REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

Not Reportable

CASE NO: P 322/15

In the matter between

ANDILE FANI **Applicant**

and

BUFFALO CITY METROPOLITAN MUNICIPALITY **First Respondent**

EXECUTIVE MAYOR, Nomine Officio,

BUFFALO CITY METROPOLITAN MUNICIPALITY **Second Respondent**

SPEAKER, Nomine Officio,

BUFFALO CITY METROPOLITAN MUNICIPALITY **Third Respondent**

VINCENT PILLAY, THE ACTING CITY MANAGER,

BUFFALO CITY METROPOLITAN MUNICIPALITY **Fourth Respondent**

Heard: 6 October 2015

Delivered: 8 October 2015

Summary: The delay in bringing an urgent application and failure to give reasons why urgent relief is necessary are individually sufficient to render an urgent application irregular.

JUDGMENT

Lallie J

[1] The applicant is the City Manager of the first respondent. He launched this urgent application on 18 September 2015 for an order in the following terms:

> "1. The applicant's non-compliance with the rules of the above Honourable Court relating to forms and service of this application be condoned;
>
> 2. The applicant be granted leave to bring this application on short notice to the Respondents and is a matter of urgency;
>
> 3. A Rule Nisi be issued calling upon the Respondents to show cause before the Honourable Court on the 30th October 2015 at 10H00 why an order in the following terms may not be made final that;
>
> 3.1. The implementation of the purported resolution of the Council of the First Respondent taken on 25th of August 2015 be suspended pending the final determination of the application for Review instituted before the above Honourable Court under case no. P182/2015.
>
> 3.2. The purported suspension of the applicant by the Council of the First Respondent on 8th of September 2015 from his position as City Manager of the First Respondent be declared premature, unlawful, unconstitutional and set aside;
>
> 3.3. The applicant be and is hereby granted an order to return to his workplace and position as City Manager of the First Respondent pending the final determination of the Review application.
>
> 3.4. The respondents be interdicted in any way from disturbing, preventing and/or disallowing the Applicant from doing his work as the City Manager of the First Respondent;

3.5 The investigation authorised by the purported resolution of Council on 25 August 2015 as well as any act pursuant thereto including the appointment of any external service provider to undertake such investigations by the respondents be declared unlawful, premature, unconstitutional and set aside.

3.6 The appointment of the fourth Respondent by the Council of the first Respondent be declared unlawful, unconstitutional and set aside.

3.7 The First, Second and Third Respondents pay the costs of this application on an attorney and client scale.

3.8 Further or alternative relief.

4. That paragraphs 3.1 to 3.6 operate as an interim interdict pending the final determination of this application."

[2] The application is opposed by the respondents who raised a number of points *in limine* one of which is urgency. The applicant submitted that *ex facie* the founding papers, it is clear that the founding papers were prepared on 9 September 2015 but delivered on the first respondent on 15 September 2015 after 12h00, giving the municipality one and a half days to file opposing papers. The occurrences the applicant is complaining about took place on 25 August 2015 and were brought to his attention the following day. It, however, took the applicant 21 days to launch this application.

[3] The applicant did not deal with the issue of urgency in his founding affidavit where he was required to have stated his case. It was argued on behalf of the applicant that his application is inherently urgent. Urgent applications are governed by Rule 8 of the Rules for the Conduct of Proceedings in the Labour Court ("the Rules") which requires the founding affidavit to contain reasons for urgency and why urgent relief is necessary.

[4] It was argued on behalf of the respondents that it is established law that a litigant who seeks to dispense with the ordinary procedure

provided for in the Rules on grounds of urgency should refer explicitly to circumstances on which he bases his allegation and why he could not be afforded relief at a hearing in due course. In this regard they relied, *inter alia* on *Cape Killarney Property Investments (Pty) Ltd v Mahamba*[1]. They further argued, based on *Eniram (Pty) Ltd v New Woodholme Hotel (Pty) Ltd*[2], that the applicant's omission to set out in his founding affidavit, circumstances which rendered this application urgent and reasons for claiming that he could not be afforded substantial redress at the hearing in due course, rendered his application irregular. They sought an order dismissing this application based on the omission as well as the dilatoriness of the applicant in filing this application.

[5] I have considered the applicant's argument that this application is inherently urgent. It is however not supported by his case that the Council resolution which forms the basis of this application was taken on 25 August 2015 and communicated to him the following day. His obligation to give reasons for urgency cannot be over-looked and his failure to fulfil it was not cured by his unsupported submission of inherent urgency. In *National Union of Mineworkers v Black Mountain (a division of Anglo O*perations *Ltd)*[3] it was held that urgent relief is required to be made out with sufficient particularity and that urgency in itself does not relieve a party of that obligation. Even if the applicant's case was inherently urgent, a conclusion he laid no foundation for, he was still obliged to give reasons for alleging that this matter is urgent. No reasons were proferred by the applicant for not launching this application shortly after 26 August 2015. The delay in bringing an urgent application and failure to give reasons why urgent relief is necessary are individually sufficient to render an urgent application irregular. The combination of the applicant's dilatory conduct and his

[1] 2000 (2) SA 67 (C) 77
[2] 1967 (2) SA 491 (E)
[3] (2007) 28 ILJ 2796 (LC)

omission to give reasons why urgent relief was necessary, rendered his application irregular.

[6] The respondents sought costs for two Counsel. I could find no reason both in law and fairness for costs not to follow the result. The applicant argued that the use of two Counsel was not justified. Having considered the submissions on the issue of costs, I have to agree with the applicant that the complexity of this application did not justify the use of two Counsel.

[7] In the premises the following order is made:

7.1 The application is struck from the roll for lack of urgency.

7.2 The applicant pay the respondents' costs such costs to be limited to costs of one Counsel.

Lallie J

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Advocate Dyer

Instructed by Nduli Attorneys

For the third Respondent: Advocate Buchnun SC and Advocate Nzuzo

Instructed by Wikus Van Rensburg Attorneys