Reportable

THE LABOUR COURT OF SOUTH AFRICA,

HELD AT JOHANNESBURG

Case No: J 1797/17

In the matter between:

ZWELIBANZI VELAPHI NYANDA **Applicant**

and

THE CITY OF JOHANNESBURG **First Respondent**

THE CITY MANAGER OF THE CITY OF JOHANNESBURG **Second Respondent**

THE HEAD OF DEPARTMENT FOR PUBLIC SAFETY FOR THE CITY OF JOHANNESBURG **Third Respondent**

Heard: 22 August 2017

Delivered: 19 September 2017

Summary: (Urgent application – unnecessary delay in bringing application and short time frame for opposition unacceptable – not urgent – merits weak - expectation of permanent appointment tenuous at best - costs)

JUDGMENT

LAGRANGE J

Introduction

[1] This is an urgent application for interim relief. The applicant is a traffic officer currently serving as the Chief of Police for Johannesburg. In summary, the interim relief he seeks is:

1.1 An interdict preventing the City of Johannesburg ('the City') from appointing anyone to replace him or taking any steps to do so, including interviewing candidates.

1.2 A declarator that he should retain his position as chief of police.

1.3 To restore his remuneration and conditions of service as they existed at 4 August 2017.

[2] This interim relief is sought while he awaits the outcome of two alternative courses of action he might take. The first is a referral of a dispute about whether he should be converted from a fixed term contract employee to a permanent one to be dealt with by the objection/dispute resolution committee established under clause 12 of the collective agreement on the Conversion of Fixed Term Employees in Terms of the Institutional Design concluded on 28 September 2012 ('the conversion agreement'). The alternative course of action he might take is a court application to determine whether he should be permanently employed by the City of Johannesburg ('the City'). At the time of the hearing of this application, he had not taken any steps to invoke either of these remedies.

[3] The 300 odd page application was served on 15 August for 22 August (a period of 4 court days). The respondent was expected to reply barely 48 hours after receiving the application from the applicant on 15 August. This was an unreasonably short period given the issues canvassed in the application. I will address this further when dealing with urgency below.

Background

[4] Nyanda was employed under a fixed term contract of employment concluded in 2013. In terms of clause 4.3 of that contract, it was deemed to have commenced on 5 August 2013 and would terminate automatically

on 4 August 2017. In summary, other provisions in the contract of relevance to the application provide that -

4.1 The agreement was entered into in accordance with section 57 (1) of the Local Government: Municipal Systems Act, 32 of 2000 ('the Systems Act') in order to "record the special employment relationship between the City and the employee, being the Chief of Police directly accountable to the City Manager" (clause 2.1).

4.2 The parties agreed that the performance agreement which the parties are required to include under section 57 (2) of the Systems act, would form an integral part of the employment contract (clause 2.2).

4.3 Nyanda in his capacity as Chief of Police was "directly accountable" to the city manager (clause 4.2).

4.4 It was recorded that there was no expectation that the agreement would be renewed or prolonged, except by written agreement between parties and that the nonrenewal of the contract would not constitute a dismissal of Nyanda, and in the event the appointment was renewed "the new appointment is subject to the normal recruitment process where the Employee has applied for, and being considered for, and offered the employment" (clause 4.4).

4.5 To emphasise the last point, the contract also stipulated that "(a)ny appointment subsequent to the termination date shall be subject to the City's normal recruitment procedures and other requirements relevant to such appointment"(clause 4.5).

4.6 As a condition precedent, the parties specifically acknowledged that the contract terminated automatically if a performance agreement between Nyanda and the city manager, "as contemplated in section 57 (2)" of the Systems act, was not concluded within 60 days of the commencement of the contract (clause 5).

4.7 Provision was made for the parties to agree on the performance agreement and failing agreement on annual key performance areas the city manager was entitled to determine the same (clause 6.1).

4.8 The dispute resolution procedure of the contract provided that any dispute arising from an unresolved grievance relating to the agreement or about the interpretation and application of the agreement should be submitted to private arbitration (clause 24).

[5] It is common cause that no performance agreement was entered into within 60 days of the commencement of Nyanda' contract' contrary to the requirements of section 57 (2) of the Municipal Systems act and clause 5.1 of the contract itself. The pertinent provisions of section 57 state:

> "57 Employment contracts for municipal managers and managers directly accountable to municipal managers
>
> (1) A person to be appointed as the municipal manager of a municipality, and a person to be appointed as a manager directly accountable to the municipal manager, may be appointed to that position only-
>
> (a) in terms of a written employment contract with the municipality complying with the provisions of this section; and
>
> (b) subject to a separate performance agreement concluded annually as provided for in subsection (2).
>
> (2) The performance agreement referred to in subsection (1) (b) must-
>
> (a) (i) be concluded within 60 days after a person has been appointed as the municipal manager or as a manager directly accountable to the municipal manager, failing which the appointment lapses: Provided that, upon good cause shown by such person to the satisfaction of the municipality, the appointment shall not lapse; and
>
> (ii) be concluded annually, thereafter, within one month after the beginning of each financial year of the municipality;
>
> (b) in the case of the municipal manager, be entered into with the municipality as represented by the mayor or executive mayor, as the case may be; and

(c) in the case of a manager directly accountable to the municipal manager, be entered into with the municipal manager."

[6] Notwithstanding the failure to conclude the performance agreement, the parties conducted themselves as if Nyanda was lawfully employed as the Chief of Police. The parties are in agreement this, except insofar as Nyanda might suggest that he was indefinitely employed. However, in paragraph 22 of his founding affidavit, Nyanda relies on clause 17.1.2 of the written contract as the basis for his appointment to the position of Chief of Police.

[7] The applicant claims that in accordance with that clause, he reported directly to the former city manager. He claimed that in 2013 when he queried with the former Mayor, Mr P Tau, why he had been employed on a four-year contract as opposed to a five-year contract, he was advised that there were imminent changes planned to the management structure of the City and when these were implemented he would be changed from a limited duration contract to a permanent one, at which stage he would report to the Head of Public Safety rather than directly to the city manager. The anticipated changes in the management structure appear to have only taken place at the end of 2014 or early in 2015. In terms of that structure he claims he then reported to the new head of Department for Public Safety ('the HoD'), Mr H Msimang, and that he no longer reported to the city manager or attended council meetings or mayoral committee meetings like previously did. Similarly, departments which previously reported to him now reported to Msimang. What also changed was that, whereas previous performance assessments were conducted by the city manager or on the city manager's behalf, after the changes, Msimang completed his performance assessment scorecard. Nyanda claims that in 2015 and 2016 when he raised this perceived reduction in his executive powers with the former city manager he never got a direct answer from him.

[8] In consequence of these changes, Nyanda argues that his position as Chief of Police has now been moved down to a level 3 post whereas

previously his post was level 2 because he reported directly to the city manager who occupies post level 1.

[9] The City maintains that Nyanda remained accountable to, and under the direction of, the city manager and continued to report to him in respect of the matters he was employed to perform. It concedes that Nyanda did also report to the head of Department, but maintains that this was mainly for administrative matters. Moreover, the HoD did not have control or authority over him and he remained the executive head of the municipal police services and was responsible for the duties he was required to oversee in terms of section 64C(2)(a) to (h) of the SAPS act 68 of 1995.[1] Therefore he continued to report to the municipal manager. In so far as certain functions such as finance and supply chain matters were allocated to other staff, the City maintains that these were not executive functions but administrative ones.

---

[1] 64C Executive head of municipal police service

(1) Subject to section 64D, a municipal council shall appoint a member of the municipal police service as the executive head thereof.

(2) The executive head shall, subject to this Act, national standards and the directives of the chief executive officer of the municipality, exercise control over the municipal police service, and shall-

(a) be responsible for maintaining an impartial, accountable, transparent and efficient municipal police service;

(b) subject to the applicable laws, be responsible for the recruitment, appointment, promotion and transfer of members of the municipal police service;

(c) ensure that traffic policing services by the municipality are not prejudicially affected by the establishment of the municipal police service;

(d) be responsible for the discipline of the municipal police service;

(e) either personally or through a member or members of the municipal police service designated by him or her for that purpose, represent the municipal police service on every local policing co-ordinating committee established in terms of section 64K within the area of jurisdiction of the municipality;

(f) either personally or through a member or members of the municipal police service designated by him or her for that purpose, represent the municipal police service on every community police forum or subforum established in terms of section 19 within the area of jurisdiction of the municipality;

(g) before the end of each financial year, develop a plan which sets out the priorities and objectives of the municipal police service for the following financial year: Provided that such plan in so far as it relates to the prevention of crime, shall be developed in co-operation with the Service; and

(h) perform such duties as may from time to time be imposed upon him or her by the chief executive officer of the municipality.

[10] The applicant claims that in early 2015, management structures at the City were changed and he no longer reported to the city manager but to the Head of the Department for Public Safety. The respondents agreed that there were changes to the City's organogram and that Nyanda did report to the HoD "in some instances...over administrative matters", but "not on core issues the applicant was employed to perform." The City maintains that even if it were true that Nyanda reports to the HoD, he did not report exclusively to him and it would be sufficient for the purposes of classifying his post level as level 2 that he still reports to the city manager.

[11] It is not disputed that clause 3.3 of the conversion agreement provides that all employees of the City in municipal structure level 3 and below would be employed on a permanent basis. The definition of an "Affected employee" in clause 2.2.2 of the conversion agreement describes such employees as "all the fixed term contract employees employed on reporting levels 3 and below with in the C0J's existing municipality structure, and listed in the schedule annexed marked "A", as at the signature date" (emphasis added).

[12] The conversion agreement also contains the following definitions:

> "2.2.10 "Excluded Employees" mean senior employees linked to political offices, including not limited to the Speaker and the Executive Mayor, as set out more fully in Annexure "B", levels 1 and 2 Employees, and employees currently and in future employed by the City in terms of paragraph 11 herein[2].
>
> ...
>
> 2.2.11 "Levels 1 and 2 Employees" means the employees in pointed by the municipal council and directly reporting to the city manager, as set out more fully in Annexure "C". "

[13] None of the Annexures referred to in the conversion agreement were included in the conversion agreement attached to the founding affidavit, but Nyanda concedes that he would not have been one of the "affected employees" listed in Annexure "A" of the agreement. Nonetheless, on the

[2] Paragraph 11 of the agreement concerns employees engaged in the future on fixed term contracts.

basis of the situation of another senior employee Nyanda believes that he ought to have the opportunity to contest his exclusion from post level 3. Clause 6.2 of the conversion agreement states:

> "To the best of the Parties' knowledge and belief all Affected Employees have been listed in Annexure A hereto. It is agreed however; that should any employee have proper reason to believe that they fall within the categories considered for inclusion under Annexure "A" such employee may refer a dispute in terms of clause 12 to the Objection/Dispute Resolution Committee."

(emphasis added)

It is common cause that to date the dispute resolution committee referred to has not been established, but of course that can be done if required.

[14] Nyanda compares his situation to that of the head of Emergency Management Services ('EMS'), Mr Makola. He claims that his position was affected in the same way by the restructuring. Both EMS and JMPD were merged into the Department of Public Safety to whose head both Nyanda and Makola now reported. He claims the City took the view that the position of executive head of EMS was now in a level 2 post and accordingly should be converted to a permanent contract. This view was informed by two legal opinions provided by the City's attorneys. Nyanda simply asks that he be treated the same and that his fixed term contract be converted as Makola's was into a permanent (indefinite) employment contract because he too falls into the category of an "affected employee".

[15] The gist of the first legal opinion was that Makola was no longer an employee engaged in terms of section 56 of the MSA (i.e. he no longer reported directly to the city manager as a result of the restructuring). In the first opinion letter, the author expressly stopped short of giving any opinion on whether his fixed term contract of employment had been converted into permanent employment by virtue of the conversion agreement.

[16] In the second opinion letter dated 10 January 2017, which addresses this question directly, the author noted that Makola's position as Executive Head of Emergency Management Services was included in Annexure "C" to the conversion agreement titled "List of Designations - S 57

Employees". That annexure set out employees who were *excluded* from the category of affected employees under the conversion agreement. The opinion alluded to a footnote in the annexure which stated "Designation in current approved COJ high-level structural design. These positions may change when current structures are revised". The opinion concluded that *at the time* of the conclusion of the conversion agreement, Makola's position was that of a level 2 employee and therefore expressly excluded from the conversion agreement. The opinion also notes that an employee such as Makola who had reason to believe that they fell within one of the categories of affected employees in Annexure "A" could have asked to be included in that category under clause 6.2 of the conversion agreement. The final remarks in the opinion are significant and state:

> "7.4 The principle expressed in the conversion agreement, even if not immediately enforceable, is that if an employee is on level 3 or below then the "general form of employment" was intended to be permanent.
>
> 8. Thus, if it is correct that in terms of the city's present structure/organogram the Executive Head: EMS no longer reports directly to the City Manager, then it would be consistent with the City's general approach and clause 11 of the Conversion Agreement that he be placed on a permanent contract."

(emphasis added)

In short, the second opinion did not suggest that Makola was entitled to enforce a right to permanent employment using the grievance and dispute processes of the conversion agreement. However, it suggested that it would be consistent with that agreement and the City's policy to employ him on a permanent contract. The applicant maintains that because the conversion agreement remains in force and is binding on the City, he can rely on that and the conversion of the fixed term contract of Makola to insist that he be treated similarly and that any different treatment of him would be unfair.

[17] Notwithstanding the similarity between Makola's restructured position, also being located within the Public Safety Department in the new organogram, the City claims that Nyanda's position is still somewhat different from that of Makola. In this regard, the City points out that under section 64C(2)(h)

of the Police Act ,the Chief of Police exercises control of the municipal police service subject, *inter-alia*, to the directives of the chief executive officer of the municipality and is required to perform such duties imposed on him by the chief executive officer. However, in the gazetted advertisement for the Chief of Police post-dated 3 April 2017, the City was more equivocal and stated:

> "The position of chief of police is not a direct report to the city manager and is therefore not dealt with under the Municipal Systems act 32 of 2000. It is however, regulates through the South African Police Service Act 68 of 1995 which requires that for certain matters the head of a municipal police service must report to the CEO of the municipality. It is for this reason that the city follows a similar process as with section 56 managers in that the Council is requested to approve the commencement of process and that a counsellor be designated to…form part of the Selection and Interview Panel."

It would seem therefore that, the City does not in fact regard the position of the Chief of Police as clearly being a level 2 position as a matter of law, which lends some credence to Nyanda's claim about his current status. However, there is still a question mark about whether or not the fact that the Chief of Police does report directly to the city manager on some issues, is sufficient to classify the post as one falling within section 56 of the Systems Act.

Urgency

[18] Nyanda bases his claim of urgency on the fact that he was told not to return to work on 3 August 2017. Having regard only to that date, the applicant took approximately 11 days to prepare his application. However, that date is not when the situation he seeks to reverse first arose.

[19] The applicant applied for reappointment to his post in mid May 2017 and the respondent contends that he must therefore have been aware that his services would be terminated on 4 August 2017. Insofar as Nyanda relies on the terms of his fixed term contract as governing his employment despite the performance agreement not being concluded, his application

for the post is consistent with the procedure for renewal of the appointment provided for in clauses 4.4 and 4.5 of the contract, which envisaged that even though he was the former incumbent of the post, he would have to subject himself to applying for the post like any other candidate.

[20] Although he applied for the position and was granted an interview scheduled for 21 July 2017, he decided not to go to the interview because his attorneys had written to the City on 24 June 2017. The letter written by his attorneys in June essentially sets out his claim to be permanently employed based on the application of the conversion agreement. The letter further put the City on terms to halt the recruitment process for a replacement and, taking into consideration the conversion agreement and opinions of the City's attorney in relation to Makola, the letter demanded that Nyanda's contract of employment be converted to permanent status in accordance with clause 11 of the conversion agreement. The letter concluded that if no response was received within five days, the attorneys already had instructions to approach the court for an interdict to halt the recruitment process pending the determination of Nyanda's employment status.

[21] Nyanda's deadline to the City came and went without any response. Instead of acting on the threat made in the letter of 26 June, Nyanda issued further letters demanding a response on 7, 17 and 20 July respectively. On 27 July 2017 the City finally did respond, setting out in considerable detail why it did not believe he could rely on the conversion agreement. The City sought confirmation from Nyanda whether he still wish to apply for reappointment and notified him that it would oppose any urgent application he might bring. It was only some two and a half weeks' later after this response that Nyanda launched his urgent application, which he had first threatened to bring on 24 June 2017, some seven odd weeks earlier.

[22] *Mr Bishop*, who appeared for the applicant, argued that the court should take an indulgent view of Nyanda's delay in bringing his application in mid-August despite apparently being ready to do so by the end of June. In this

regard, he referred to a number of cases in which it was held that a party endeavouring to resolve an issue before having recourse to litigation should not be prejudiced because it first tried to resolve the matter by other means. In *Stock And Another v Minister Of Housing And Others* [3], based on the correspondence between the parties in a dispute over the development of a Temporary Residential Area under a land use planning ordinance, the Cape High Court rejected the respondent's argument that since the applicant had known of the respondent's stance late in October, it could not bring an urgent application early in December the same year to stay the development pending review proceedings. Having regard to that matter, it is clear that the applicant after discussions with the respondent had made proposals in late October to settle the matter and the respondent kept requesting extensions of time to respond to the offer, the last of which was to 1 December that year. The application was launched just over a week later when the response was still unforthcoming and it had become evident that construction was proceeding. The applicant also referred to the Constitutional Court case of *South African Informal Traders Forum and others v City of Johannesburg.* [4] In that matter, informal traders had been forcibly evicted from trading stalls and have their goods confiscated during October 2013. The last evictions to place on 30 October. On two November, an agreement was reached between the traders and the city in terms of which a verification and reregistration process was agreed to, following which the traders would be allowed to return to their trading stalls. Despite the verification and reregistration process being done during the week of 4 November, traders were not allowed to return to their stalls and those who did so were forcibly removed. Between 8 and 14 November, the traders engaged the municipality to give effect to the agreement of 2 November without success and proceedings were launched for urgent interim relief on 15 November.

[3] 2007 (2) SA 9 (C)

[4] 2014 (4) SA 371 (CC)

[23] Mention was also made of the case of *Nelson Mandela Metropolitan Municipality and others v Grevenouw CC and others*.[5] In that case the court had held that a residents' association which launched an urgent application on 19 December 2002 to stop the respondents from carrying on a bar and restaurant business in contravention of the zoning and noise control regulations. The applicants had first alleged non-compliance with the zoning conditions in a letter to the respondents on 7 November 2002. In a reply dated 21 November 2002, a vague undertaking was made by the respondents that they would ensure that they would not create any further nuisance at common law to the extent that this was the case. In the meantime, the applicants had discovered other statutory infringements of the respondents and on 22 November, the applicants reserved their rights and demanded that the respondents remedied their breaches of zoning conditions within 48 hours. The respondents then proposed a meeting on 9 December to try and resolve the issues, which took place. The meeting was unsuccessful and the applicants made further demands on the respondents in correspondence from 10 to 13 December, which ended with a warning that if the demands were not complied with an interdict would be launched. Six days later, the applicants brought the application. The court held that the applicants have not tracked their feet but undertook efforts to resolve the problem and when that failed, by requiring an undertaking. When that was not forthcoming, it investigated further, so it had evidence of the level of noise emanating from the [respondents premises]. In my view, it approached its statutory duty of safeguarding the rights and interests of ratepayers in a responsible manner by seeking to persuade the respondents to comply and then only approaching the court for relief." [6] Lastly, Nyanda suggested that the recent unreported case of *Nowalaza and Others v Office of the Chief Justice and Another*[7] also suggested the Courts take an indulgent view of leniency in cases of this nature. Though it might appear that in that matter the applicants, who had sought an urgent declarator confirming the status of their appointment as

[5] 2004(2) SA 81 (SE)

[6] At 95, para [34].

[7] (J1177/2017) [2017] ZALCJHB 234 (15 June 2017)

judges' secretaries, knew in early April 2017 when their posts were advertised that their appointments were not assured, on 21 April they received what should have been reliable information that they would be appointed either permanently or for three years. This information was only controverted on 9 May when the employer announced that they would have to apply for their positions like anyone else. Within a week of this announcement a formal letter of demand had been served and by 23 May, they had launched the application. Like the *Informal Traders* matter, this was a case where reassuring representations from the respondent reasonably justified them not acting at the first sign of a threat to their rights.

[24] I do not think that the cases cited are on a par with this one on the question of self-created urgency. In the *Informal Traders* and *Stock* cases, the applicants only launched urgent applications once it became clear that the respondent party had either reneged on a previous resolution of the matter or had repeatedly failed to fulfil its own undertakings to respond to a settlement of the dispute. In the *Grevenouw CC* case, the applicants brought their application within 10 days of the failed meeting between the parties to resolve the issue. In the first two cases, the respondent party had at some stage given the applicants hope or assurances that the matter would be resolved and it was only when those assurances were reneged upon or when it became apparent that the respondent had given the applicants false hope that it became obvious they would have to launch the proceedings. In the *Grevenouw CC* matter, the applicants needed to gather additional evidence before launching proceedings and did so within 10 days of an attempt to settle the matter amicably failed. In this instance, the City gave Nyanda no reason to believe it was amenable to acceding to his claim because it never responded at all to his attorney's letters until late July. When it did so, its response was unequivocal. By that stage, the applicant's attorney should have been ready to launch proceedings within a matter of days at the very latest.

[25] The explanation for doing so only on 14 August, was that it was only on 3 August he received the letter from the respondent confirming the termination of his employment. However, there was no reason based on

any representations by the City that it was reconsidering his position, or that it no longer considered the written contract determinative of his employment status. Accordingly, there is no reason to believe that this confirmation came as a surprise. Everything suggests that by late June Nyanda had already decided on what he believed was his true legal status as an employee and nothing changed since then until he launched his application on 15 August. In addition, in applying for re-appointment he implicitly acknowledged that he expected his initial appointment would come to an end at the beginning of August, as indicated in his contract of employment. To the extent that his view of his employment status and the contract changed, he had no reason to believe that the City shared his view given that it was proceeding with the recruitment process for a new appointment. Nothing the respondent did might have given him false hope of a resolution. If anything, the City's unresponsive attitude and its firm and negative response when it did finally revert to him conveyed the opposite.

[26] Further, Nyanda brought the application at a time when his services had already been terminated more than 10 days earlier and then he did so on unnecessarily short notice. Moreover, to the extent that he relies heavily on the conversion agreement, he ought to have realised that he should have sought to take steps to invoke that remedy before his fixed term contract was due to expire. In *Nowalaza,* the applicants brought the matter to court before the termination of their current fixed term contracts.

[27] In the circumstances, I am not satisfied that the applicant was justified in waiting until 15 August when he launched the application, quite apart from the unjustifiably short time he gave the respondent to oppose it, and the application should be dismissed for lack of urgency.

Merits

[28] Even if I am wrong on the question of urgency, this application ought to be dismissed on its merits. To succeed in an application for interim relief an must satisfy the court amongst other things that he at least has a *prima facie* right though open to doubt.

[29] From the discussion above, the applicant is not entitled to invoke the remedies in the conversion agreement because it is common cause that he did not occupy a level 3 post at the time that agreement was concluded and that the City's conversion of the EMS manager's post was based on a policy approach rather than adherence to the provisions of the conversion agreement. Given the fact that there may be legitimate reasons for distinguishing that position from the Chief Traffic Officer, Nyanda's claim that he had a right to have been made permanent is tenuous at best even on a *prima facie* basis. Insofar as he argues that he had a legitimate expectation of being made permanent, given that his termination has already taken place, the 'horse has already bolted' if he sought to rely on the definition of dismissal in s 186(1)(b)(ii). Even if he had brought his application timeously, his basis for having a legitimate expectation of permanent employment is not on a par with the applicants in the *Nowalaza* case. Their expectation was not merely created by the fact they had occupied the posts which were going to be advertised, but the employer itself had previously asked them to elect if they wished to be permanently employed and had contemplated permanent employment for the applicants on the terms and conditions similar to those in the current fixed term contracts. It was only when the Auditor General expressed a different view that the employer did a *volte face.* In Nyanda's case, insofar as he placed store on the terms of his employment contract even if his appointment was invalid, that contract made it abundantly clear from its commencement that he would have to apply for his previous post like anyone else if he hoped to extend his appointment beyond its fixed term. To the extent that he no longer relies on that contract, his expectation of indefinite employment cannot be established by direct reliance on the enforceability of the conversion agreement nor on any undertaking or representation previously made by the City. Rather it is based on a debatable prospect of being entitled to similar treatment as Mokola. However, in view of my decision on urgency, these comments on the merits are in any event strictly speaking *obiter,* except to the extent they have some relevance to costs.

Costs

[30] Given that the applicant should have brought this application timeously and that the merits were weak, I see no reason why costs should not follow the cause.

Order

[1] The application is struck of the roll for lack of urgency.

[2] The applicant must pay the respondent's costs.

Lagrange J
Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT:	A Bishop instructed by Victor Nkwashu Attorneys
RESPONDENT:	M Naidoo instructed by Moodie & Robertson