

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO.D.1157/99

In the matter between:

BABA ZWAKALA Applicant

and

PORT ST. JOHNS MUNICIPALITY First Respondent
THE MAYORESS: PORT ST. JOHNS

MUNICIPALITY Second Respondent
THE MEC FOR LOCAL GOVERNMENT AND
HOUSING: EASTERN CAPE PROVINCIAL
GOVERNMENT Third Respondent

J U D G M E N T

(1) The applicant is the municipal manager (this according to the answering affidavit - the applicant describes himself as the chief executive officer) of the Port St. Johns municipality, the first respondent herein. On 5 October 1999 the first respondent's council suspended the applicant, on full pay, pending the investigation of certain irregularities involving inter alia the applicant using council funds to hire a bus to convey mourners to his mother's funeral. In terms of the council's letter of that date the applicant was invited to

supply reasons by 14 October as to why the suspension should not continue. In his response on 13 October the applicant did not deal with the substance of the allegations against him and confined himself to a general denial. He did add however that he regarded his suspension as being unconstitutional and he went on to say that it caused him "great humiliation".

(2) The applicant referred his suspension to the Commission for Conciliation, Mediation and Arbitration ("the CCMA") and at the same time approached this court as a matter of urgency for an order in the following terms:

"2.1 That applicant's purported suspension by first respondent effected on 05 October 1999 be declared an unfair labour practice and be set aside as being void ab initio, improper, irregular and unlawful.

2.2 That first and second respondent's eviction of applicant from first respondent's offices and the requirement that applicant be at first respondent's premises upon being granted permission by the council of first respondent be declared improper, irregular,

unlawful and unfair labour practice deserving of being set aside.

2.3 That first respondent reinstate applicant into his position as chief executive officer of first respondent on terms no less favourable than those which existed on the 05 October 1999.

2.4 That first respondent pay costs of this application and second and third respondents pay such costs, jointly and severally with first respondent, only in the event of them opposing same."

The applicant initially only asked for paragraph 2.3 to operate as an interim interdict pending the finalisation of this application. By the time this matter was argued before me on Friday, 22 October, all papers had been filed and it was agreed between the parties that I should dispose of this matter finally.

(3) In SACCAWU v. Shoprite Checkers (Pty) Limited (1997)10 BLLR 130 (LC) Landman J. assumed that this court has the necessary jurisdiction to grant interim relief pending the finalisation of a matter which is pending before the CCMA. The learned judge again left the matter open in Rammekwa v. Bophuthatswana Broadcasting Corporation (1998)5 BLLR 505 (LC). In Hultzer v. Standard Bank of SA (Pty) Ltd. (1999) 20 ILJ 1806 (LC) Revelas J. held, at 1809 E, that this court does have the power in terms of section 158(1)(a)(i) of the Labour Relations Act 66 of 1995 ("the Act") to grant reinstatement on an urgent basis pending proceedings before the CCMA. This will obviously include the setting aside of a suspension. The learned judge however went on to say the following (at 1809 F):

"The court will, however, only grant such relief where an applicant is able to persuade the court that extremely cogent grounds for urgency exists."

(4) The only grounds for urgency advanced by the applicant in his founding affidavit relate to the humiliation suffered by him by reason of the suspension and the tarnishing of his name which it implies. In this regard he states:

"With my continued suspension the damage

of my name continues ceaselessly and rumour mongering about unfounded allegations of embezzlement involving me. Port St. Johns is a small town and stories of this nature immediately spread fast like veld fire. This is occurring on a day to day basis and is prejudicing me in my name, position and status in the community."

(5) The difficulty I have is that almost every suspension by reason of the investigation of allegations of misconduct would cause this type of prejudice. This does not make the matter urgent in the sense described above. Furthermore, urgency can surely not be created by "rumour mongering" and "unfounded allegations of embezzlement". Right thinking inhabitants of Port St. Johns must know, or ought to know, that a suspension pending further investigations is nothing more than that. Such further investigations may establish impropriety on the applicant's part. On the other hand they may not.

(6) Bearing in mind particularly that the applicant's suspension is on full pay, he has in my view a perfectly adequate alternative remedy before the CCMA. Even if the suspension had been without pay, this fact would not have taken the matter much further - see University of the Western Cape Academic Staff Union & Others v. University of the Western Cape (1999) 20 ILJ 1300 (LC) at 1304 E-F. Mr Mbatha, for the applicant, suggested in argument that a

hearing before the CCMA could well take much longer than the periods envisaged in the Act. There is no evidence before me to support this submission and I must accept that the matter will be dealt with expeditiously.

(7) What must also be remember that the applicant is asking for final relief. This in effect means that he wants this court to pre-judge the very issue which is pending before the CCMA. This consideration will not preclude this court from granting such relief in the proper case and the granting of such relief will of course not bind the CCMA. The fact is however that this is another factor that the court would in my view consider carefully before granting an order such as the one sought here.

(8) I am accordingly of the view firstly that the applicant has not satisfied the test of urgency and secondly that he has a perfectly adequate alternative remedy, namely the arbitration proceedings by the CCMA.

(9) As regards costs I see no reason why they should not follow the result.

(10) In the result the application is dismissed with costs.

G.H. Penzhorn, A.J.

For the Applicant:
Mr M. Mbatha of
A S M Mbatha & Company

Durban

For the Respondent:

Adv. S V Notshe
Instructed by:
Maqiwa Zani & Dana Attorneys
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