

Reportable

Delivered 12 October 2010

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN**

CASE NO J2010/10

In the matter between:

VICTORIA MOYA

Applicant

And

STANDARD BANK OF SOUTH AFRICA LIMITED

Respondent

JUDGMENT

VAN NIEKERK J

[1] This is an unopposed urgent application in which the applicant seeks a rule *nisi, inter alia* staying a disciplinary enquiry scheduled to be held on 12 October 2010, pending the outcome of a constructive dismissal dispute referred to the CCMA by the applicant on 1 October 2010. I accept for present purposes that the application is urgent.

[2] The relevant facts are briefly the following. The applicant is employed by the respondent as a director of its cash operations. In August 2010, she was placed on 'special leave' by her superior, Mark Barrett. On 14 September 2010, after a meeting with Barrett, the applicant was placed on formal suspension and

during which the prospect of disciplinary charges being brought against her was discussed. A further meeting was held on 29 September, when the possibility of charges against the applicant was again discussed. At this point, the applicant took the view that she was the victim of a witch hunt, and sent Barrett a letter dated 30 September 2010 in which she tendered her resignation with immediate effect. On the same date, the respondent had addressed a letter to the applicant stating that she was to attend a disciplinary hearing at 8:30 on 12 October 2010. Various charges of misconduct were outlined in the letter, which the applicant states was served on her on 1 October. On 30 September, the respondent addressed a further letter to the applicant in response to her letter of resignation. The letter recorded events that had transpired since May 2010 when a grievance was initiated against the applicant. The letter stated *inter alia* that while the respondent accepted the applicant's resignation, she was obliged to serve a thirty day notice period. On this basis, the applicant's last day of employment was reckoned to be 30 October 2010. The applicant was notified that she remained on suspension until the outcome of the disciplinary hearing, or 30 October 2010. On 8 October the applicant's attorneys sought an undertaking that the respondent would not proceed with the hearing. When no undertaking was given, these proceedings were instituted on a few hours notice.

[3] At the outset of the hearing, I raised with Adv Zondo, who appeared for the applicant, the question whether this court had jurisdiction to grant the order sought. In *Booyesen v South African Police Services & another*, Cheadle AJ held that this court had no jurisdiction under s 157 of the Labour Relations Act (LRA) to intervene in disciplinary proceedings, primarily on the basis that only the CCMA or a bargaining council has jurisdiction to determine the procedural fairness of a dismissal for a reason relating to an employee's conduct. The court also considered the question of intervention from the perspective of the right to fair administrative action (not relevant in these proceedings), the right to dignity, the right to fair labour practices and what was contended to be this court's inherent power to remedy injustice. Under each of these heads, and after an

examination of the relevant constitutional and other statutory provisions, the court held that it had no jurisdiction to intervene in domestic disciplinary hearings. At paragraph [42] of the judgment, Cheadle AJ concluded:

Section 151 (2) is perfectly clear - the Labour Court has the inherent powers of the High Court but only 'in relation to matters under its jurisdiction'. Its jurisdiction, as I have held, does not include interfering with disciplinary hearings.

In the course of his judgment, Cheadle AJ recalled the following passage from *Moropane v Gilbeys Distillers and Vintners (Pty) Ltd & another* [1997] 10 BLLR 1320 (LC), where Landman AJ said the following:

This Court is a creature of statute, albeit a superior court having the status and standing of the High Court with the statutorily conferred inherent powers of a High Court within its jurisdiction. It does not have an all-embracing jurisdiction over the employer/employee relationship. Its jurisdiction is a sporadic one, interspersed in the life cycle of employment. Not only that but the moment of intervention is regulated by statute. Moreover its jurisdiction sometimes indirect. It may supervise the activities of a council or the CCMA dealing with an aspect of the employment relationship but it does not necessarily mean that it may supervise the antecedent activities before a complaint is made and disposed of by the CCMA or a council (at paragraph [25]).

[4] In the present proceedings, the founding affidavit fails to disclose with any degree of clarity which of the applicant's rights the respondent's conduct either impairs or threatens to impair. When pressed to articulate the prima facie right on which the applicant specifically relied to claim interim relief in these proceedings, Adv Zondo sought refuge in the submission that a hearing would necessarily tarnish the applicant's good name and reputation. Indeed, this is the only ground

articulated in the founding affidavit as one that potentially falls into the category of prima facie rights. But the impairment of good name and reputation is clearly an issue over which this court has no jurisdiction. Even if one accepts, as Adv Zondo contended, that the potential for prejudice to the applicant's reputation arises in the milieu of an employment relationship, it does not necessarily follow that the court has the jurisdiction to interdict a disciplinary enquiry from proceeding only because the outcome of that proceeding may impair the reputation of the affected employee.

[5] While Adv Zondo sought to distinguish *Booyesen* on the facts (in *Booyesen* the applicant had claimed that he was incapacitated and unable to participate in disciplinary proceedings) it seems to me that despite the different factual matrix, the principle remains intact, i.e. that the LRA does not confer jurisdiction on this court to intervene in disciplinary hearings, at least not in terms of any right conferred by the LRA, any right to fair administrative action or by virtue of the direct application of any constitutional right to fair labour practices.

[6] Even if my reading of *Booyesen* is too narrow (or if the *Booyesen* decision itself too narrowly interprets the LRA) there are other reasons why this application should fail, not least of which is that when the applicant states that the outcome of the hearing will tarnish her reputation, she does no more than speculate as to the outcome of the enquiry. That outcome may well serve to exonerate her from the charges levelled against her, and present no potential to prejudice her good name and reputation. To the extent that the applicant's case is based on the fact of her resignation, the applicant does not make out a case in the founding affidavit to the effect that she terminated her contract of employment in circumstances where the respondent had materially breached the contract thus justifying her summary cancellation of it. The applicant appears to contend no more than that her pending constructive dismissal dispute obliges the respondent to terminate any disciplinary processes that it might have initiated. Prima facie at least and in the absence of any evidence to the contrary, it seems

to me that the respondent is entitled to hold the applicant to her notice period and to convene a disciplinary hearing within that period.

[7] For these reasons, in my view, the applicant has failed to establish a prima facie right (even one open to some doubt) that would entitle her to the interim relief she seeks. In these circumstances, it is not necessary for me to consider the remaining elements of the applicable test.

I accordingly make the following order:

1. The application is dismissed.

ANDRE VAN NIEKERK
JUDGE OF THE LABOUR COURT

Date of hearing 11 October 2010

Date of judgment 12 October 2010

Appearances

For the applicant: Adv M Zondo, instructed by Legong Manika Inc.