



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

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: 2025-140150

In the matter between:

PETER PAULOS MOLOKO MONYEPAO

Applicant

and

CITY OF EKHURHULENI METROPOLITAN MUNICIPALITY

First Respondent

CITY OF EKHURHULENI METROPOLITAN MUNICIPALITY:

KAGISO LERUTLA ACTING MUNICIPAL MANAGER

Second Respondent

ADV SANELE SIBISI N.O.

Third Respondent

ADV BRIDGETTE SEHLAPELO

Fourth Respondent

Heard: 26 August 2025

Reasons delivered: 10 February 2026

REASONS FOR ORDER

PHEHANE, J

Introduction

[1] This is an urgent application in which the applicant seeks orders:

1.1. declaring that his suspension by the first respondent has lapsed;

- 1.2. declaring that his internal disciplinary hearing scheduled to recommence on 27 and 28 August 2025, is unlawful and invalid;
 - 1.3. a final order interdicting and restraining the respondents or functionaries under the first respondent from disciplining him for any of the charges in the charge sheet dated 30 June 2025, including the continuation of the disciplinary hearing on 27 and 28 August 2025;
 - 1.4. directing the respondents to lift his suspension.
- [2] The first and second respondents (the respondents) oppose this application.
- [3] After hearing oral submissions by the parties on 26 August 2025, this Court issued an order dismissing the application with punitive costs.
- [4] Brief reasons for the order follow below.

Background

- [5] The applicant was employed by the first respondent in the position of Chief Information Officer since April 2022. By virtue of his position, the applicant's role is that of a senior manager as contemplated in section 56 of the Local Government: Municipal Systems Act¹ (the MSA).
- [6] On 15 April 2025, the applicant was suspended from duty as a precautionary measure pending disciplinary proceedings in terms of the provisions of regulation 6 of the Regulations² published in terms of section 120 of the MSA (the Regulations).
- [7] The applicant previously launched an application in this Court under case number 2025-056915 in which application, he alleged that his suspension was unlawful for failure by the respondents to comply the regulations, including challenging the authority of the second respondent to suspend him. This Court per Matyolo AJ issued an order and judgment on 29 May 2025 (the Matyolo AJ judgment) pronouncing that the applicant's suspension was lawful

¹ Act 32 of 2000.

² Local Government: Disciplinary Regulations for Senior Managers, 2010, published under GN 344 in GG 34213 dated 21 April 2011.

and his application was accordingly dismissed. In that application, the applicant's cause of action was premised on unlawfulness consequent upon an alleged breach of contract by the respondent; the applicant disavowed reliance on the cause of action premised on the unfairness of his suspension in terms of the unfair labour practice dispensation of the Labour Relations Act³ (LRA). Of relevance to this present application, with reference to the provisions of regulation 6(6)(a), Matyolo AJ remarked that the suspension of the applicant was lawful and that it could not continue for more than 90 days.

[8] It is pertinent for the purposes of this application at this juncture to set out what regulation 6(6) reads:

'(6)(a) If a senior manager is suspended, a disciplinary hearing must commence within three months after the date of suspension, failing which the suspension will automatically lapse.

(b) The period of three months referred to in paragraph (a) may not be extended by council.'

[9] Following the Matyolo AJ judgement, on the same day, that is, on 29 May 2025, the respondents obtained a council resolution in terms of regulation 10 of the Regulations, which resolution authorised the respondents to institute a disciplinary hearing against the applicant.

[10] It is necessary for the purposes of the present application to set out the provisions of regulation 10 in its entirety. It reads:

'10. Conducting disciplinary hearing

(1) The disciplinary hearing must commence—

(a) within three months of the resolution to institute disciplinary action; and

³ Act 66 of 1995, as amended.

- (b) on a date not less than seven days and not more than 10 days from the date of service of the charge sheet and the written notice of the disciplinary hearing on the senior manager.
- (2) The hearing must be conducted by the presiding officer who may determine the procedures to be followed, provided that the—
 - (a) rules of natural justice are adhered to at all times;
 - (b) matter is speedily resolved with the minimum of legal formalities;
 - (c) presiding officer in discharging his or her obligations—
 - (i) exercises care, diligence and acts impartially; and
 - (ii) does not consult or confer with any of the parties or their representatives on the merits or demerits of the case.
- (3) The officer leading evidence—
 - (a) must commence the disciplinary hearing by reading out the charges to the senior manager;
 - (b) may call witnesses and produce book[s], document[s] or object[s];
 - (c) may cross-examine any witness called to testify on behalf of the senior manager;
 - (d) may inspect any book[s], document[s] or object[s] produced by the senior manager; and
 - (e) must present arguments on the merits of the case.
- (4) The senior manager has the right to—
 - (a) be heard in person or through a representative;
 - (b) call witnesses and produce book[s], document[s] or object[s];

- (c) cross-examine any witness called to testify by the officer leading evidence; and
 - (d) inspect any book[s], document[s] or object[s] produced by the officer leading evidence.
- (5) The presiding officer—
- (a) may, at any time during the hearing—
 - (i) ask any party any questions to clarify any matter;
 - (ii) ask any party or his or her witnesses any question on any matter relevant to the charges;
 - (iii) proceed with the hearing if no satisfactory reasons are furnished for the absence of the party against whom charges of misconduct are being brought;
 - (iv) make such interim determinations or rulings as he or she deems necessary; and
 - (b) must—
 - (i) after having considered the evidence before him or her, make a finding;
 - (ii) in the event of a verdict of guilt, invite and hear any plea in mitigation or aggravation of sanction by the senior manager prior to imposing a sanction; and
 - (iii) impose an appropriate sanction.’

[11] It is common cause that the applicant was served with a notice to attend a disciplinary hearing as well as the charges, on 30 June 2025.

[12] It is not disputed that the first sitting of the disciplinary hearing took place on 9 July 2025, at which hearing, the applicant was legally represented. On the date of this first sitting of the disciplinary hearing, the parties agreed to postpone the hearing to 27 and 28 August 2025 and 8 to 12 September 2025.

Submissions

- [13] At the outset, I point out that the allegations of the applicant are clumsily set out and so are his contentions.
- [14] In his founding affidavit, he sets out that his cause of action is premised on unlawfulness, consequent upon the respondents breaching provisions of regulations 6 and 10. In his founding affidavit, he disavows reliance on the cause of action relating to an unfair suspension in terms of the unfair labour practice dispensation of the LRA. Thus, he avers that his cause of action is premised on a breach of contract.
- [15] More specifically, the applicant contends that the respondents have failed to comply with the provisions of regulation 6 as he has been suspended for a period exceeding three months without the disciplinary hearing having commenced. In the premises, he claims that his suspension is unlawful as the respondents are in breach of the provisions of regulation 6(6)(a). Thus, the applicant seeks an order declaring his suspension is unlawful and an order lifting that suspension.
- [16] Further, on the applicant's pleaded case, he seeks a final interdict as he alleges that the disciplinary hearing, which was to re-commence on 27 August 2025, is invalid, as he alleges that the respondents failed to commence the disciplinary hearing within the three months of the date of his *suspension*.
- [17] The applicant avers that the disciplinary hearing *commences* when the evidence leader reads out the charges as contemplated in regulation 10(3). He contends that, as this has not occurred and three months have lapsed since the date of his suspension, the hearing is invalid, and in his words, the hearing "lapses".⁴

⁴ See: founding affidavit at para 4.5 on p 002-11.

- [18] At the outset, the applicant conflates, misinterprets and misapplies the provisions of regulations 6 and 10. He also misapplies the jurisprudence on the meaning of the word “*commence*” as authoritatively pronounced by the Labour Appeal Court (LAC). I deal with this below.
- [19] It was submitted on behalf of the applicant during oral argument that the “crux” of this application is the unlawful suspension of the applicant, which suspension he contends has lapsed by operation of the law. According to the applicant, his suspension lapsed on 15 July 2025. Mr Mafu, for the applicant, submitted that the prayers seeking an order interdicting the disciplinary hearing are abandoned. It was nonetheless submitted by Mr Mafu oddly, that the disciplinary hearing had not commenced.
- [20] The applicant’s heads of argument seem to suggest that the only relief he pursues is an order seeking a declarator that the suspension is unlawful.⁵ However, the heads of argument record that the applicant persists with his application⁶ and the heads of argument set out in why the hearing should be interdicted.⁷ I point out that in his founding affidavit, the applicant seeks final interdictory relief, however, he has pleaded requirements relating to the grant of interim interdictory relief. In his heads of argument, he persists that he seeks interim interdictory relief. I mention this to illustrate the clumsy approach adopted by the applicant, which demonstrates a lack of understanding of the legal requirements pertaining to interdictory relief. In any event, the applicant fails to make out a case for final relief as set out below.
- [21] The applicant brought an application for leave to admit a further affidavit. The purpose of this further affidavit is to place facts before this Court regarding his suspension that the applicant avers were omitted in his founding affidavit. Nothing turns on these facts.
- [22] On urgency, the applicant contends that this application is urgent as proceeding with an unlawful hearing is a grave injustice. He alleges that he

⁵ See: para 1.1 of the applicant’s heads of argument at p 009-4.

⁶ *Ibid* at para 1.3

⁷ *Ibid* at paras 6 and its sub-paragraphs and para 7 at pp 009-14 to 009-15.

“raised the issue” with the respondents in early August 2025 and approached this Court at his earliest convenience.

- [23] The respondents oppose this application, contending that there is a misjoinder of the fourth and fifth respondents, that urgency is self-created and the application is frivolous.
- [24] The respondents submit that the applicant has failed describe the parties in his founding affidavit and has thus failed to comply with the provisions of Rule 35(5) and consequently, the application is defective and the applicant has failed to make out a case for joining the third and fourth respondents. Although the applicant’s pleadings are not a model for clarity, this is an application enrolled for hearing on the urgent Court roll and therefore, technical contentions should be discouraged, particularly where the respondents have raised a compelling and persuasive defence on the merits of the application on the applicant’s case as pleaded. In view of the facts that are common cause which this Court’s order below, it is not necessary to canvass this preliminary point.
- [25] The respondents contend that urgency is self-created, as on 9 July 2025, the applicant and his legal representatives, who are the same legal representatives that represented him during the disciplinary hearing on 9 July 2025, agreed to the postponement of the hearing to 27 and 28 August 2025 and 8 to 12 September 2025, yet, did not launch these urgent proceedings at the earliest opportunity and did not give the respondents any prior indication that he intended to launch this application seeking the relief he seeks. The applicant avers that his suspension lapsed on 15 July 2025, yet he took a month to approach this Court and has not provided any compelling explanation why this Court was not approached at the earliest opportunity.
- [26] Relying on the decisions of our Courts that self -created urgency is fatal to an applicant in urgent proceedings, the respondents submit that this application should be struck off the roll for lack of urgency with costs.⁸

⁸ See: paras 8 to 15 of the respondents’ heads of argument and the authorities cited therein at pp 010-4 to 010-08.

- [27] The respondents contend that the applicant has failed to demonstrate any exceptional circumstances warranting the intervention of this Court in the incomplete disciplinary hearing.
- [28] Further, the applicant's case is frivolous and devoid of merit. The respondents contend that the applicant and his legal representatives conflate the provisions of rule 6(6)(a) and regulation 10(1) and (3). Regulation 6(6)(a) makes provision for the commencement of a disciplinary hearing within three months of an employee's suspension, failing which the suspension lapses, while regulation 10(1) makes provision for the commencement of a disciplinary hearing within three months of the *council resolution instituting a disciplinary hearing*. The two time-frames do not run simultaneously. On the facts, the applicant was suspended on 15 April 2025, and his suspension would lapse on 15 July 2025 if the hearing had not commenced by that date.
- [29] The hearing commenced on 9 July 2025. The respondents place a transcript of the proceedings on 9 July 2025 before this Court and aver that the applicant made a material non-disclosure in omitting to mention this first sitting of the disciplinary hearing in his founding affidavit.
- [30] By agreement between the parties, the hearing was postponed by the chairperson of the hearing to mutually agreed upon dates, following introductory and preliminary issues being discussed. The postponement was occasioned by the applicant raising an issue of not having been provided with the bundle of documents that the first respondent relied on.
- [31] As the hearing commenced before the expiration of the three-month period from the date of the applicant's suspension as contemplated in regulation 6(6)(a), the respondents accordingly contend that the applicant's suspension did not lapse and his claim that his suspension is unlawful cannot succeed.
- [32] Further, on 29 May 2025, the council took a resolution to institute a disciplinary hearing against the applicant. This hearing commenced on 9 July 2025. Therefore, the respondents complied with the provisions of regulation 10(1).

[33] The respondents stated that the applicant misconstrues the meaning of the word “commence” in regulations (6) and (10). The LAC in *Tshabalala v Moqhaka Municipality and Another*⁹ (*Tshabalala*) with reference to this Court’s decision in *Mengo v Lekwa-Teemane Local Municipality*¹⁰ (*Mengo*) and *Moloto and Another v Kagisano Molopo Local Municipality and Others*¹¹ (*Moloto*) authoratively and unambiguously pronounced that a disciplinary hearing “commences” when the chairperson of the hearing takes control of the proceedings and clarified that the proceedings do not commence when the evidence leader reads the charges to an employee as contemplated in regulation 10(3).

Evaluation

[34] Regulation 6(6)(a) provides that a hearing must commence within three months of the date of suspension. Regulation 10(1)(a) provides that a hearing must commence within three months of a council resolution instituting the hearing. These are separate events.

[35] On a purposive interpretation of regulation 10, in line with jurisprudence,¹² the hearing commences when the presiding officer takes charge of the proceedings. In the words of regulation 10(2), the presiding officer *conducts* the hearing and *determines the procedures to be followed*. This is what the presiding officer did in the present application – the presiding officer commenced the proceedings, took charge and made a determination that the hearing is postponed after hearing both parties.

[36] It is trite that in disciplinary hearings, the employer bears the onus of proving the allegations against an employee. Therefore, the employer representative or evidence leader commences the process of the hearing proceedings by reading the charges in order for a plea to be entered by the employee, followed by the evidence leader leading the evidence, whereafter, the employee leads evidence in his or her defence.

⁹ (2025) 46 ILJ 590 (LAC).

¹⁰ J452/20 [2020] ZALCJHB 255 (11 June 2020).

¹¹ (J4415/18 [2019] ZALCJHB (21 February 2019).

¹² *Tshabalala, Mengo and Moloto* supra at fn 10 to 12.

- [37] The applicant misapplies the meaning of the word “*commence*” to suit his own contrived agenda. The applicant’s interpretation of the hearing commencing when the charge is read is incorrect and is incongruent with the meaning of regulation 10 and jurisprudence. This Court is bound by the doctrine of *stare decisis*.
- [38] Thus, on a proper application of *Tshabalala*, the disciplinary hearing commenced in accordance with the requirements of regulation 6(6) and 10. This is evident from the common cause facts that the parties convened in the disciplinary hearing and the presiding officer took control of the proceedings, navigating the process by addressing introductions, preliminary matters, and other formalities.
- [39] The first sitting of the hearing took place on 9 July 2025. This was within three months of the suspension of the applicant and in compliance with regulation 6(6)(a).
- [40] When this application was heard, the three-month time frame within which to hold the disciplinary hearing had also not expired. On the facts, this period would have expired on 28 August 2025. As the hearing commenced on 9 July 2025, the respondent complied with the provisions of regulation 10(1). The applicant’s interpretation of regulation 10(1) that the hearing must commence within three months of his *suspension* is incorrect. Nowhere does regulation 10(1) provide this. In addition, regulation 10(1) does not provide, as the applicant incorrectly alleges, that the *hearing will lapse* if it does not commence within the prescribed three-month time frame.
- [41] In view of the foregoing, the applicant has failed to make out a case for the relief sought, as, on the proper interpretation of the word “commence” and on the common cause facts, his hearing commenced before the expiration of the three-month period as contemplated in regulation 6(6)(a), and it commenced before the expiration of the three month period from the date council instituted the disciplinary hearing. Therefore, the applicant is not entitled to the relief he seeks.

- [42] On his papers, the applicant has failed to demonstrate a breach of the provisions of regulations 6 and 10 by the respondents. In the premises, his application cannot succeed.
- [43] The applicant has not demonstrated any exceptional circumstances warranting this Court's intervention in an incomplete disciplinary hearing. He agreed to the postponement of the hearing and did not raise with the chairperson any grounds of the hearing becoming unlawful should the three-month time period not be adhered to as a result of the postponement of his hearing. Even if he had raised this, his contention would be devoid of merit for the reasons that the respondents complied with both regulations.
- [44] The applicant agreed to the postponement of the hearing. He participated in the hearing and placed himself under the control of the chairperson by appearing and agreeing to a postponement in a hearing he now claims is illegal and wants to interdict. This conduct is an abuse of the Court process.
- [45] It is concerning that the applicant and his legal representatives, who are officers of the Court, did not disclose to this Court that the hearing commenced on 9 July 2025 and was postponed by agreement to agreed dates. Had he done so, he knew he would not be entitled to the relief he seeks and he has wasted the resources of this Court in proceeding with an application that is devoid of merit.
- [46] Not only did he fail to disclose material facts to this Court, in his replying affidavit, on the one hand, he "*notes*" the hearing proceedings of 9 July 2025 and transcript thereof, and on the other hand, in the same affidavit, he pleads a bare denial of what transpired at that hearing and common cause facts.¹³ This is misleading.
- [47] The applicant refers in his papers to the meeting of 9 July 2025 as the "initial" sitting of the hearing. He cannot escape the common cause fact that the hearing initially sat within the prescribed time frame in both regulations and

¹³ See: paras 14 to 18 of the answering affidavit on p 005-7 and paras 10 to 12 of the replying affidavit on p 006-9; and paras 25 to 47 of the answering affidavit on pp 005-9 to 005-12 and para 17 of the replying affidavit on p 006-9 to 006-10.

therefore, disingenuously makes nonsensical arguments on the interpretation of the regulations to suit his contrived agenda to avoid answering allegations of serious misconduct.

[48] This is an applicant who by hook or by crook, more the latter, is attempting to avoid answering serious allegations of misconduct by agreeing to a postponement and later claiming that the very hearing he has participated in and agreed to postpone, is unlawful. There is no better description of a frivolous application.

[49] Although I am not persuaded that this application is urgent, I exercise my discretion to hear it, as striking an unmeritorious and frivolous application off the roll will only burden this Court's roll were the matter to be enrolled in the ordinary course.

Costs

[50] The applicant has not approached this Court with clean hands. He failed to disclose material facts regarding the initial sitting of the disciplinary hearing.

[51] The application is riddled with multiple errors that range from the misapplication of legal principles relating to causes of action and jurisdiction, the misapplication of the legal requirements of interim and final interdicts, the misapplication of case law on the definition of when a disciplinary hearing is said to have commenced as contemplated in regulation 10(1), misinterpretation and conflation of regulations 6(6)(a) and regulation 10.

[52] The conduct of the applicant and his legal representatives as aforesaid, in launching this frivolous application with a multiplicity of errors and making a material non-disclosure, warrants a punitive costs order.

Conclusion

[53] In view of the afore-going, the above order was made.

M. T. M. Phehane

Judge of the Labour Court of South Africa

LABOUR COURT