

**IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN**

Not Reportable

Case No: C383/2019

In the matter between:

**IVAN MYERS**

**Applicant**

and

**LIEUTENANT GENERAL JULA N.O**

**THE PROVINCIAL COMMISSIONER OF THE**

**SOUTH AFRICAN POLICE SERVICE**

**(WESTERN CAPE PROVINCE)**

**First Respondent**

**LIEUTENANT COLONEL GOLIATH**

**Second Respondent**

**LIEUTENANT COLONEL MOSES**

**Third Respondent**

**Date heard: 13 August 2019**

**Delivered: 21 August 2019**

---

**JUDGMENT**

---

**RABKIN-NAICKER, J**

[1] This application was brought on an urgent basis under the same case number as a statement of claim filed by the union Solidarity on behalf of the applicant (“Myers”) on the 11 June 2019.

[2] In this application, Myers seeks the following relief:

“ 1. The first respondent is ordered to:

1.1 cease to subject the applicant to occupational detriment, as defined in section 1 (iv) of the Protected Disclosures Act, 2000 (Act No. 26 of 2000) as amended by Act 5 of 2017.

2. The second and third respondents are ordered to refrain from harassing, and intimidating the applicant....”

[3] It must be said that despite the application being described as ‘interlocutory’ by Myers, the relief sought is not. Counsel for Myers wrote in his submissions that essentially what is sought is the suspension of disciplinary proceedings, pending the finalization of the claim under this case number. This, he properly conceded, is not what the Notice of Motion reflects. The relief sought in the Notice of Motion is essentially the same to the relief sought in the action under this case number. Before considering this application on its merits, it is necessary to deal with whether the matter is urgent.

[4] The application was filed on the 4 July 2019. The respondents were put on notice to inform the Court of their intention to oppose on Monday 8 July 2019 and to serve and file their answering papers by no later than 12h00 on Wednesday 10 July 2019, in order to place the applicant in a position to file a replying affidavit by 12h00 on Friday 12 July 2019. Myers did not specify a date for the hearing in his Notice of Motion and it was set down for hearing on the 13 August 2019. These facts do not evince a sense of urgency on his behalf.

[5] The founding affidavit is replete with averments relating to the steps Myers and Solidarity have taken to attempt to stop the hearing of the disciplinary charges against him, which he alleges amount to an occupational detriment. He received notice of these charges in April 2019. Under the heading “Urgency”, he avers the following:

“The unfair labour practice is not only reasonably anticipated but is actually being committed by the Respondents. Despite all the legislative processes that Solidarity and I exhausted (referral to the SSSBC and filing the main proceedings and the interlocutory application<sup>1</sup>) the Respondents appear to be hell-bent to proceed with the disciplinary hearing on 4 July 2019. This is

---

<sup>1</sup> This refers to an application Myers brought for an interdict under C261/19 which was never enrolled

despite the fact that I am a state witness in the criminal matter regarding the police dog as well as a witness in a potential disciplinary hearing against the Second Respondent. I respectfully submit that I have made out a prima facie right to be protected from occupational detriment as a result of the protected disclosure.”

- [6] Myers further quotes from a letter he has written to the State Attorney regarding a pre-trial conference he wished to be held on the 9 July 2019. In that letter he states the following inter alia:

“Lieutenant General Julia has been duly served the Statement of Claim and decided to engage as a litigant in the proceedings by filing your response. It is clearly an admission that the protected disclosure dispute (the disciplinary action in the form of an occupational detriment) is pending in the Labour Court.

Regardless of the above, Lieutenant General Julia remains relentless in proceeding with the disciplinary hearing on 4 July 2019. The disciplinary hearing (occupational detriment) is the crux of the cause of action set out in the statement of case.

I therefore respectfully request you as a matter of urgency to advise Lieutenant General Julia to suspend the disciplinary hearing pending the outcome of the litigation in the Labour Court, alternatively, to postpone the disciplinary hearing on 4 June (sic) until after the pre-trial....”

- [7] Myers further puts the respondents on notice that he would bring an urgent application on the 4 July 2019 unless his demands were acceded to. The founding papers quote part of the State Attorney’s reply:

“...we confirm that you will prepare and furnish us with a draft pre-trial minute for our client’s consideration. This will facilitate matters considerably.

....our client denies that any allegations contained in the statement of claim filed above constitute a protected disclosure. In the circumstances our client is of the view that the disciplinary proceedings set down for hearing on 4 July 2019 should proceed.”

- [8] It is averred by Myers that the contents of the second paragraph of the letter from the State Attorney will:

“defeat the entire purpose of the facilitation and the pending main proceedings. The Respondents will proceed to dismiss me as the Third Respondent, acting for the employer had made this clear before the chairperson on 25 April 2019. The inevitable result will be that the main proceeding would be moot.” (*his emphasis*)

- [9] Under the heading of “Urgency”, Myers avers as follows:

“The Respondents created urgency after I requested to have a pre-trial conference. I respectfully submit that the invitation to file pre-trial minutes is a farce. It can definitely not be an attempt to facilitate matters. Why then the instruction to proceed with the disciplinary hearing.”

- [10] A further issue that deserves consideration is that Solidarity on behalf of Myers filed an urgent application in this Court on 28 June 2019 under case number C433/2019 applying for a hearing date on 4 July 2019, wherein it sought interdictory relief to suspend the disciplinary hearing proceeding pending the hearing of the main action. Such application was withdrawn by Meyers on the 29 June 2019, because, according to the submissions by his Counsel, he believed it was shoddily drafted and that Solidarity should have enrolled the first application under C261/2019 which was filed on 17 April 2019. As I have dealt with above, he did not ensure that this application was enrolled promptly in any event.

- [11] It is submitted on behalf of Myers that the respondents created the urgency for this application by their grossly unfair conduct to persist with the disciplinary proceedings knowing that the issue is pending in the Labour Court (i.e. in the action). However, in my view, given the history of this matter, the urgency in the application before me was self-created.

- [12] It is evident from his own papers that Solidarity had enrolled and set down an urgent application to stay the disciplinary proceedings on 4 July 2019 but Myers saw fit to withdraw this. The action itself could have been set down on an urgent basis or have been accompanied by an application for interim relief when the statement of case was filed on the 11 June 2019. It appears to the

Court that Myers founding affidavit, which in essence seeks both final relief and to incorporate the entire pleadings of the action, reflects that the application has been set down because Myers now regards the action as moot. The notion that the respondents have created the urgency herein is without merit.

[13] In all these circumstances, the Court will not consider the merits of the application. I find that this application cannot be treated as urgent and it therefore stands to be struck off the roll. I consider it in order that costs of this application stand over for future determination. I therefore make the following order:

Order

1. The application is struck off the roll for want of urgency.
2. Costs to stand over for future determination.

---

H. Rabkin-Naicker

Judge of the Labour Court

Appearances:

Applicant: JA Nortje instructed by Heidi van der Meulen Attorneys

Respondents: De Villiers Jansen SC instructed by the State Attorney