

Not reportable**IN THE LABOUR COURT OF SOUTH AFRICA****(HELD AT CAPE TOWN)****CASE NUMBER:**

C1073/2010

5 **DATE:**

7 DECEMBER 2010

In the matter between:

Z GOCI

Applicant

and

10 **METROPOLITAN HEALTH GROUP**

Respondent

J U D G M E N T**VAN NIEKERK, J:**

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This is an urgent application in which the applicant seeks the following relief:

1. *Dispensing with the forms and service provided by the rules and seeking leave to have the matter heard as one of urgency.*

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2. *A prayer to the effect that the respondent is directed to issue a letter clearing the name of the applicant from allegations of fraudulent behaviour within three days from the date of judgment.*

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3. *That the respondent is directed to furnish the applicant with employment, duties and responsibilities that are the same of that of the finance clerk. Alternatively to that prayer, the applicant seeks an order to the effect that he*
- 5 *be reinstated as the finance clerk.*

The origins of this application lie in a settlement agreement concluded between the parties on 20 August 2010. The settlement agreement which was concluded under the auspices

10 of the CCMA pursuant to three separate disputes referred to that institution by the applicant, provides as follows: In paragraph 1, that the respondent agrees to reinstate the applicant on the same terms and conditions of employment, which governed the employment relationship prior to his

15 dismissal. That provision is, it would seem, qualified by paragraph 6 of the same agreement, where the parties agreed as follows:

“Reinstatement will be in accordance with a formal

20 offer to be given to applicant on 23 August 2010.

The offer will be for a position as store controller, and on the same terms and conditions as for his previous position, also with all same benefits.”

25 The agreement then continued to regulate the terms on which

the offer was to be made by the respondent and the date by which it was to be accepted by the applicant. There is no dispute that an offer was duly made and accepted.

5 The dispute that gives rise to the present application has its origins, in essence, in an allegation by the applicant that the respondent has failed to comply with the terms of the settlement agreement in a number of respects. Firstly, the applicant contends that the terms of the settlement agreement,
10 properly read, entitled him to be employed on the same terms and conditions as existed prior to his dismissal and that in effect, the provisions of clause 1 of the agreement trump those of clause 6. This is the basis on which I understand the averment to be made that the applicant is entitled to be
15 reinstated into his old position as a finance clerk rather than the position referred to in paragraph 6, which is that of a store controller. That appears to be from the notice of motion, an alternative prayer.

20 The second complaint that can be identified from the papers, is to the effect that even in the position of a store controller, the applicant has not been afforded the same terms and conditions that applied prior to the settlement agreement and in particular that the terms and conditions that currently apply are
25 demeaning to him and that he has been the subject of negative

C1073/2010

remarks made by certain members of the respondent's management.

In relation to urgency, the first hurdle that the applicant is
5 required to overcome in these proceedings, the applicant's
attorney addressed a letter of demand to the respondent on 21
October 2010. In terms of that letter, a demand was made that
the applicant be reinstated to a position similar to that which
he previously held, alternatively is to his former position as a
10 finance clerk. The respondent was further advised that if it
failed to reinstate him on those terms by 11 November 2010,
the applicant would have no other option but to make an
urgent application to this court for an order reinstating him
with immediate effect.

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This application was filed on 2 December, almost a month after
the expiry of the ultimatum issued in terms of the letter dated
21 October. In my view, the applicant has failed to establish
that this matter is of such a nature that it warrants promotion
20 above those cases currently awaiting hearing in the normal
course. The question of urgency is very often linked to some
of the other elements of an application of this nature. In this
instance, I recall particularly the requirement of an absence of
alternative remedy. I fail to appreciate why the applicant has
25 not sought to bring an application in the normal course under

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section 158(1)(c) of the Labour Relations Act to have the settlement agreement made an order of court and if necessary, to seek the enforcement of that order. That is the procedure that is normally available to persons who are party to settlement agreements and who contend that one or more other parties to the agreement are in breach of their obligations.

There is a dispute of fact on these papers. An answering affidavit and replying affidavit have been filed, primarily addressing the issue of whether the respondent is indeed in breach of the settlement of agreement. But that is not a matter that I need consider today, and I make no finding in regard.

The specific grounds for urgency that have been proffered in these proceedings are largely the following. First, the applicant makes an appeal to dignity and the dignity of workers. Of course the right to dignity is well established in our labour law jurisprudence and it is a fundamental constitutional right, one that recognises that work confers a certain dignity on persons and workers are entitled to have that dignity protected. But I fail to appreciate why, in these circumstances, that factor alone warrants the promotion of this matter to the urgent roll.

To the extent that the applicant claims that he is seeking alternative employment and that prospective employers would regard him as having been employed in the more lowly position of a stock controller rather than the more elevated position of a finance clerk, there is no factual basis made out for that contention on the papers. The furthest that the applicant goes is to suggest that he may well be prejudiced in regard to future prospects should he not be reinstated into the position of a finance clerk. As I have already indicated, whether he is entitled to be reinstated into that position, is a matter for another court to decide on another day and I fail to appreciate, given the lack of any facts that appear from the papers before me, why this matter is urgent simply because the applicant may elect to seek some form of alternative employment in future.

Finally, in regard to the applicant's medical condition, which has been alluded to, the applicant contends that he is under treatment. Annexure K to the founding affidavit records the nature of the applicant's condition and the medication regime that is in place to facilitate his recovery. The same letter indicates, as I have said, that the applicant is on medication, that he is being monitored by his medical advisors with regular therapy. But there is no indication either in terms of that letter or elsewhere in the papers, that the applicant's medical

condition is such that should this matter not be treated on an urgent basis, that he will suffer irreparable harm should the relief he seeks not be granted.

5 For all of those reasons, in my view, the urgent application brought before this Court is misconceived. As I have indicated, it is open to the applicant, should he so wish, to initiate proceedings in terms of section 158(1)(c), should he be of the opinion, which he clearly is, that the respondent is in
10 breach of the settlement agreement signed under the auspices of the CCMA. Should the respondent elect to oppose any such proceedings, this Court will then be in a position to properly consider in the normal course whether indeed the settlement agreement should be made an order of court and
15 thereafter, if necessary, to decide whether any continued breach of an order made by this Court, constitutes contempt for which a variety of penalties may be sought in order, effectively, to enforce the terms of the settlement agreement.

20 For those reasons I make the following order:

1. The application is removed from the roll for want of urgency.

25 2. The applicant is to pay the costs of these proceedings.

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VAN NIEKERK, J

Edited 26 January 2011

LABOUR COURT JUDGMENT