In essence, an application for the retrieval of a file from the archives is a form of an application for condonation for failure to comply with the Court Rules, timeframes and directives. Showing good cause demands that the application be *bona fide*; that the applicant provide a reasonable explanation which covers the entire period of the default; and show that he/she has reasonable prospects of success in the main application, and lastly, that it is in the interest of justice to grant the order. It has to be noted that it is not a requirement that the applicant must deal fully with the merits of the dispute to establish reasonable prospects of success. It is sufficient to set out facts which, if established would result in his/her success. In the end, the decision to grant or refuse condonation is a discretion to be exercised by the court hearing the application which must be judiciously exercised.'

- [4] Whilst the Applicant can be criticised for the delay in the administration of its affairs in ensuring a timeous prosecution of the review application, the explanation for the delay was not without merit. The delay was largely caused by the court file itself being mislaid in the offices of the Registrar. The Applicant was at liberty to make a duplicate file and proceed with the matter. However, its failure to do so does not indicate an intention to abandon the review application. It continuously attended at the offices of the Registrar until the file was eventually found and it could finalise the filing of the record. The Applicant did so and took every step thereafter to ensure this matter was properly enrolled. The Third Respondent equally forced the Applicant's hand

¹ Practice Manual of the Labour Court of South Africa, effective 2 April 2013, repealed with effect from July 2024.

² [2017] ZALAC 10; (2017) 38 ILJ 1790 at para 17.

to bring the reinstatement application by requesting that the file be deemed to be archived. The Third Respondent later contended that the file was not archived for the sole reason that it had now been set down, which axiomatically meant that it is not archived and the reinstatement application is now academic. This is wholly incorrect on the Third Respondents' part. The Registrar's directive in this case was instructive:

- '1. Reference is made to the Third Respondent's Attorneys of Record's Notice to Archive in terms of Rule 69(2)(a) of the Rules of Court, which was delivered on 20 February 2025.
2. The Applicant's attorneys of record have since responded to that Notice on 25 February 2025 and objected to the archiving of the matter on account of the last process having been filed on 1 November 2023 and subsequent enquiries with the Office of the Registrar about allocation of a date.
3. To the extent that the Third Respondent persists with its contention that the matter ought to be archived under the provisions of Rule 69(2)(a), these are issues that can be raised on the hearing date as shall be allocated by the Registrar in due course.
4. Accordingly, the Registrar is directed to enrol the matter on the opposed motion roll.
5. I trust that the above is in order.'(Own emphasis)

[5] I advised the parties at the start of the proceedings that I was inclined to grant the reinstatement application on the papers before the Court. However, should the Third Respondent require time to file opposing papers and the matter be fully ventilated, it would only result in a further delay of the matter in terms of which the parties have awaited an outcome for almost five (5) years. The Third Respondent's Counsel Adv. Mbhalati took instructions and confirmed that it did not seek an adjournment to oppose the reinstatement application and will not oppose the application.

- [6] On the basis of the above I have fully considered the pleaded case in the reinstatement application and grant the application with no order as to costs. I now turn to deal with the review application (Part B).

The review application

- [7] The dispute arose from the extended precautionary suspension of the Third Respondent, who was employed as Chief Financial Officer by the Department of Health: North West. The Third Respondent was placed on precautionary suspension on the 8th of May 2020. The suspension was not followed by the convening of a disciplinary hearing within the 60 days, as prescribed by the employer's SMS Handbook. Instead, the Applicant remained suspended beyond the expiry of the 60-day period, was not reinstated, and was not afforded a disciplinary hearing within the stipulated timeframe. The Third Respondents' suspension was not extended by the chairperson of the disciplinary hearing. It was extended by way of a letter (from an internal administrator) which stated as follows:

'SUBJECT: EXTENSION OF PRECAUTIONARY SUSPENSION FROM EMPLOYMENT IN TERMS OF CHAPTER SEVEN (7) OF THE 2003 SENIOR MANAGEMENT SERVICES HANDBOOK

1. The above matter refers.
2. Kindly take notice that as the Administrator for NW Department Health, I have received update on the investigations of allegations brought against you. The investigations against you are still underway.
3. I therefore came to the conclusion that it is fair and reasonable to extend your precautionary suspension until further notice, under same conditions stated in the notice of the precautionary suspension.
4. Should you have any queries regarding your suspension you may contact Adv. Monchusi on 0[...] / (0[...], alternatively me, Ms J Hunter at 0[...].

MS. J HUNTER

ADMINISTRATOR

NORTH WEST DEPARTMENT OF HEALTH' (Own emphasis)

- [8] The Third Respondent referred an unfair labour practice dispute relating to suspension to the Bargaining Council, contending that the continuation of her suspension beyond 60 days was both procedurally and substantively unfair.
- [9] The Applicant did not lead oral evidence. The factual version presented by the Third Respondent was therefore largely uncontested. The Applicant relied solely on its jurisdictional point. In determining the jurisdictional point, the Second Respondents' award states as follows:

'Ruling relating to the re-opening of the Applicant's case and the Council's jurisdiction on the dispute.

5. Although the first issue before me was the point of law that was raised by the Respondent, I logically could only deal with after both parties had concluded their evidence in that regard. The Applicant had during cross examination on 2 November 2020 initially indicated as the record will show that she intended to call, her disciplinary hearing Attorney. The basis for calling the Attorney was simply to demonstrate that she did not mandate him to agree to the extension of her suspension when he attended her disciplinary hearing in her absence on 8 September 2020. When the sitting of 2 November adjourned, after advice from her unfair labour practice Attorney, she decided against the calling of the said witness Attorney.
6. What remained was for the parties to call any other witnesses on the same subject before the arbitrator could make a ruling on the mootness or not of the dispute, which if favoured the Respondent would have ended the matter as Council would not have had jurisdiction to arbitrate the dispute. Whilst if the point in limine was dismissed, Council would assume jurisdiction and arbitrate the dispute referred by the Applicant.
7. On 2 November 2020, Ms. Bertha Hampu Maleka testified under oaths briefly that she was issued with a precautionary suspension Notice on 8 May 2020. She stated that she reported for duty on 9 July 2020 after her 60 days suspension period had in terms of the SMS Handbook expired on

8 July 2020. She was returned by the Respondent's Administrator informing her that her suspension was only expiring on the date she reported and not on 9 July 2020 as she believed it had. The Administrator told her not to report further for duty until further notice. The Applicant immediately referred an unfair labour practice dispute to the Council for conciliation on 9 July 2020. The conciliation meeting was held on 29 September 2020, after which a certificate indicating that the dispute remained unresolved was issued. The respondent was represented during the conciliation meeting on 29 September 2020.

8. The point of law raised on 2 November 2020 was not raised at the time, challenging the Council's jurisdiction based on the submission by the Respondent that the Applicant had waived her right by agreeing through her Attorney to the extension of her suspension earlier on 8 September 2020 during a disciplinary hearing. The Applicant indicated that the limited mandate she gave her disciplinary hearing Attorney was to the effect that he must seek the postponement of the hearing on the basis that she was sick. She denied during cross-examination that her Attorney phoned her on the day to obtain her mandate regarding the Respondent's request to have her consent to the extension of her suspension.
9. In her substantive application to seek to have her case re-opened in order to call the Attorney as a witness after she herself had testified about the sequence of events since after her suspension, I could not find her opposed application how she refusal to have her re-open the matter would prejudice her case. The Applicant was the dominus litis in the unfair labour practice dispute. I found that since she was informed not to return for duty by her employer, she immediately lodged a dispute in that regard. Beyond the disciplinary sitting of 8 September 2020, she was issued with a certificate of non-resolution of her live dispute, which the Respondent did not argue its mootness and therefore the lack of jurisdiction by Council to even conciliate it.
10. The Labour Relations Act, under Section 191 provides for a procedure and timeframes within which the Applicant should follow after a certificate had been issued. It is common cause that the Applicant referred the same dispute which the Respondent submitted she waived her rights on in October 2020. Her conduct on this point glaringly corroborates her

avermment that she had never mandated her disciplinary hearing Attorney to agree to the extension of her suspension beyond the 60 days which already expired on 8 July 2020. I did not find it being the Applicant's duty in refuting the alleged waiver agreement by calling her Attorney.

11. Since the agreement was raised by the Respondent and it was the Respondent's case and not the Applicant's that they were relying on the disputed agreement, they were (Respondent) the ones who should have called the Attorney to corroborate their case on the point of law they raised. The Applicant on 2 November 2020 attended the arbitration because she regarded her dispute as still being live and had at no stage withdrew it from the Council's roll. I find no logic that the Applicant would attend a conciliation meeting on 29 September 2020, almost three weeks after she had allegedly waived her right to her original dispute, then again when the matter is not resolved and the Respondent do not raise during conciliation, that it could suddenly be said she had waived her right. Anyway, even if it were to be proved that she had previously withdrawn her dispute, there is nothing in the Rules of Council suggesting that she could not have the dispute reinstated. There is nothing in the Rules suggesting that a withdrawn dispute renders the matter *res judicata*. However, it should be understood that the passages above do not suggest that the Applicant had at some stage withdrew her dispute.

12. I conclude therefore that the Applicant by her own conduct since referring the dispute to the Council never took any action which would have created an impression to Council that she had withdrawn her dispute. Council proceeded to set the matter down because there was nothing in its records that the dispute was no longer live. I ruled therefore that the application for the re-opening of her case was refused.'

[10] The Second Respondent relied on Section 186(2)(b) of the Labour Relations Act³ (LRA), which defines unfair labour practices, including unfair suspension as well as section 193 and 194 of the LRA, governing remedies and compensation. She also cited the SMS Handbook, which limits precautionary suspension to 60 days. Permits an extension only if:

³ Act 66 of 1995, as amended.

10.1. A disciplinary hearing is convened within 60 days; and

10.2. The hearing is postponed and suspension extended by *the Chairperson* for valid reasons.

- [11] The Second Respondent found that the Applicant had no authority to keep the Third Respondent suspended beyond 60 days without compliance with the SMS Handbook. The continued suspension was *ultra vires* the employer's powers. The Applicant's conduct constituted an unfair labour practice, as it unjustifiably deprived the Third Respondent of her right to resume duties.
- [12] The Second Respondent further found that the Applicant failed to follow its own prescribed procedure. No disciplinary hearing was convened within the 60-day period. No lawful decision was taken by a Chairperson to extend the suspension. The extension of the suspension was therefore procedurally unfair.
- [13] The Second Respondent rejected any reliance on internal correspondence (the letter extending the suspension) or alleged agreements (an agreement with the Third Respondent's attorney), holding that nothing in the SMS Handbook permitted an automatic or informal extension of suspension beyond 60 days.
- [14] It does appear from the transcript of the disciplinary proceedings that the Third Respondent's attorney did agree to extend her suspension pending the outcome of the disciplinary proceedings. However, such an agreement is void *ab initio* on the basis that the erstwhile attorney's consent (whose authority to do so is disputed by the Third Respondent) cannot make lawful what would otherwise be unlawful.
- [15] For the Applicant to rely on the Third Respondent consciously abandoning her constitutional right to refer an unfair labour practice dispute, it needed to demonstrate that her attorney could legally agree to the extension and that she expressed in unequivocal terms that such agreement was an abandonment of her rights to challenge the fairness of the ongoing suspension. The Applicant failed in this regard.

[16] The review (Part B) is essentially a review of a jurisdictional point. The applicable test to determine this issue of jurisdiction is not the reasonableness test, but the correctness test⁴.

[17] In *Lekaabe v Minister Department of Justice and Constitutional Development*⁵, Molahleli J held as follows:

‘16. Turning to the specific issue in the present instance, in my view it could never have been the intention of the parties that clause 2.7(2)(c) of the SMS Handbook should take away the right of an employer to discipline an employee on the expiry of the 60 (sixty) days from the date of suspension. In essence the case of the Applicant in the present instance is that the right of the Respondent to proceed with the disciplinary hearing prescribed on the on the expiry of the 60 (sixty) days from the date of his suspension.

17. In my view clause 2.7(2)(c) deals with suspension and not the disciplinary action. There is nothing in this clause that says an employer would lose the right to discipline an employee on the expiry of the 60 (sixty) days from the date of the suspension. I have not been able to find even a basis for implying the interpretation sought by the Applicant or the one given by the Court in *Lavejoy Malambo*. At best, as I see it, the suspension falls away after the 60 (sixty) days unless the chairperson of the disciplinary hearing extends that period.

18. The purpose of clause 2.7(2)(c), as I see it, is to address the problem of protracted suspensions which demoralizes and unfairly prejudice the suspended employee. It would appear that the mischief which the parties sought to address with the provisions of clause 7.2 was to deal with what Andre Van Niekerk J in *Mosweu Paul Magotlhe v The Member of the Executive Council for Agriculture Conservation and the Environmental and Another* soon to be reported case number J2622/08, regarded as the tendency by certain employers to:

⁴ *SA Rugby Players Association & others v SA Rugby (Pty) Ltd & Others* (2008) 29 ILJ 2218 (LAC); [2008] ZALAC 3.

⁵ [2009] ZALC 18; (2009) 30 ILJ 2444 (LC).

“...regard suspicion as a legitimate measure of first resort to the most groundless suspicion of misconduct, or worst still, to view suspicion as a convenient mechanism to marginalise an employee who has fallen from the favour.”

19. Thus the right of the employee in the event that the employer does not uplift the suspension on the expiry of the 60 (sixty) days is to file an unfair labour practice claim or bring an application to have an order directing the employer to uplift the suspension. I need to emphasize that in my view it could never have been the intention of parties that the right to discipline by an employer would fall away on the expiring of the 60 (sixty) days.
20. The Court in *Magotlhe's case* quoted with approval what this Court had said in *SAPO Ltd v Jansen van Vuuren* [2008] ZALC 33; [2008] 8 BLLR 798 (LC). The Court in that case was dealing with the abuse of power by the employers through the use of suspensions. As stated earlier the real intention of the parties in promulgating clause 2.7(2)(c) of the SMS Handbook was to address this abuse. The intention was to curb the power of employers in the public service from using protracted suspension as a means of marginalising those employees who may have fallen out of favour. The intention of the parties was also to minimise if not do away with the resultant detrimental impact, the prejudice on the affected employees, reputation, advancement, job security and fulfilment that would arise from the prolonged suspension. See in this regard *SAPO (supra)* (at paragraph 37).
21. In the circumstance the Applicant's application stands to be dismissed in as far as interdicting the disciplinary hearing. The sixty days having expired and the employer having not taken any further steps in the initiation of the disciplinary hearing, I see no reason why the Respondent should not be ordered to uplift the suspension and allow the Applicant to resume his duties. The Respondent should by now have completed its investigations and therefore I do not see on what basis the suspension should be prolonged further.'

[18] The Applicant also elected to stand or fall by this point before the Second Respondent. The Second Respondents findings cannot be faulted in this

regard. There was no evidence before her that the attorney of record could agree to extend a lapsed suspension.

[19] Against the aforementioned jurisprudence of this Court the Second Respondent's award cannot be set aside in respect of her findings regarding the ongoing suspension after the 60 day period had lapsed.

[20] This then leaves the issue of the amount of compensation awarded. In determining whether to review an award of compensation the Court is required to determine whether the arbitrator reached a decision that a reasonable decision maker would reach in considering what was just and equitable in all the circumstances⁶. On the prevailing jurisprudence the determination of a quantum of compensation involves the exercise of a discretion in the strict sense⁷. Decisions based on the exercise of discretions of this sort stand to be reviewed on the *Sidumo*⁸ test.

[21] The Second Respondents reasoning for the award of compensation can be gleaned from the following paragraphs of her award:

'30. Firstly, the Applicant sought to have her suspension lifted and sought compensation. Having found that her continued suspension was unfair, I have no doubt that her required remedy of ordering the lifting of the suspension and reinstating her was justified.

31. If compensation is awarded Section 194(4) requires that it be just and equitable in all the circumstances but must not exceed twelve months remuneration. The Applicant sought 12 months compensation.

32. There is no medical evidence presented to me showing a casual nexus between the protracted suspension and her personal psychological condition and therefore cannot use that submission as a consideration for compensation. However, the Applicant had demonstrated that there was no reason for the Administrator to disregard the employment prescripts governing her suspension.

⁶ S 194(4) of the LRA.

⁷ *Dr Dc Kemp t/a Centralmed v Rawlins* [2009] 11 BLLR 1027 (LAC); [2009] ZALAC 8 at para 55.

⁸ *Sidumo & another v Rustenberg Platinum Mines Ltd & Others* [2007] 12 BLLR 1097 (CC); [2007] ZACC 22 at para 110.

Clearly her extended period of suspension was accompanied by malice as it is evident from the letter the Administrator wrote her when she challenged the extended suspension. The Administrator's conduct clearly violated her employment rights and her dignity as a senior manager. What was supposed to have been a precautionary suspension until 8 July 2020 lost its meaning when there was no hearing within the sixty days.

33. The Notice of suspension provided that the precautionary suspension was not a judgement but simply precautionary. But when the Applicant drew the Administrator's attention to the fact that the refusal to lift it and have her reinstated was unfair, it then became judgemental and punitive against her. That is when the Administrator became personal than relying on the legal prescripts. The conduct of the Administrator when one reads the tone of the response letter, I find that it was very malicious. I have not yet found precedent where as arbitrator I could order personal costs. I am aware that the labour court and high courts had previously made such orders against officials who behave the way the Administrator behaved in this matter. Whilst it is true that the prolonged suspension did not affect her remuneration, the same cannot be said about the unnecessary delay in lifting the suspension and easing her life. It is for the latter reason that I concur with the Applicant that compensation under the circumstances be awarded.
34. I consider as just and equitable taking into account the total disregard of the employment prescripts and contemptuous conduct of the Respondent through its Administrator's letter in the bundles that there was no legal justification to refuse the Applicant reinstatement other than concluding that the intention was to injure her dignity. Her dignity, injury to her persona, emotions and employment rights commenced on 9 July 2020 when she was unjustifiably refused to resume her work and it continued despite her displeasure until date of the arbitration award on 25 January 2021. This makes that period six months of continued unjustified injury. I concur with all the case laws cited by her representative in this regard. I ordinarily would have awarded her six months compensation given the period of deliberate pain and suffering the Respondent inflicted on her. But so far despite the fact that the

empowering Act, (LRA) allows me the discretion to determine the matter in any manner befitting and also allows me to award to a maximum of 12 months if I find it to be just and equitable. I was mindful of the fact that the Labour Appeal Court so far ordered a solatium of up to three months compensation. Since we are called upon to follow the principle of *stare decisis*, I will limit the amount of compensation to the current jurisprudence created by a higher court in regard to the compensation. I also took into account the fact that the Applicant received her full salary during the extended unjustified period of suspension. I order compensation equivalent three months of the Applicant's salary.'

[22] The Applicant raises its challenge to this in its founding affidavit under the fifth and sixth grounds of review as follows:

'FIFTH GROUND OF REVIEW

47. The objective evidence demonstrates that the Third Respondent sought compensation for unfair suspension, based on the psychological effect that ensued as a result of unfair suspension. The Third Respondent did not rely on medical reports in substantiation of her claim. A perusal of the record of the proceedings would demonstrate that the Third Respondent was an unreliable litigant who materially contradicted herself and adjusted her case as cross-examination proceeded, to bolster her case or when the shoe pinched.
48. Of critical importance is the fact that the Third Respondent could not establish whether what she alleged to be undergoing, was as a result of the Covid-19 pandemic, her unfair suspension and/or the fact that she was facing a disciplinary hearing.
49. In view of the aforesaid, the Second Respondent should not have made a finding that the Third Respondent was entitled to compensation.
50. It is clear from the Award that the Second Respondent made out a case for the Third Respondent in that the Second Respondent did not take into account the whole content of the letter wherein it is clearly indicated that the further suspension of the Third Respondent was

necessitated by the fact that the investigation had not been concluded, and the interest of the Applicant. A copy of the relevant letter is attached hereto, marked as annexure "F".

51. In the premises, on this aspect alone, the Award ought to be reviewed and set aside.

SIXTH GROUND OF REVIEW

52. The Second Respondent ruled that the payment equivalent to three months' salary must be paid to the Third Respondent by no later than 16 February 2021, failing which the applicable interest rate shall accrue.

53. I am advised that the Second Respondent misdirected himself in awarding the Third Respondent compensation equivalent to three months which the total value is R343 450.71 (three hundred and forty-three thousand four hundred and forty-three and seventy-one cents), less statutory deductions.

54. The compensation ordered to be paid to the Third Respondent by the Second Respondent constitutes double payment, is unlawful and irrational.

55. The irrationality of the Second Respondent's award is apparent at paragraph 32 where he says the following:

"32. There is no medical evidence presented to me showing a casual nexus between the protracted suspension and her personal psychological condition and therefore cannot use that submission as a consideration for compensation..."

56. In clear terms, there is no rational nexus between the paragraph 32 and paragraph 42 of the award. The two paragraphs are irreconcilable and cannot stand the rationality test. Without doubt, paragraph 32 of the award states that there is absence of medical evidence to justify compensation. That being clearly stated, it was irrational of the

Second Respondent to order compensation in the absence of medical evidence.

57. In addition, there is no rational basis set out by the Second Respondent why the purported compensation should be paid by no later than 16 February 2021, in circumstances where the Third Respondent was not financially prejudiced during her suspension as she was duly paid her salary in full. For ease of reference I annex hereto marked "A" a copy of the award sought to be interdicted and stayed pending the review application.

58. In the premises, the grounds cited above justify the granting of the interim interdict pending the review application.'

[23] The fifth ground of review does not take into consideration the Second Respondents findings quoted above where she particularly took issue with the level of 'self-help' the Applicants representatives resorted to by extending the suspension of their own accord. It equally had serious consequences for the Third Respondent who was a senior manager and her ongoing suspension and exclusion from the workplace causes significant damage to her reputation and standing within the workplace. This must be considered against the fact that the Applicant was well aware that it needed to bring an application to extend the Third Respondents' suspension as it did in September 2020 (almost two months later). This begs the question, why would the Applicant not simply extend the suspension again through the administrator if it believed that it was legally entitled to do so? The Second Respondent seems to have correctly deduced that this was draconian conduct on the part of the Applicant, which had a material effect on the Third Respondent and she was entitled to solatium in all the circumstances.

[24] The sixth ground of review, that this constitutes a double-payment, is absurd. The amount awarded to the Third Respondent was not contractual or retrospective pay, it was solatium for her being subjected to an unfair labour practice. This is precisely what S 194(4) permits.

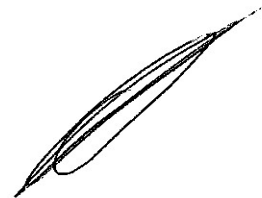
Costs

[25] Both parties sought costs in the event that the relief sought was obtained, including the costs of Counsel. I have considered the provisions of S 162 of the LRA and in particular the conduct of the Applicant in this matter. This review application lacked merit from the outset and should not have been pursued based on the well-established jurisprudence that dated back, at the time, in excess of ten years. The Applicant could not reasonably have believed that the Third Respondents attorneys utterances could legitimize an unlawful extension of her suspension past the sixty (60) day period. The Third Respondent is entitled to her costs in these proceedings in respect of Part A and B.

[26] I accordingly make an order as follows:

Order

1. The reinstatement of the review application is granted with no order as to costs.
2. The Applicant is ordered to pay the Third Respondents' costs in respect of Part A of this application on a party and party scale C, together with the costs of Counsel.
3. The review application, Part B, is dismissed with costs on a party and party scale C, together with the costs of Counsel.



K. R. Munsamy
Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Adv. T F Mathibedi SC
Instructed by: Lucky Thekisho Inc. Attorneys

For the Respondent: Adv. S Mbhalati
Instructed by: Moima Attorneys Inc.

LABOUR COURT