

**IN THE LABOUR COURT OF SOUTH AFRICA
(Held at Durban)**

CASE NO: D 734/10

Not Reportable

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In the matter between:

DERERAJH MOODLEY

Applicant

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And

**MINISTER OF SAFETY & SECURITY
COLONEL M R VORSTER**

First Respondent
Second Respondent

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JUDGMENT

CELE J

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Introduction

[1] The application before Court is the one in terms of section 158(1)(a) of the Labour Relations Act, 66 of 1995 (hereafter referred to as “the Act”), where the applicant seeks to be granted an urgent and interim order whose terms appear in now what is called an amended order prayed for. This begins from page 297 of the paginated bundle. The terms of the order sought are the following:

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"The applicant's non-compliance with the rules of the Court are sought to be condoned. Pending the outcome of the review application filed under Case No D734/10:

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1. Respondents be and are hereby interdicted from stopping applicant's salary.

2. Respondents be and are hereby interdicted from proceeding with the disciplinary proceedings instituted against the applicant arising from his failure to report to the crime office.

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3. The respondents be and are hereby interdicted from ordering or instructing the applicant to report to the

crime office at Montclair SAPS.

4. The respondents be are hereby interdicted from preventing applicant from performing the duties he is presently performing at the detective branch Montclair SAPS, South Coast Road."

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Then finally, there is a prayer that the respondents be ordered to pay the costs of this application.

- 10 [2] Both parties appeared before me on 28 August when the matter was before Court. The matter was postponed to 6 September 2010 on the understanding that the respondents were to be granted time to file opposing papers. On Monday morning, 6 September 2010, the file had thickened and was just brought to me in the morning. I just could not deal with the matter. I attempted to move the parties to a settlement. My attempts were in vain. That necessitated me having to postpone the matter to have it heard today. Further papers were filed this morning. Clearly therefore the application is opposed by the two respondents.

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Background Facts

- [3] The one aspect that remains common cause is that the applicant was injured on duty. He was involved in a car accident and was indisposed for quite some time. He returned to work and again he unfortunately was injured on his knee. He then had to be off duty for quite some months or quite a long period of time and when he finally came back, he was then accommodated in the sense that he could no longer proceed to do the normal duties that he had been doing as a detective and he was given what the parties seem to agree were light duties. It does not appear that there is an issue around the nature of those duties that he was doing, namely that they were somehow light. It happened at the time that there was a lady who had been doing those duties. She had been indisposed or she was unwell and was hospitalised for quite a long period of time. It appears common cause

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that he took over those duties.

5 [4] There is a dispute about whether or not he only did those duties, but it would seem that he might have done more than that, judging by the submissions that he has made in the affidavit. The lady came back. He continued to work and then some time this year, I think it was in March, after the lady had come back, he was called to a meeting, I think it was on 14 March, which he attended and there was a further attempt to hold a further meeting on 17 March. The one on 17 March brings about the dispute between the parties in terms of the purpose for it and how it was to be structured.

15 [5] It is in the running of the affairs of the police that if a person a disabled, there will be a meeting where officers come together to determine what kind of duties he may therefore continue to do in his career and out of that a decision is then taken. It would appear that according to the respondent, an attempt may have been made to hold that employer support group meeting, but from the side of the applicant, clearly that kind of a meeting falls short of being one such. 20 After the 17 March 2010, the events that follow appear to be then the following which are more than relevant to the present matter. A letter dated 25 March 2010 was issued to the applicant. It reads:

"Placement Inspector D Moodley

- 25 1. Arising from your meeting with Supt B E Dube and Capt Y P Reddy on 2010/03/17, kindly be advised that management can only offer the following posts at the following components at SAPS Montclair:
- Crime office: Investigator.
 - Detective branch: Investigating official.
 - 30 ➤ Vispol: which is visible police crime prevention/CSC official.
- 35 2. Kindly be advised that upon resumption of duties after your injury On Duty, you were accommodated by the Branch Commander and given light duties to perform. This however, cannot be on a continuous basis.

3. In light of the above, you are afforded the opportunity to consider the abovementioned posts and advise the office of your decision within 05 working days.

4. Kindly acknowledge receipt on duplicate hereof."(sic)

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[6] A further document is dated 13 April 2010. It is issued and addressed to the applicant. It reads:

"1. In response to your grievance dated 2010/03/19, kindly be advised that it was management's decision to offer you the respective posts at the components that were available and mentioned in my minute dated 2010/03/19.

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2. The performance of light duties as previously delegated cannot be on a continuous basis. You were accommodated in performing light duties by assisting with D/Typ NB Van Loggenberg's duties. Mrs Van Loggenberg resumed duties in January 2010 and this affects your placement. Circumstances have changed and all employees have to be utilised effectively to maintain productivity.

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3. It must be pointed out, that the detective component at South Coast Road is currently not equipped for you to perform any functions on the CAS. The crime office situated at SAP Montclair on Roland Drive falls under the detective component and has facilities to accommodate you. You would be working in an office environment as an investigative official and could also assist with the CAS functions as mentioned in your grievance.

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4. You are not being prejudiced as Management is accommodating you by affording you the opportunity to choose your placement as mentioned in our minute dated 2010/03/25. Your decision herein is expected on Friday, 16 April 2010.

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5. Kindly acknowledge receipt on the duplicate hereof."

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[7] Regrettably this document has highlights which have obliterated clarity of some aspects making it difficult to read. I may just point out that between the two documents, the applicant had then filed a grievance.

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That is what this document relates to. Then there is a letter dated 19 April 2010, placement, also issued to the applicant. It reads:

- 5 "1. This office's evenly numbered minutes 2010/03/25 and 2010/04/13 bears reference.
2. You have failed to inform this office of your decision regarding your placement.
3. This office is hereby instructing you to report to the Crime Office as an investigative official with immediate effect, pending the outcome of your grievance.
- 10 3. Kindly acknowledge receipt on duplicate hereof."(sic)

15 This appears to have been signed but the date appears to be 15 April 2010 and the letter is issued on 19 April 2010. Effectively then the applicant consulted his attorney and finally the matter came before Court, as I have already indicated earlier on.

20 [8] What the application turns on is whether or not his intended placement at the crime office, whichever word is used, whether or not it amounts to a transfer. If it is construed to be a transfer, then the policy of the department kicks in. It is clear then that if he has to be transferred, certain steps have to be taken. He must be told of the intention to transfer, he must make representations, they must be considered and a final decision should be made. There is an exception where the transfer is done on an urgent basis. I have

25 looked at the policy document which is filed in the papers and it is clear in terms of this document that it is only in terms of paragraph 10.1.6 that a transfer on an urgent basis may be done and it is worded in the following:

30 " In urgent cases if the interest of the State requires that an employee immediately assume duties at another component."

This is not the case that is before me. From the affidavits filed on behalf of the respondents by Vorster and Reddy that it does not come across that the transfer of the applicant is intended to be treated as

one of urgency, if it were to be regarded as a transfer. Is it a transfer?

[9] I have been taken through the papers that are filed as a means of showing that what the applicant is currently doing is very much different from what he is called upon to do at the police station. We are talking of normal duties. It is clear that the two functions are different and there is no doubt about that, and again I am limiting myself to what the normal duties are. The duties that are performed at the police station by the crime unit necessarily bring the officers closer to the heat. They have to very often go out to a crime scene, very often they have to come across the suspects that would have been arrested at the time and therefore that environment is very much different from the environment that is prevailing at the detective branch where they are working separately and away from the police station. I have indicated to the parties as well that I am familiar with the two premises. I put it on record that I have a fair idea of those premises.

[10] It has been indicated to me that the applicant stands to suffer prejudice if he is moved from where he is reporting to the police station. Firstly, in terms of the distance that he has to travel as he lives in the Bluff. Certainly if there is any difference, it is not a major issue. It is very close by. He can choose to take a shorter route, because there is a route that starts from the Bluff straight, you go past the police station along the South Coast Road and down to his office. He has indicated that he takes a shorter route through the Mondri Road. That I take it to mean that there would therefore be a longer distance, but even if one were to consider it might be longer, it is a question of just probably less than a kilometre or if it is, it is a very short distance. I do not think that it becomes a bigger issue.

[11] From the documents that have been shown to me, the applicant, if he were to be moved, would be going to the same command line in my view, because he will be falling within the authority of the same station

commander. He will still be under the command line of a second officer who reports to the station commander. The documents that are here seem to suggest that both the crime unit and the detective apparently have one authority they report to, who is junior to the station commander. I have looked at the papers and it does not appear that they report to different personnel. That therefore he would be reporting to his immediate supervisor who is a different officer does not in my view amount to it being soundly said that it amounts to a transfer. It cannot be.

[12] In any government environment people get to be transferred from one supervisor to another not in the sense of a transfer that is envisaged by the policy document. It just so happens at Montclair Police Station that the detective is placed away from the premises of the police station. It could well have been the case that the detectives would have been placed within the same premises. The locality therefore of the premises in my view should not be seen to give a right to an employee which he would want to seek to protect, because then what happens when one day he wakes up to find that there are new premises that have been erected, everybody is housed together and this is relevant to what is happening in the country.

[13] A lot of police stations have been improved, they have been developed and all employees being put together. It is something that can physically happen at Montclair Police Station. One would be then faced with the situation where the detectives say, "We do not want to go to a new office, we do not want to be together with the rest of the police" and rely on a decision such as this one, if I were to accept what the applicant seeks to achieve and I do not think that that will be fair in the circumstances. It was just opportunistic that the detective branch was placed differently. They could have been put within the same premises and in my view therefore the fact that there are separate premises does not give rise to a right which the applicant would have basis to protect. In my finding, the instruction given to him

was not a transfer. Therefore the policy relating to transfers did not have to be applied.

5 [14] As to whether or not the respondents intended to accommodate him
or wanted to take him back to the normal duties, I want to refer to
page 179. It is clear here and it is in writing that an attempt would
have been made to accommodate him. He had no reason to assume
that when he went to the crime unit he would perform ordinary duties.
There was no reason for that, because it was already in writing on 13
10 April 2010. He had been accommodated before. He had no reason
to doubt that the accommodation that is referred to in this document
was anything less than what had been afforded him before.

15 [15] In my view, the applicant has not shown that he has a right which
justifies him to be granted the relief that he seeks in these
proceedings. The case seemed to be made that the applicant feels he
is being punished by the movement to the Montclair Police Station
and if that is the case, there is another alternative remedy. It is found
in section 186(2) of the Labour Relations Act. He was supposed to
20 refer an unfair labour practice dispute to a corresponding Bargaining
Council if he felt that his rights were violated and there, there is
another remedy that would be available to him. The remedy that he
seeks here is not therefore the one and the appropriate remedy
available. I am alive to the fact that he seeks an interim order pending
25 the review of the proceedings.

[16] The applicant asked that if he were successful a costs order should be
awarded in his favour. There is a continuing employment relationship
thus far. I have noted that the last report that has been filed does not
30 suggest that he should stop working. It is capable of a construction
that he should continue to work because it suggests towards the end
of that report that it will still strain him as he has to report to work, to
walk out or to go to work and that his position might take a turn for the
worse. However, the applicant appears to have been in a better

5 position to know that this was really not a transfer. He is not a junior member of the police. He is a warrant officer, he is a senior officer. He prides himself of years of experience. I know that he has been acting out of legal advice, but he knows the environment where he works and he has done some legal studies. In my view therefore, he was in a position to formulate a view that this really could not have been a transfer as is envisaged in the transfer policy document.

10 [17] I just think of a situation like this if it were to prevail every day and that officers would want to rush to this court and inundate it with applications of this nature at the expense of a taxpayer, this would be incorrect. It should be discouraged. I have already indicated he has an alternative remedy.

15 [18] One other consideration I have had in my mind, I know that both parties have addressed me and have pointed out, have conceded that an employer has a prerogative to dismiss an employee. One can imagine each time any employer wants to discipline an employee and the employee feels that his employer is acting unlawfully and then he
20 rushes to court with applications of this nature, what would happen to this court. I do not think it would be able to cope with the kind of work it is doing. I do not think Labour Relations Act caters for complaints of this kind of a nature.

25 [19] Therefore in considering these aspects, the following order will therefore issue:

1. The application is dismissed.
2. The applicant has to pay the costs thereof.

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CELE J

DATE OF HEARING : 10 SEPTEMBER 2010

DATE OF JUDGMENT : 10 SEPTEMBER 2010

5 **APPEARANCES**

FOR THE APPLICANT : VIREN SINGH of VIREN SINGH & CO

FOR THE RESPONDENT : Adv. J I HENRIQUES

Instructed by : STATE ATTORNEY