



IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: J 616/2023

In the matter between:

NELLY LETSHOLONYANE

Applicant

and

**MINISTER OF THE DEPARTMENT OF HUMAN
SETTLEMENTS**

First Respondent

**ACTING DIRECTOR-GENERAL OF THE
DEPARTMENT OF HUMAN SETTLEMENTS**

Second Respondent

Heard: 8 August 2023

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, and publication on the Labour Court's website. The date and time for the hand-down is deemed to be on 14 August 2023

JUDGMENT

TLHOTLHALEMAJE, J

Introduction

[1] This urgent application is brought before the Court in terms of Section 18(3) of the Superior Courts Act¹. The applicant seeks an order that the operation and execution of an order issued by Makhura AJ on 15 May 2023², read with the

¹ Act 10 of 2013.

² *Letsholonyane v Minister of Human Settlements and Another* [2023] ZALCJHB 147; [2023] 8 BLLR 796 (LC) (15 May 2023).

judgment on application for leave to appeal handed down on 25 July 2023 under the present case number, not be suspended pending applications by the respondents for leave to appeal to the Labour Appeal Court or any other subsequent applications or appeals.

Background

- [2] The factual background to the application is succinctly set out in the main judgment of Makhura AJ, and I do not intent to repeat same other than to highlight pertinent common cause facts.
- [3] The applicant is 62 years old and intended to retire at the mandatory age of 65. She was until her dismissal on 20 April 2023, employed by the Department of Human Settlements as Deputy Director General: Corporate Services. She had 18 years of service in the Department.
- [4] On 14 March 2023 at about 19h53, the first respondent (Minister) posted a message on a WhatsApp group to inform that she was stuck in an elevator at the premises of the Department of Human Settlements. It appears that the Minister was stuck in the malfunctioning lift for about an hour before she was rescued.
- [5] A series of events took place from the morning of 15 March 2023 after the Minister had summoned the applicant to her office, and issued her with a letter of intention to summarily dismiss her for negligence related to her (Minister) being stuck in the lift. Having been informed of the allegations against her and being afforded an opportunity to show cause why she should not be dismissed, the applicant made representations.
- [6] A further meeting took place on 3 April 2023 between the applicant, the Minister and the second respondent, Acting Director General. The Minister gave the applicant three options, viz, to be dismissed; to be suspended and face a disciplinary enquiry; or to take early retirement. The applicant had opted for early retirement but had made certain proposals since that option had financial implications for her.

- [7] The Minister's response on 14 April 2023 was to place the applicant on precautionary suspension, and further suggested that the parties should meet on 20 April 2023 to discuss the applicant's proposals. At that meeting which the Minister did not attend, the applicant met with the Minister's advisor, Chief Directors of Legal Services and Human Resources, and a Union official, where the proposals she had made in respect of early retirement were discussed. It appears that nothing of substance came out of that meeting. However, after that meeting, and as the applicant was driving home, she received a call from the Minister who informed her that she was dismissed with immediate effect and that a letter in that regard would follow. Indeed, such a letter was sent to her on the same day. The Acting DG also on the same day circulated a letter to staff informing them that the applicant was no longer in the employ of the Department.
- [8] The applicant then approached this Court on an urgent basis to seek a declaratory order. She had disavowed any reliance on the provisions of the Labour Relations Act³ (LRA) and alleged that her summary dismissal was in breach of her contract of employment read with the provisions of the SMS Handbook, and thus unlawful. She sought reinstatement and for the Minister not to terminate her services until the provisions of clause 27(2) of the SMS Handbook were complied with.
- [9] When the matter came before Makhura AJ on 3 May 2023, the respondents opposed the application for relief based on lack of urgency and the contention that the Court lacked jurisdiction to determine the application. In a judgment delivered on 15 May 2023, Makhura AJ issued an order in the following terms
1. *The respondents' jurisdictional point is dismissed, and it is declared that this Court has jurisdiction to entertain the application.*
 2. *The matter is heard as one of urgency in terms of Rule 8 of the Rules for the conduct of the proceedings in the Labour Court.*
 3. *The decision of the first respondent to summarily dismiss the applicant from her employment on 20 April 2023 is hereby declared to be in*

³ Act 66 of 1995, as amended.

breach of the contract of employment and chapter 7 of the SMS Handbook, and unlawful.

4. *The applicant is reinstated to her employment with effect from 20 April 2023.*
5. *The first respondent or her delegate is prohibited from summarily dismissing the applicant without complying with the procedure set out in chapter 7 of the SMS Handbook*
6. *The respondents are ordered to pay the costs of this application, jointly and severally the one paying the other to be absolved.*

[10] Two days after the delivery of the judgment, the respondents on 17 May 2023, lodged their application for leave to appeal, which Makhura AJ dismissed on 25 July 2023. On 27 July 2023, the respondents advised the applicant of their intention to petition the Judge President for leave to appeal. Before the petition could be filed, the applicant on 01 August 2023 brought this application.

Urgency:

[11] As was the case before Makhura AJ, the respondents again opposed the application on the grounds that the matter is not urgent. It was contended that against the time frames set out above since the delivery of the main judgment on 15 May 2023, it took the applicant about 77 days to approach the Court with this application, when at the very least, she ought to have done so as early as 17 May 2023 upon the respondents having lodged their application for leave to appeal. The respondents contend that the applicant has not proffered any explanation for the delay, nor did she make out a case for urgent relief.

[12] I do not intent to rehash the applicable principles when an applicant seeks urgent relief. It nonetheless ought to be reiterated based on an abundance of authorities⁴ that it is trite that an applicant is not entitled to rely on the urgency

⁴ *University of the Western Cape Academic Staff Union & others v University of the Western Cape* (1999) 20 ILJ 1300 (LC) *AMCU and Others v Northam Platinum Ltd and Another* [2016] ZALCJHB 309; [2016] 11 BLLR 1151 (LC); (2016) 37 ILJ 2840 (LC) at para 26; *Golding v HCI Managerial*

that is self-created when seeking a deviation from the rules, and that the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. Urgent applications by their nature are effectively a request for an indulgence from the Court to be given preference in order to prevent prejudice and/or harm that may materialise or persist, should the conduct complained of occur or persist. The Court exercises a discretion as to whether a matter ought to be accorded any urgency having had regard to a variety of factors⁵. Rule 8 of the Rules of this Court regulates the bringing of such applications and requires *inter alia*, that the applicant should explicitly state the reasons for urgency, why urgent relief is necessary, and the reason why it is said that substantial relief cannot be attained at a hearing in due course⁶.

- [13] The applicant contends that applications in terms of section 18(3) of the SCA are inherently urgent. She further contended that the urgency was triggered on 27 July 2023 after the respondents indicated their intention to petition the Judge President for leave to appeal.
- [14] Inasmuch as it is accepted in this case that with this application, the applicant seeks to protect rights arising from a favourable Court order which fact in itself might create some urgency, I am in agreement with the approach of Wilson J set out recently in *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC*⁷, that the concept of ‘inherent urgency’ as contended for by the applicant is a misnomer, and that a matter is urgent because of the imminence and depth of harm that the applicant will suffer if relief is not given, not because of the category of right the applicant asserts⁸.

Services (Pty) Ltd and others [2015] 1 BLLR 91 (LC) at para 26; *Jiba v Minister: Department of Justice and Constitutional Development and others* (2010) 31 ILJ 112 (LC) at para 18; *Valerie Collins t/a Waterkloof Farm v Bernickow NO And Another* [2001] ZALC 223 (7 December 2001) at para 8.

⁵ See *Nelson Mandela Metropolitan Municipality & Others v Greyvenouw CC and Others* 2004 (2) SA 81 (SE) at para 37 - 40.

⁶ See *East Rock Trading 7 (Pty) Ltd and another v Eagle Valley Granite (Pty) Ltd and others* [2012] JOL 28244 (GSJ) at para 6 - 7; *Mojaki v Ngaka Modiri Molema District Municipality and Others* (2015) 36 ILJ 1331 (LC), at para 17.

⁷ [2023] ZAGPJHC 846 (1 August 2023).

⁸ At para 8. See also at para 6 where it was held;

‘There is, accordingly, no class of proceeding that enjoys inherent preference. Counsel appearing in urgent court would, in my view, do well to put the concept of “inherent urgency” out of their minds. There are, of course, some types of case that are more likely to be urgent than others. The nature of the prejudice an applicant will suffer if they are not afforded an

Equally so, an applicant is still required to satisfy the requirements of urgency and those of the nature of the relief that she seeks.

- [15] The main judgment having been delivered on 15 May 2023, the respondents had as the timeline has demonstrated, lodged their application for leave to appeal within two days of that judgment. Thus, no purpose would have been achieved by the applicant filing this or any application in enforcing or executing the order pending a ruling on the leave to appeal.
- [16] Equally so, since the ruling on the leave to appeal was delivered on 25 July 2023, two days later, the respondents had given their intention to petition the Judge President for leave to appeal. Of course the suspension of the enforcement of the order of Makhura AJ fell away when the application for leave to appeal was dismissed. As at the filing of the application in terms of section 18(3) of the SCA on 01 August 2023, the respondents had not filed the petition since the *dies* in that regard fell on 08 August 2023. The applicant had however not waited for the respondents to file their petition and had set down this matter for a hearing on 08 August 2023. In these circumstances, given the timeline and events since the main judgment and order, one cannot speak of the urgency in this case having been self-created or that the applicant was supine.
- [17] The imminence and depth of harm that the applicant will suffer if urgent relief is not granted; whether she has demonstrated that she is without substantial redress in due course, and whether the requirements of interim relief have been satisfied, are issues which for the sake of expediency, I intend to deal with within the context of the nature of the application before the Court.

The section 18 of the SCA application:

urgent hearing is often linked to the kind of right being pursued. Spoliation is a classic example of this type of claim. Provided that the person spoliated acts promptly, the matter will nearly always be urgent. The urgency does not, though, arise from the nature of the case itself, but from the need to put right a recent and unlawful dispossession. The applicant comes to court because they wish to restore the ordinary state of affairs while a dispute about the right to possess a thing works itself out. Cases involving possible deprivations of life and liberty, threats to health, the loss of one's home or some other basic essential of daily life, such as water or electricity, destruction of property, or even crippling commercial loss, are also likely to be urgent.'

[18] The relevant portions of section 18 of the SCA provides that;

'Suspension of decision pending appeal'

- (1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.
- (2) ...
- (3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.'
- (4) ...

[19] The Supreme Court of Appeal recently in *City of Tshwane Metropolitan Municipality v Vresthena (Pty) Ltd and Others*⁹ reiterated that an order issued in terms of section 18(3) is an extraordinary remedy reserved for exceptional circumstances¹⁰. This is so in that such an order empowers a high court to

⁹ [2023] ZASCA 104 (22 June 2023) at para 14; *NEHAWU v Minister for The Public Service and Administration and Others* [2023] ZALAC 7; [2023] 6 BLLR 487 (LAC); (2023) 44 ILJ 1207 (LAC) at para 30; *Road Traffic Management Corporation v Tasima (Pty) Limited and Others; Road Traffic Management Corporation and Another v Tasima (Pty) Limited* [2018] ZALAC 47; [2019] 5 BLLR 434 (LAC); (2019) 40 ILJ 1036 (LAC) at para 44 where it was held;

'Section 18 of the SC Act has significantly altered the common law in more than one respect. The court no longer has a wide discretion to do what is just and equitable or to rely exclusively on the balance of convenience or the appeal's prospects of success. Now, before a court may order interim execution, the applicant for that relief must prove three things on a balance of probabilities. Firstly, the applicant must show that exceptional circumstances exist (perhaps including the balance of convenience and prospects of success) justifying the reversal of the ordinary principle of suspension pending appeal. Secondly, it must prove on the probabilities that it will suffer irreparable harm if interim execution is not ordered. Thirdly, it must prove that the other party will not suffer irreparable harm if an order of interim execution is granted. Should the applicant fail to discharge its onus in relation to any one of these requirements, the court may not grant an interim execution order. Additionally, in terms of section 18(4) of the SC Act, where an interim execution order is granted, the aggrieved party has an automatic right of appeal against that order to the next highest court and the order will be automatically suspended, pending the outcome of such appeal.

¹⁰ See also *Johannesburg Society of Advocates and Another v Nthai and Others* [2020] ZASCA 171; 2021 (2) SA 343 (SCA); [2021] 2 All SA 37 (SCA) at para 102 where it was held;

deviate from the general principle that pending an appeal, a judgment and attendant orders are suspended if the party requesting the court to do so can prove, on a balance of probabilities, two things, viz, that the applicant must demonstrate that she will suffer irreparable harm if the court does not issue the requested order. Secondly, she must show that the other party involved will not suffer irreparable harm if the court grants the requested order. The SCA further reiterated that the provision allows the court to consider the potential harm to both parties and make a decision that aims to prevent irreparable harm to the party seeking the order because of the extreme nature of the remedy.

Exceptional circumstances:

- [20] The issue is whether the applicant in this case has demonstrated exceptional circumstances, in terms of section 18(2), to justify reversing the ordinary rule of the suspension of the order pending an appeal. As to what constitutes exceptional circumstances was set out in *Ntlemeza v Helen Suzman Foundation and Another*¹¹, with particular reference to *Incubeta Holdings &*

“This court explained in *University of the Free State v Afriforum* that s18 places a heavy onus on the applicant’ as ‘the granting of relief of this nature constitutes an extraordinary deviation from the norm that, pending an appeal, a judgment and its attendant orders are suspended.’ Section 18 does not seek merely to codify the common law but to ‘introduce more onerous requirements’. And, the interim enforcement of court orders constitutes an ‘extraordinary deviation from the norm’ and thus requires ‘the existence of truly exceptional circumstances to justify the deviation’. Exceptional circumstances entail ‘something out of the ordinary and of an unusual nature; ... in the sense that the general rule does not apply to it; [and] something uncommon, rare or different.’” (Internal citations omitted)

- ¹¹ [2017] ZASCA 93; [2017] 3 All SA 589 (SCA); 2017 (5) SA 402 (SCA), where it was held that; [37] As to what would constitute exceptional circumstances, the court, in *Incubeta*, looked for guidance to an earlier decision (on Admiralty law), namely, *MV Ais Mamas Seatrans Maritime v Owners, MV Ais Mamas, & another* 2002 (6) SA 150 (C), where it was recognised that it was not possible to attempt to lay down precise rules as to what circumstances are to be regarded as exceptional and that each case has to be decided on its own facts. However, at 156H-157C, the court said the following:

‘What does emerge from an examination of the authorities, however, seems to me to be the following:

1. What is ordinarily contemplated by the words “exceptional circumstances” is something out of the ordinary and of an unusual nature; something which is excepted in the sense that the general rule does not apply to it; something uncommon, rare or different; “besonder”, “seldsaam”, “uitsonderlik”, or “in hoë mate ongewoon”.
2. To be exceptional the circumstances concerned must arise out of, or be incidental to, the particular case.
3. Whether or not exceptional circumstances exist is not a decision which depends upon the exercise of a judicial discretion: their existence or otherwise is a matter of fact which the Court must decide accordingly.

*another v Ellis & another*¹². Arising from the latter authority is that exceptionality is fact-specific, and that the circumstances deemed exceptional must be derived from the actual predicaments the applicant finds herself in¹³.

- [21] The applicant alleges that the exceptional circumstances arise from the judgment of Makhura AJ to the extent that her dismissal was declared to be in breach of the employment contract and SMS Handbook and thus unlawful; that she is 62 years with 18 years of service and left with less than three years before she retires; and that she is deprived of a salary which has a negative impact on her monthly financial obligations. She laments the prospects of this matter being protracted as there was a likelihood of it being a subject of appeals by the respondents ending up in the apex court. She contends that pending a series of anticipated appeals, she will in the meanwhile, remain without an income until her retirement age. The consequences thereof are that any victory even if at the finalisation of all appeals would be pyrrhic, as she would no longer be in a position to be reinstated into her position.
- [22] The respondents submit that the applicant's assertions are not supported by any proof; that they are not fact specific and that she had essentially failed to demonstrate exceptional circumstances to satisfy the requisites of section 18 of the SCA.
- [23] As stated in *Incubeta*, whether "exceptional circumstances" exist or not is a fact-specific enquiry, with "circumstances which are or may be 'exceptional'

4. Depending on the context in which it is used, the word "exceptional" has two shades of meaning: the primary meaning is unusual or different; the secondary meaning is markedly unusual or specially different.

5. Where, in a statute, it is directed that a fixed rule shall be departed from only under exceptional circumstances, effect will, generally speaking, best be given to the intention of the Legislature by applying a strict rather than a liberal meaning to the phrase, and by carefully examining any circumstances relied on as allegedly being exceptional.'

[38] In *UFS v Afriforum & another* [2016] ZASCA 165 (17 November 2016), para 9, this court stated that it was immediately discernable from ss 18(1) and (3) that the Legislature proceeded from the well-established premise of the common law, that the granting of relief of this nature constituted an extraordinary deviation from the norm that, pending an appeal, a judgment and its attendant orders are suspended. It noted that the exceptionality is further underscored by the requirement of s 18(4)(i); that the court making such an order 'must immediately record its reasons for doing so'. I interpose to state that the reasons contemplated in s 18(4)(i) must relate to the court's entire reasoning for deciding 'otherwise' and must therefore also include its findings on irreparable harm as contemplated in s 18(3).

¹² [2013] ZAGPJHC 274; 2014 (3) SA 189 (GSJ) at para 16.

¹³ At para 22.

must be derived from the actual predicaments in which the applicant finds herself in. Against this principle, it is my view that there is indeed merit in the applicant's submissions that her exceptional circumstances arise out of the conduct of the Minister upon being stuck in the lift, and the conclusions reached in the main judgment in respect of that conduct by Makhura AJ.

- [24] Makhura AJ had found that the applicant in approaching the Court in the manner she did, had disavowed any reliance on the provisions of the LRA, and had pleaded her case based on a breach of contract, hence reliance on the provisions of sections 77(3) and 77A(e) of the Basic Conditions of Employment Act¹⁴ (BCEA). It was on this ground that it was found that the jurisdiction of the Court was engaged¹⁵. Having made that determination, Makhura AJ had appreciated that the merits of the dismissal of the applicant were not an issue before him, but that in the light of the common cause fact that she was dismissed, the issue was whether it was effected in compliance with the contract and/or the SMS Handbook.
- [25] Makhura AJ having considered the applicant's contention that the Minister had acted as the victim or complainant, witness, initiator, and had pronounced on the sanction of a dismissal, her (Minister's) conduct was unacceptable, particularly since the applicant was denied an opportunity to present her case on the merits of the allegations and to make any submissions in mitigation. It was concluded that the Minister disregarded the provisions of the SMS Handbook, and assumed powers she did not have by pronouncing a sanction. Her conduct concluded Makhura AJ, was unlawful, and ought not be condoned by courts of law.
- [26] In the light of those conclusions, and further it being common cause that the services of the applicant were terminated in the manner described, it is my view that allowing the suspension of the implementation of the order of Makhura AJ to stand consequent the petition for leave to appeal and/or any other further applications for leave to appeal, would clearly amount to countenancing the unlawful conduct of the Minister to continue unabated.

¹⁴ Act 75 of 1997, as amended.

¹⁵ At paras 16 – 23.

Without being bogged down with the merits or otherwise of the reasons for dismissal, the respondents clearly adopted a deplorable and gung-ho posture in dismissing the applicant, irrespective of the nature of the trauma the Minister may have endured whilst stuck in the elevator. Clearly as found by Makhura AJ, the Minister had acted as a 'victim', prosecutor, and executioner in summarily dismissing the applicant. This Court will be failing in its constitutional obligations in permitting such conduct to continue in that based on the facts, it represents the very antithesis of what is expected in a constitutional democracy. Surely the respondents in their positions ought to have known better.

- [27] The applicant's other submissions related to being deprived of an income and consequently being unable to meet her financial obligations, were for some reason, downplayed by the respondents to the extent that they were not supported by any documentary evidence. It can however not be disputed that the applicant since 20 April 2023 remains unemployed and without an income, which has clearly placed her in a predicament based on the respondents' conduct. Based on her case before Makhura AJ, it cannot be said that the applicant enjoys any remedy bar an immediate reinstatement, to address that predicament. Of course it is not suggested that the applicant is of right entitled to reinstatement irrespective of the merits of the facts that led to her dismissal. It is however the conduct of the respondents and the manner of the applicant's dismissal that placed her in that predicament.
- [28] Thus, even if the predicament she finds herself in is an ordinary consequence of a loss of a job, that predicament derives from the exceptionally peculiar and unlawful conduct of the respondents which as I have already indicated, ought not be countenanced. Within a constitutional democracy, it is not common for an employer or let alone a Cabinet Minister, to summarily dismiss an employee without any due process being followed, irrespective of the nature of the misconduct complained of. Accordingly, for reasons given as considered either individually or cumulatively, these constitute exceptional circumstances, and I therefor agree with the applicant that she is entitled to the relief she seeks.

Irreparable harm:

- [29] The applicant is required to demonstrate on a balance of probabilities that she will suffer irreparable harm if the operation and execution of the order is not given interim effect; and further that the respondents will not suffer irreparable harm if the order is immediately put into operation. The irreparable harm requirement in such applications is met if a reasonable person, confronted by the facts, would apprehend the probability of harm. Thus, actual harm need not be established upon a balance of probabilities and thus on the face of it, the test seems less stringent¹⁶.
- [30] The applicant again relies on a loss of salary since her dismissal and a further period as a consequence of anticipated leaves to appeal. The respondents on the other hand contend that the department stands to suffer far more harm than the applicant in the event that she came back to work, and that her presence will cause disruption which cannot be undone. The respondents further submit that the applicant's reinstatement will entail that she be placed on paid suspension, and that the department would be unable to recoup such payments should she not succeed on appeal. It was submitted that the applicant on the other hand will be able to recoup all of her salaries and benefits in the event that the respondents' appeal fails.
- [31] It is my view that my conclusions in regards to the applicant having demonstrated exceptional circumstances should be dispositive of whether she had equally demonstrated on a balance of probabilities, that she stands to suffer irreparable harm. The harm complained of ought to be considered within the context of the respondents' continued unlawful conduct as concluded by Makhura AJ. It would be remiss of the Court not to appreciate that such conduct had resulted in an irreparable harm to the applicant, in view of the circumstances she now finds herself in. Inasmuch as the applicant had not placed supporting documents regarding the financial prejudice, she would continue to suffer pending any appeals, this in my view ought not to be the basis for a conclusion to be reached that she will not suffer irreparable harm.

¹⁶ *Road Accident Fund and Others v Mabunda and Others* [2020] ZAGPPHC 386; [2021] 1 All SA 255 (GP)

As already indicated, the test in this regard is less stringent, but what is apparent in the light of the conduct of the respondents and the detrimental consequences thereof on the applicant, is that these consequences, even if remedied some years later, will indeed be small comfort to her.

- [32] On the opposite scale, the respondents cannot speak of any discernible irreparable harm in circumstances where the order of Makhura AJ had specifically considered their right to proceed to discipline the applicant, *albeit* in accordance with the provisions of Chapter 7 of the SMS Handbook. This is what the respondents ought to have done in the first place, and it is inexplicable that they would persist under the wrong impression that it was legally permissible for them to dismiss the applicant in the manner they did. The issue of the applicant having to return to work and being placed on paid suspension is neither here nor there. This is so in that nothing prevents the respondents from completing the disciplinary enquiry timeously and in accordance with the standing prescripts.

Prospects of success on appeal:

- [33] The respondents implored the Court to have regard to their prospects of success on appeal, it being contended that once the applicant had failed to satisfy the requisites of section 18(3), her prospects should not count. The Court need not say more on this issue in the light of its conclusions on these requisites having been met. Central to the contentions before Makhura AJ was whether this Court had jurisdiction. Whether the respondents have prospects of success on appeal in that regard is an issue which this Court ought to recede into the background, in the light of the pending petition before the Judge President. In any event, a determination on the prospects of success would not have had any bearing on the conclusions I have already reached.

Conclusions:

- [34] I am satisfied that the applicant has met the requirements of urgency and of the relief that she seeks. As evident from the nature of her primary case

before Makhura AJ, she is without substantial redress in due course should the matter not be accorded urgency.

[35] I am further satisfied that the applicant has demonstrated exceptional circumstances, and had further on a balance of probabilities, demonstrated that she will suffer irreparable harm if the relief sought in this application is not granted. On the other hand, in the light of the respondents' conduct in dismissing the applicant, and further in the light of the nature of orders issued by Makhura AJ upon a finding of unlawfulness, it cannot be said that the respondents will suffer any irreparable harm.

[36] Given the nature of the application before the Court, and the circumstances that the applicant had complained of as a result of the respondents' conduct, it further follows that the Court ought to exercise its discretion in her favour in regards to costs. Accordingly, the respondents ought to be burdened with the costs of this application.

[37] Accordingly, the following order is made;

Order:

1. The applicant's application is accorded urgency.
2. The operation and execution of the order granted in favour of the applicant on 15 May 2023 under the present case number by Makhura AJ is not suspended in terms of section 18(1) read with 18(3) of the Superior Court Act 10 of 2013, pending the application and petition for leave to appeal, or any subsequent applications or appeals.
3. The respondents are ordered to pay the costs of this application, jointly and severally the one paying the other to be absolved.

Edwin Tlhotlhallemaje

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant:

V.J. Chabane, instructed by Z & Z
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For the 1st - 2nd Respondents:

Professor T. Madima SC with M. Makwela,
instructed by State Attorney: Pretoria

LABOUR COURT