

IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: C608/2019

In the matter between:

VUYISEKA FEBRUARIE**Applicant**

And

MTN**Respondent****Date heard: 18 October 2019****Delivered: 22 October 2019**

JUDGMENT

RABKIN-NAICKER, J

[1] This application for urgent relief was brought by the applicant in person. The relief sought on the papers was final in nature, to:

“Interdict the respondent from executing an unreasonable and unjust instruction to the applicant;

Interdict the respondent from instituting the disciplinary action referred to in the unreasonable and unjust instruction;”

- [2] At the hearing of the matter the applicant asked the Court for interim relief, i.e. that the instruction to report and be based at MTN Head Office on Monday October 21st October 2019 be declared unenforceable pending a conciliation to be held at the CCMA on the 31st October 2019.
- [3] Counsel for the respondent submitted that the application before Court was for final relief and he urged the case for the respondent on that basis. He did however state that it was for the Court to decide whether it should determine the matter as an application for interim relief. The CCMA set down date only came to knowledge of the applicant after she had drafted her papers.
- [4] It is trite that this Court is very loathe to intervene in dispute which stand to be conciliated and/or arbitrated by the CCMA. The merits of the dispute between the parties fall into that category. Any finding in this judgment regarding allegations of an unfair labour practice and/or a claim of unfair discrimination would amount to a pre-determination of processed that must take place in a different forum.
- [5] I have decided to decide this matter on the basis of an application for interim relief. The granting of interim relief will allow the parties to meet at conciliation proceedings in order that an important purpose of the LRA, that of mediation, can take place. The balance of convenience to both parties in the circumstance of such a mediation taking place is in my view served. The prejudice to the respondent of a delay amounting to eleven days cannot disturb that balance. In this regard, I take into account that the applicant has spent the last 11 months working from Cape Town.
- [6] Only this Court can provide the interim remedy sought by the applicant. The further requirement for interim, of a prima facie right, requires consideration. A 'prima facie right, though open to some doubt' conveys that the strength of the

right is allowed to fluctuate from strong to weak: if it is strong, the other requirements for an interim interdict may be weak; if it is weak, the other requirements for an interim interdict may be strong.¹

[7] In this case, on a reading of the papers and on the submissions before me. I am prepared to grant interim relief thus accepting that even if the prima facie right in casu were to be considered relatively weak, the other requirements are relatively strong. In any event, the remedy I am granting remains 'an extraordinary remedy within the discretion of the Court'.² I am not dealing with the merits in this judgment purposively given the role of the mediation process which will take place shortly.

[8] In all the circumstances, I make the following order:

Order

1. The respondent is interdicted from ordering the applicant to resume her duties and be based at its headquarters in Johannesburg pending the outcome of the conciliation hearing to be held at the CCMA on the 31st October 2019.

H. Rabkin-Naicker

Judge of the Labour Court

Appearances:

Applicant: In person

¹ Resilient Prop (Pty) Ltd V Eskom Holdings Soc Ltd 2019 (2) SA 577 (GJ) at paragraphs 49-52 in which the authorities on this principal are discussed.

² Eriksen Motors (Welkom) Ltd V Protea Motors, Warrenton 1973 (3) SA 685 (A) at 691

Respondents: A.M. Mtembu instructed by Mashiane Moodley& Monama Inc

LABOUR COURT