REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA,

IN PORT ELIZABETH

JUDGMENT

REPORTABLE

Case No: P 02/14

In the matter between:

ZOLEKA PEARL PAMELA TANTSI **APPLICANT**

AND

MEMBER OF THE EXECUTIVE COUNCIL OF

HEALTH- EASTERN CAPE PROVINCE **FIRST RESPONDENT**

FRANK WESLEY PRETORIUS **SECOND RESPONDENT**

ANDREW CONROY **THIRD RESPONDENT**

HEARED: 30 JANUARY 2014

DELIVERED: 31 JANUARY 2014

Summary: In urgent applications the applicant is required to provide reasons for urgency, in the absence of which the application may not be granted.

JUDGMENT

LALLIE, J

Introduction

[1] The applicant approached this Court on the basis of urgency for an order reviewing and setting aside the first respondent's decision appointing the second respondent as the legal representative of the Department of

Health of the Eastern Cape Province (the Department) in her disciplinary hearing. She also seeks an order for the stay of her disciplinary hearing pending the appointment of the Department's representative who is not a legal practitioner, in her disciplinary enquiry. The application is opposed by the first respondent.

Factual background

[2] The applicant was appointed by the Department as the General Manager: Integrated Human Resources on 11 January 2012. On 28 October 2013 she received a notice of a disciplinary enquiry in which she was charged with 30 counts of misconduct. When the disciplinary enquiry sat on 12 November 2013, the applicant objected to the appointment of the second and third respondents as chairperson and initiator respectively. She based her objection on the following clause of the SMS Handbook:

Paragraph 7.2.1

"*The employer must appoint a person, from within or from outside the public service, as chairperson of the disciplinary hearing."*

Paragraph 7.2.2

"In a disciplinary hearing, neither the employer nor the member (meaning the employee) may be represented by the legal practitioner, unless the member is a legal practitioner. For the purposes of this agreement, a legal practitioner is defined as a person who is admitted to practise as an advocate or an attorney in South Africa."

[3] In response to the objection the second respondent made an application for legal representation. The applicant did not oppose it and expressed the view that she was faced with a *fait accompli* as the Department had already been granted legal representation by the first respondent. In a letter dated 13 November 2013 addressed a letter to the second respondent's law firm in which she expressed her intention to have the first respondent's decision reviewed. On 18 November 2013 the third respondent issued his ruling on the application and granted legal representation to both the Department and the applicant. On 12 December 2013 the date to which the disciplinary enquiry was postponed, the

applicant's attorney requested documents from the Department and sought a postponement of the disciplinary enquiry to the week of 6 to 10 January 2014 to afford the Counsel they had briefed the previous day an opportunity to prepare. The postponement was granted. On 10 January 2014 the founding papers were served and this application was filed on 13 January 2014.

[4] Opposing this application the first respondent raised the following points in *limine*: disciplinary proceedings do not constitute administrative action, lack of urgency, waiver and failure to review the chairperson's decision on legal representation.

[5] Rule 8 (2) of the Labour Court Rules (Rules) requires an applicant in an urgent application to give reasons for urgency, the necessity of urgent relief and explanation for the non-compliance with the requirements of the Rules. The first hurdle the applicant needs to clear is urgency.

[6] The reason given by the applicant for urgency in her founding affidavit is that the disciplinary enquiry was scheduled for 28, 29 January and 3 February 2014. She further submitted that the composition of the disciplinary enquiry was in breach of the Handbook which breach rendered the disciplinary enquiry useless. In her replying affidavit she submitted that urgency is not one of the requirements for a final interdict aimed to stop a continuing wrong.

[7] The necessity to prove urgency in urgent application cannot be overlooked. *In Mimmo's Franchising CC and Others v Spiro and Others*[1] the Labour Appeal Court made it clear that the provisions of Rule 8 which require the applicant to prove urgency, apply to all urgent applications, irrespective of whether the relief claimed is of an interim of final relief. In *Radinaledi Josiah Mosiane v Tlokwe City Council*[2] the matter was struck from the roll because the grounds of urgency raised and the type of dispute before court was found not to be sufficient to allow the applicant to jump the queue. The following dictum in *National Police Service Union and*

[1] Unreported under case number J1889/00 at para [29]

[2] (2009) 30 ILJ 2766(LC)

others v National Negotiating Forum and others[3] is apposite "the latitude extended to parties to dispense with the rules of this court in circumstances of urgency is an integral part of a balance that the rules attempt to strike between time-limits that afford parties a considered opportunity to place their respective cases before the court and a recognition that in some instances, the application of the prescribed time-limits, or any time-limits at all, might occasion injustice. For the reason that, rule 8 permits a departure from the provisions of rule 7, which would otherwise govern an application such as this. But this exception to the norm should not be available to parties who are dilatory to the point where their very inactivity is the cause of the harm on which they rely on to seek relief in this court".

[8] The applicant's reason for urgency when this application was filed on 13 January 2014 that her disciplinary enquiry was scheduled for 28, 29 and 3 February 2014 is unacceptable. The applicant became aware of the second respondent's appointment as the Department's legal representative at her disciplinary enquiry as early as the 28 October 2013 when she received her notice to attend the disciplinary enquiry. On 13 November 2013, she expressed her intention to have the first respondent's decision appointing the second respondent reviewed. She was legally represented at her disciplinary enquiry on 12 December 2013 when an application for postponement was made on her behalf to afford her legal team an opportunity to prepare. Even in the event of her first consultation with her legal team being held on 13 December 2013 bringing an urgent application a month later constituted inordinate delay and obliterated urgency. In addition, the urgency the applicant sought to rely on is self-created.

[9] The applicant's submission that the composition of the disciplinary enquiry was in breach of the Handbook and therefore useless cannot found urgency. It is an issue she should have raised at the disciplinary enquiry as she correctly did, however, her dissatisfaction with the manner in which it was dealt with does not constitute grounds for urgency. She could have raised it at arbitration in the event of the matter proceeding to arbitration and later at this Court, after the completion of the arbitration process when reviewing the arbitrator's decision not to handle the issue reasonably, if her gripe persisted.

[3] (1999) 20 ILJ 1081 (LC) para [39]

[10] The applicant's argument that urgency is not one of the requirements for a final interdict aimed at stopping a continuing wrong is misplaced. The main application before me is a review application as the applicant seeks an order reviewing and setting aside the first respondent's decision. On the applicant's own version a review application falls outside the realm of cases where urgency is not a requirement. The application for an interdict restraining the Department from proceeding with the disciplinary enquiry is predicated on review application.

[11] This application was brought during court recess for no reason at all as the applicant could proffer no reason for urgency. I could find no reason for costs not to follow the result.

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

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

12.2 The applicant is ordered to pay the first respondent's costs.

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LALLIE, J

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Advocate Nduzulwana

Instructed by: Ntwendala Attorneys

For the First Respondent: Advocate Rorke, SC.

Instructed by: Wesley Pretorius and Association