



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case Number: J2298/15

In the matter between:

CHRISTABEL NOBUBELE MBEKELA

Applicant

and

KGOMOTSO PHAHLANE

First Respondent

MINISTER OF POLICE

Second Respondent

Date heard: 13 November 2015

Delivered: 14 June 2016

JUDGMENT

RABKIN-NAICKER J

[1] This application brought on an urgent was withdrawn on the day of hearing, 13 November 2015, with no tender of costs.

- [2] The Notice of Motion and founding affidavit were served on the Respondents on the afternoon before the matter was set down, requiring the Respondents to file answering affidavits two hours after the papers were served.
- [3] It was argued on behalf of the Respondent that given the application was misconceived and unnecessary that costs should be awarded against the Applicant.
- [4] The relief sought in the urgent application was as follows;
- “1. Condoning non-compliance with the Rules of the above honourable court regarding service and timeframes and hearing this application as urgent;
2. Interdicting the Respondents from interfering with the Applicant's projects/initiatives as set out in Applicant's deferment application;
3. Interdicting the respondents from attempting to relocate or migrate my projects/initiatives to any person or manager.
4. Interdicting the Respondents from restructuring SAPS management and particular the office of the National Commissioner pending the finalisation of Board inquiry instituted by the State President..”
- [5] The Applicant is a Deputy National Commissioner: Corporate Service Management, stationed at SAPS head office. She sought to prevent the First Respondent (Acting Commissioner of Police) from restructuring management and in particular to release her from service in terms of section 35 (b) of the SAPS Act¹ –i.e due to her having reached retirement age. She had been granted a deferment on recommendation of the National Commissioner, who at the time of the launching of this application was suspended, pending the completion of an enquiry against her.
- [6] A letter revisiting the question of her early retirement written by the First Respondent and dated 5 November 2015 gave her an opportunity to submit representations to him within 14 days. On the next day she wrote to him as follows:

¹ Act 68 of 1995

“ The deferment of my retirement age for a period of three (3) years was made by the Minister and this issue is thereby beyond your powers of jurisdiction .

The purported offer made in your letter dated 5th November 2015 is not even considered.

You lack locus standi to administer nor to pronounce on this matter.

- [7] The purported urgency of the matter hinges on a meeting to which the applicant was invited to discuss restructuring of the management of SAPS. The applicant averred as follows:

“6.1 The matter is very urgent as the First Respondent intends to use a meeting taking place on 12 to 14 November 2015 as a platform to discuss and announce the ill-considered changes.

6.2 I cannot provide the totality of the intended discussions at the meeting mentioned above as I was not provided with the agenda of the said meeting. I was only provided with a name list of the people who are supposed to attend such meeting mentioned above. See annexure CNM4” attached hereto.

6.3 That I was not given the agenda of the meeting indicated that the first Respondent is actuating “ my intended discharge” from the SAPS”.

- [8] The answering papers reveal that applicant never requested the agenda of the meeting that she was invited to. The tenor of the founding affidavit appears to reflect that it was drafted in an atmosphere of some acrimony amongst the upper echelons of the SAPS. This urgent Court is too often regarded as a forum to deal with internal departmental conflicts of this type. An applicant who withdraws his or her application is in the same position as an unsuccessful litigant². Abuse of the urgent court stands to be discouraged.

- [9] I therefore make the following order:

Order

1. The costs of this application are to be paid by the applicant.

² Sun International (Pty) Ltd t/a The Table Bay v CCMA and Others (204) 35 ILJ 1666 (LC) at para 20/

H. Rabkin-Naicker

Judge of the Labour Court of South Africa

LABOUR COURT

Appearance:

For the Applicant: Andrew Laka SC instructed by Raumutla-at-law Inc

For the Respondent: Paul Kennedy SC instructed by State Attorney

LABOUR COURT