Not reportable
Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: J 719/17

In the matter between:

Seshma SUKHA	**Applicant**
and	
MYRAN ANDRE SUKHA	**First Respondent**
AMBANC (PTY) LTD	**Second Respondent**
HIREF SA (PTY) LTD	**Third Respondent**
ROWAN MECHANICAL AND ELECTRICAL CONSULTING ENGINEERS (PTY) LTD	**Fourth Respondent**
ANTON MEYER	**Fifth Respondent**
DERRYL THOMPSON	**Sixth Respondent**

Heard: 4 April 2017
Delivered: 7 April 2017
Summary: Urgent application to uplift suspension. Dismissed with costs.

JUDGMENT

STEENKAMP J

Introduction

[1] The applicant, Mrs Seshma (aka Ramona) Sukha, is married to the first respondent, Mr Myran Sukha. They are both directors of the second respondent, Ambanc (Pty) Ltd. It sells air conditioning units. Myran is also a director of Hiref South Africa (Pty) Ltd, the second respondent. Ambanc has suspended the applicant, who is its Chief Financial Officer, on full pay. She approaches this Court on an urgent basis to have the suspension uplifted.

Background facts

[2] The applicant's husband, Myran, has opened a bank account for Hiref, of which he is also a director. It appears that invoices under the name of Hiref have been sent from Ambanc's bookkeeping system. The applicant objected.

[3] On 9 March 2017 Ambanc launched an urgent application in the High Court (South Gauteng) to interdict Myran and Hiref from conducting business in the name of Hiref and diverting money due to Ambanc to Hiref's account. Myran brought a counter-application asking the court to order that Seshma must cease to act as a director of Ambanc and to attend its offices. The court (Adams J) dismissed both applications.

[4] On 22 March 2017 Myran invited Sesha to a meeting on 24 March for a "performance discussion". At the meeting, Ambanc was represented by Myran and by a co-employee of Ambanc, Anton Meyer (the fifth respondent). It was chaired by an outsider, Derryl Thomson (the sixth respondent). The applicant left when she was denied legal representation.

[5] On the same day, Ambanc suspended the applicant. The suspension notice, issued by Meyer, adviser her that she is suspended "pending an investigation of your conduct by the company".

[6] On the same day, the applicant's attorneys sent Ambanc a letter requesting a host of information about the meeting. They did not receive a response. On 27 March they wrote again, demanding that Ambanc uplift the suspension. They launched this application the next day, to be heard on urgent basis during the court recess.

The relief sought

[7] The applicant seeks the following relief on an urgent basis:

7.1 An order that Ambanc immediately uplifts her suspension.

7.2 The restoration of the *status quo ante* before her suspension.

7.3 An order that Myran and Ambanc return all her company assets to her.

7.4 A declaratory order that her suspension is invalid; and

7.5 Costs on an attorney and own client scale.

The nature of the relief

[8] Mr *Makka* argued that the relief sought is of an interim nature. It is not. He does not ask for relief pending any future eventuality or further court action or application. It is final in nature. The rule in *Plascon-Evans*[1] applies.

Urgency

[9] The applicant says the matter is urgent. Mr *Pottas*, unsurprisingly, says it is not. Most of the reasons she cites for urgency have already been dealt with and dismissed by the High Court. The matter should be struck from the roll for lack of urgency alone. I will nevertheless deal with the merits.

Suspension *ultra vires*?

[10] The applicant's main ground for arguing that the suspension is invalid is that it is *ultra vires*. (Wisely, Mr *Makka* did not argue that it was unfair – if that were the argument, the appropriate forum would be the CCMA in

[1] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) 634E.

terms of s 186(2)(b) of the LRA[2]. She has not referred such a dispute to the CCMA and does not seek interim relief in this Court pending arbitration at the CCMA).

[11] The sole basis for the allegation that the suspension is *ultra vires* is that Meyer did not have the authority, on behalf of Ambanc, to issue the letter of suspension. But that contention fails on the evidence before me, applying the rule in *Plascon-Evans*. The respondents have shown under oath that Meyer is employed by Ambanc; that the applicant knows that and pays his salary; that Meyer is a managerial employee who represents Ambanc in labour matters; and that Myran, the CEO and MD of Ambanc, had authorised him to act on behalf of Ambanc.

[12] The application fail son this ground.

Is the suspension otherwise unlawful?

[13] The applicant has not made out a case that the suspension is unlawful (as opposed to unfair) because it contravenes her written contract of employment, disciplinary code, or any applicable regulation or statute.[3]

Unfairness and exceptional circumstances

[14] The applicant does not rely on her suspension being unfair and does not seek interim relief pending a referral to the CCMA.

[15] In any event, the applicant has shown no exceptional circumstances why her suspension should be uplifted and why she cannot seek redress in due course in the appropriate forum, as required by the LAC in *Booysen*.[4]

[16] And, as the LAC held in *Gradwell*[5]:

> "A declaratory order will normally be regarded as inappropriate where the applicant has access to alternative remedies, such as those available under the unfair labour practice jurisdiction. A final declaration of unlawfulness on

[2] Labour Relations Act 66 of 1995.

[3] Cf *Manamele v Department of Cooperative Governance, Human Settlements and Traditional Affairs, Limpopo* [2013] ZALCJHB 225 para [20].

[4] *Booysen v Minister of Safety & Security* [2011] 1 BLLR 83 (LAC) par [45].

[5] *MEC for Education, North West v Gradwell* (2012) 33 *ILJ* 2033 (LAC) par [34].

> the grounds of unfairness will rarely be easy or prudent in motion proceedings. The determination of the unfairness of a suspension will usually be better accomplished in arbitration proceedings, except perhaps in extraordinary or compellingly urgent circumstances. When the suspension carries with it a reasonable apprehension of irreparable harm, then, more often than not, the appropriate remedy for an applicant will be to seek an order granting urgent interim relief pending the outcome of the unfair labour practice proceedings. "

[17] The applicant in this case has not made out a case that the suspension is unlawful, nor has she asked for a temporary order pending unfair labour practice proceedings. She has not established a clear right to the relief sought. And, as Mr *Pottas* reminded the Court, the words of this Court in *Mosiane*[6] eight years ago still ring true:

> "A worrying trend is developing in this Court in the last year or so where this Court's roll is clogged with urgent applications. Some applicants approach this Court on an urgent basis either to interdict disciplinary hearings from taking place, or to have their dismissals declared invalid and seek reinstatement orders. In most of such applications, the applicants are persons of means who have occupied top positions at their places of employment. They can afford top lawyers who will approach this Court with fanciful arguments about why this Court should grant them relief on an urgent basis. An impression is therefore given that some employees are more equal than others and if they can afford top lawyers and raise fanciful arguments, this Court will grant them relief on an urgent basis.
>
> All employees are equal before the law and no exception should be made when considering such matters. Most employees who occupy much lower positions at their places of employment who either get suspended or dismissed, follow the procedures laid down in the Labour Relations Act 66 of 1995. They will also refer their disputes to the CCMA or to the relevant Bargaining Councils and then approach this Court for the necessary relief. Other employees would still approach this Court for relief in the ordinary manner and not on an urgent basis."

[6] *Mosiane v Tlokwe City Council* (2009) 30 *ILJ* 2766 (LC) paras [15] – [16].

Conclusion

[18] The applicant is not entitled to the relief she seeks. Both parties asked for costs on a punitive scale. Neither party has made out a case for such a costs order, in my view, but I see no reason in law or fairness why costs should not follow the result, as both parties requested.

Order

The application is dismissed with costs.

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Steenkamp J

APPEARANCES

APPLICANT:	Ajay Makka Instructed by N Maharaj.
RESPONDENTS:	R Pottas Instructed by Scholtz & Scholtz.