IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: C249/19

In the matter between

WENDY JANE VIOLA **Applicant**

and

V AND A WATER FRONT HOLDINGS (PTY) LTD **Respondent**

Heard: 3 May 2019

Delivered: 7 May 2019

JUDGMENT

RABKIN-NAICKER J

[1] The applicant seeks urgent relief in an application launched on the 10 April 2019. The prayers set out in her Notion of Motion read as follows:

"1. The failure to comply with the time frames as provided for in the rules and practice directives of this Honourable Court be condoned and the matter is treated as one of urgency.

2. Declaring that the applicant's resignation from the employment of the respondent was valid and effective on 28 February 2019.

3. Declaring that the disciplinary hearing instituted by the respondent against the applicant, including the findings made by the chairperson or the disciplinary hearing, is null and void and accordingly set aside.

4. In lieu of the declaration of invalidity as contemplated in paragraph 3 above, directing the respondent to amend its records to remove all references to the disciplinary proceedings instituted against the applicant as well as the outcome from the respondent's employment records.

5. The respondent be ordered to pay the cost of this application.."

Urgency

[2] The factual basis for urgency (or 'semi-urgency' as referred to by applicant) was set out in the founding papers. The applicant averred that the outcome of the "impugned disciplinary proceedings will remain on my employment record with the respondent, who will feel justified to circulate the outcome (and in fact has done so) to third parties if an opportunity arises for a request of information regarding my prior employment."

[3] The applicant further stated that the harm the "impugned findings will have or already has on me is apparent. The charges were uncontested but contain allegations of a very serious nature. I will be seriously prejudiced in potential future business or employment opportunities if the impugned findings are not set aside as soon as possible."

[4] The charges of misconduct against the applicant were communicated to her in writing on the 15 February 2019. She was informed that her disciplinary enquiry had been scheduled to take place on the 26 February 2019, i.e. in 11 calendar days. She took no steps to launch an urgent application to interdict the disciplinary hearing. Instead, the hearing was postponed to the 4 March 2019, as proposed by her attorney and agreed to by the respondent's attorney. The

applicant did not attend the hearing on the 4 March 2019 on the basis that she had already resigned from the respondent's employment on the 28 February 2019. Her intention not to attend the hearing was conveyed in an email by her attorney dated 1 March 2019.

[5] The applicant then awaited the findings of the disciplinary enquiry. These findings are dated the 6 March 2018. In her founding papers, she avers that she did not receive these until 19 March 2019 when the respondent forwarded her a letter with the findings by the disciplinary chairperson. She is silent as to any attempts on her part to obtain the findings before that date. However, applicant does aver that she met with her former line manager on the 13 March 2019: "where we discussed the circumstances of my departure from the respondent."

[6] The applicant thus waited for a period of more than seven weeks to approach this court after receiving notification of the charges against her. Even should one accept that she only became aware of the findings on the 19 March 2019, it was a further 22 calendar days before this application was launched.

[7] The notice of motion asks the Court to treat the application as urgent. The founding affidavit submits that the Court should resolve the dispute expeditiously given the framework of the LRA and the applicant's need for the finalisation of the dispute to enable her to continue with her new venture or to explore other employment opportunities.

[8] The principle of expeditious resolution of disputes certainly guides this Court. However it is one that requires heeding by litigants, most especially in matters in which the Court is asked to dispense with the timeframes contained in its Rules and Practice Manual. The applicant has patently not dealt with her application expeditiously. In **Jiba v Minister: Department of Justice & Constitutional Development & others**[1] this Court stated that: "Rule 8 of the rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and why urgent relief is necessary. It is trite law that there are degrees of urgency, and the

[1] (2010) 31 ILJ 112 (LC) at para 18

degree to which the ordinarily applicable rules should be relaxed is dependent on the degree of urgency. It is equally trite that an applicant is not entitled to rely on urgency that is self-created when seeking a deviation from the rules."

[9] Given the applicant seeks final relief in this matter it is necessary for the Court to be even more circumspect in treating a matter as urgent.[2] The respondent has opposed that the matter is treated as urgent, both in its papers and in submission before me. Given the delay in bringing the application as dealt with above, I found that respondent's stance is well founded. Urgency in this application was self-created. I am also of the view that the applicant has not been completely candid with the Court as to when she came to know of the disciplinary findings. In addition there is no explanation given by her as to efforts she made, if any, to find out the outcome of the hearing.

[10] Both parties submitted that costs should follow the result in this matter. Given that the dispute may be heard in the normal course, I do not deal with the respective merits set out in the papers. In the premises, I make the following order:

Order

1. The application is struck off the roll with costs.

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H RABKIN-NAICKER

Judge of the Labour Court of South Africa

Appearances

For the Applicant: Adriaan Montzinger instructed by Wendy Viola

For the Respondent: Alec Freund SC instructed by Cliffe Dekker Hofmeyer Inc

[2] Tshwaedi v Greater Louis Trichardt Transitional Council [2000] 4 BLLR 469 (LC) at para 11