



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT)

Case number: 45193/2012

Date: 20 November 2012

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHERS JUDGES: YES/NO
(3)	REVISED
20/11/2012	<i>Peteri</i>
DATE	SIGNATURE

In the matter between:

A M MOSIDI

Applicant

And

**THE MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

1st Respondent

**THE DIRECTOR GENERAL: DEPARTMENT OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

2nd Respondent

P NKUTHA N.O.

3rd Respondent

(in her capacity as Chairperson of the disciplinary
hearing against the Applicant)

JUDGMENT

PRETORIUS J.

- [1] In this application the applicant approaches the court on an urgent basis requesting the disciplinary hearing to be postponed pending the outcome of the main application and other related relief.
- [2] The applicant is the State attorney for Pretoria who has been suspended since April 2012, pending a disciplinary hearing.
- [3] The disciplinary hearing was to commence on 12 July 2012, but was postponed as the final charge sheet had not yet been served. The proceedings were postponed to 22 October 2012. The final charge sheet was served on 6 August 2012. On 31 August 2012 the applicant requested financial assistance for her legal fees for the preparation and conduct of the proceedings from the respondents.
- [4] On 22 October 2012 a further request for postponement was launched by the applicant to have the disciplinary hearing postponed to enable the applicant to finalize an application to the High Court to order the respondents to grant the applicant assistance with her legal costs in the disciplinary proceedings. The third respondent granted the postponement. The proceedings were postponed to commence on 19 November 2012. The applicant contends that the postponement for 3 weeks does not afford her enough time to arrange for her house to be

sold to enable her to finance her legal costs. Furthermore the so-called main application requesting the court to order the respondents to pay her legal costs has not been set down as yet.

- [5] Mr Celliers, for the applicant, argued that solely on the balance of convenience the application should be granted. In **Tshabalala v Minister of Health 1987 (1) SA 513 WLD** Goldstein J held at p 523:

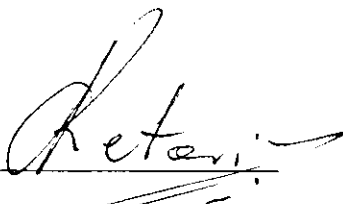
"The balance of convenience, in my opinion, is heavily on the side of the second applicant. If he is not temporarily reinstated, he might irrevocably lose the opportunity of qualifying as a nurse, and apart from that he will lose what he says is his only source of income." (Court's emphasis)

- [6] In this instance the applicant will be severely prejudiced if she has to proceed without legal representatives where the respondents are represented by senior and junior counsel. The respondents's prejudice will be much less. The applicant's service of 30 years may be terminated as a result of the disciplinary action and she is entitled to have legal representation. If her employers do not pay for her legal representation she must be prepared to do so herself. She will have to find another means to fund it, but cannot hold the respondents at ransom indefinitely by indicating that she will have to sell her house for funds.

- [7] Mr Pelser, for the respondents, is correct when he argues that she will not be entitled to the most expensive counsel, but the court finds that, in these circumstances, she is entitled to legal representation. She may suffer irreparable harm if the relief is not granted.
- [8] I have considered all the facts and arguments by both parties and have come to the conclusion that the applicant is entitled to relief as she had made out a *prima facie* case and has no other satisfactory remedy.
- [9] Having decided this, I must however take into consideration that she has been delaying the disciplinary hearing for some time. The court must indicate that the hearing must commence as soon as possible. The applicant must be prevented in delaying the inevitable further. Therefore certain time limits will be prescribed.
- [10] The following order is made:
1. The application is urgent;
 2. The respondents are prohibited to proceed with the disciplinary proceedings instituted against applicant and set to commence on the 23rd of November 2012 pending the finalisation of the application by applicant for financial assistance with her legal fees already issued in this court;
 3. Counsel for the applicant and respondent must approach the Deputy Judge President for a date for the hearing of the

application for financial assistance with her legal fees on or before 23 November 2012;

4. A date for the disciplinary hearing must be set down within 7 days after judgment had been delivered in abovementioned application;
5. Each party to pay its' own costs.



Judge Pretorius

Case number	: 60444/2012
Heard on	: 19 November 2012
For the Applicant / Plaintiff	: Adv JG Cilliers SC
Instructed by	: Geyser en Coetzee
For the 1 st Respondent	: Adv Q Pelser SC
	: Adv B Matlejoane
Instructed by	: Mponya Ledwaba
Date of Judgment	: 20 November 2012