

IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

CASE NO: J 771/10¹

In the matter between:

MATHE ZANDILE

Applicant

and

**THE MINISTER OF WATER AND
ENVIRONMENTAL AFFAIRS**

Respondent

JUDGMENT

LAGRANGE, J

1. At the hearing of this matter on Friday 21 May 2010, I handed down an *ex tempore* judgment on the matter, which is reduced to writing below. For the sake of context, I have added some background detail.
2. This is an urgent application for reinstatement of the applicant following her ‘preliminary suspension’ from work pending a decision whether or not she should be suspended pending the conclusion of disciplinary proceedings. The context in which this application was brought was that the applicant had previously been suspended pending a disciplinary hearing. Pillay J was initially approached on an urgent basis to reinstate the applicant on the

¹ It must be noted that this application bore the same case number as the previous

apparent basis that her suspension was unlawful because the Applicant did not have an opportunity to make representations before her suspension was imposed.

3. Subsequent to the order of this court on 7 May 2010 reinstating the Applicant, the Respondent filed an application for leave to appeal the decision of Pillay J. This extinguished the practical effect of Pillay J's decision, and meant the applicant was once more on suspension. The applicant then approached the court again, this time to execute the judgment of Pillay J. That application came before me also on an urgent basis, and on 20 May 2010, I granted the relief sought and the applicant returned to work. The immediate response of the Respondent was to impose a preliminary suspension pending consideration of any representations the Applicant might wish to make by Tuesday 25 May 2010 as to why she should not be suspended pending the disciplinary proceedings that have been instituted against her. In this application, the Applicant seeks to challenge the so-called 'preliminary suspension'. I found again in the Applicant's favour and the brief reasons I provided in my *ex tempore* judgment are set out below.
4. The circumstances cited by the Respondent as reasons for not permitting the Applicant's return to work do not indicate she will interfere with any investigation or witnesses in relation to the pending disciplinary proceedings against her. Inasmuch as the benefit she might derive from returning to work might be brief, any potential risk to the respondent to its investigations – which I do not believe has been demonstrated anyway - would also be equally limited.
5. I find there are no special circumstances which might justify the preliminary suspension of the Applicant without considering her representations, quite apart from the question whether a suspension without a hearing could be lawful in certain circumstances.
6. Accordingly,

- a. the application is granted, and
- b. the Respondent is ordered to pay the Applicant's costs.



ROBERT LAGRANGE
JUDGE
LABOUR COURT

Date of Hearing: 21 May 2010

Date of Judgment: 21 May 2010

Appearances

For the Applicant:

T Bruinders, SC assisted by K M Millard

Instructed by Xulu Liversage Incorporated Attorneys

For the Respondent:

S V Notshe, SC assisted by M C Baloyi

Instructed by the State Attorney