IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Of Interest to other Judges

Case No: J 4519/2018

In the matter between:

MAREDI RAMAKGAHLELA MINAH **Applicant**

and

ELIAS MOTSWALEDI LOCAL MUNICIPALITY **Respondent**

Heard: **19 December 2018**

Delivered: **28 December 2018**

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

[1] The national shame that became known as "*The Great Bank Heist'* related to the spectacular collapse of the VBS Mutual Bank continues to rear its ugly head in this and other Courts[1]. With this urgent application, the applicant, who is the current Municipal Manager of the respondent and placed on suspension, seeks an order that her suspension be declared unlawful; and that the suspension be set aside so that she can be allowed to resume her duties. The respondent opposed the application.

[2] The facts of this case, most of which are fairly common cause may be summarised as follows;

[1] See *Thabo Ben Mothogoane & another v Lepelle-Nkumpi Local Municipality* Case N0: Case no: J 4115/18 (Delivered on 11 December 2018 Per Mahosi J)

2.1 The applicant was officially appointed in terms of a fixed term contract as a Municipal Manager with effect from 1 December 2014. The employment is in terms of section 54A of the Local Government: Municipal Systems Act[2] (The Systems Act). Her terms and conditions of employment are subject to the Local Government: Disciplinary Regulations for Senior Managers (The Regulations)

2.2 As the accounting officer, she conceded to being party to certain investments that were made with VBS Mutual Bank in the financial year 2016/2017 and 2017/2018. She contends that the investments were made on the recommendations of the respondent's Chief Financial Officer, Mr Mapheto, who had also attended to all administrative procedures in regards to those investments. The applicant rightly so, does not absolve herself from accountability.

2.3 The applicant avers that at the time that the investments were made on behalf of the respondent, she was not aware that such investments were made in contravention of section 7 (3) (b) of the Municipal Finance Management Act (The MFMA)[3], which prohibits municipalities from making investments in banks which were not registered in terms of the Banks Act, 1990. VBS is obviously not registered in terms of the Banks Act.

2.4 Upon deposits being made, the applicant averred that she had complied with her obligations to furnish monthly reports detailing the deposits made, which are also reflected in the minutes of the Municipal Council as having been accepted.

2.5 The applicant had also submitted annual reports to National Treasury reflecting those investments, which were also accepted. Equally so, these deposits and investments were reflected in the respondent's

[2] Act 32 of 2000
[3] Section 7 (3) of the PMFA provides that;
".. a municipality may not open a bank account –
(a) Abroad
(b) With an institution not registered as a bank in terms of the Banks Act (Act No 94 of 1990)
(c) Otherwise than in the name of a municipality

annual financial statements, subjected to audits by both the respondent's internal and external auditors, who had not commented on those investments. The National Treasury according to the applicant also failed to appreciate that there was anything wrong with those investments.

2.6 According to the applicant, at the end of February 2018, she received a Provincial Treasury MFMA Circular N0.4 (Banking and Investments dated 27 February 2018 from Limpopo Provincial Government), which served to guide municipalities and associated entities regarding the opening of bank accounts and investments with financial institutions in line with the MFMA. At the time, she had immediately ordered the withdrawal of all investments from VBS.

2.7 The respondent commenced investing with VBS from 9 December 2016 of the financial year 2016/2017, wherein a total amount of R90 000 000.00 was invested in three batches until April 2017. During the financial year 2017/2018, five separate investments were deposited until 15 December 2018 in the amount of R100 000 000.00. The capital amount invested plus interest came to R192 559 000.40, which was withdrawn on 27 February 2018, some few days prior to VBS being placed under curatorship by the Minister of Finance. The applicant's contention is that the respondent did not lose any of its investments, and that on the contrary, it earned an interest of some R2 millon.

2.8 The applicant was advised at a Special Council meeting held on 31 October 2018 that it was resolved that investigations would ensue against her in relation to the allegations of financial misconduct related to the investments made with VBS. A disciplinary board was duly mandated to conduct a preliminary investigation into the matter in accordance with Regulation 6(1) of the Regulations, and to thereafter report back to Council within 7 days.

2.9 On 1 November 2018, the Council issued a notice of intention to suspend the applicant and the CFO Mapheto. She was subsequently served with the notice on 2 November 2018, and advised to give reasons why she should not be suspended. The allegations were essentially that;

2.9.1 She had made and/or authorised investments with VBS Mutual Bank without following the applicable legal prescripts.

2.9.2 She had failed to comply with a duty imposed by the provisions of Local Government: Municipal Finance Management Act 56 of 2003 read with the Regulations and/or any applicable prescripts when investing in the VBS Mutual Bank.

2.10 The applicant submitted her representations on 12 November 2018 as to why she should not be suspended. The disciplinary board also submitted its report to the Council on 27 November 2017. The board concluded that there were no substantial grounds to warrant a further investigation regarding the matter, and that any investigations should be terminated in the light of another investigation conducted by the Limpopo Provincial Treasury.

2.11 Despite the recommendations of the board, the Council nonetheless took a resolution to institute a full investigation into financial misconduct against the applicant and the CFO; to appoint an external investigator to handle the investigation; and further resolved that the CFO and the applicant be placed on precautionary suspension.

2.12 On 27 November 2018, the applicant and the CFO were verbally informed of their precautionary suspension. They had however carried on with their duties. Following correspondence from the applicant's attorneys of record requesting reasons for the suspension, the respondent's response on 3 December 2018 was to indicate that the matter would be dealt with within 14 days.

[3] On 7 December 2018 however, the applicant was handed a notice of suspension with full pay, with reasons stated therein including that her representations were unavailing; that the allegations against her were of a serious nature as they related to financial misconduct; that her seniority as head of administration and accounting officer was also a justification to believe that she may commit further acts of financial misconduct; that it was in the best interests of the Municipality to carry its full investigations in her absence; and that she may be in position of conflict of interest during those investigations.

[4] In contesting her suspension, the applicant contended that since the disciplinary board had decided that there was no reason to continue with the investigations, the Municipality could not simply disregard the board's report and suspend her, as there was no need for further investigations based on that report. She further submits that since the investigations in relation to the VBS Mutual Bank investment were concluded, there were no investigations which she could interfere with.

[5] She further contended that the suspension was not justified in circumstances where the relevant facts in relation to the VBS investments are currently in the public domain, as well as known to the disciplinary board, and forensic investigators as appointed by the Provincial Government. There was according to the applicant, no possibility of her tampering with the evidence, and in the circumstances, since the allegations of financial misconduct related to the investments in VBS, similar conduct was unlikely as VBS has since been placed under curatorship, and further since she had withdrawn all investments from VBS. Accordingly, she submits that the reason for her suspension (investigations) had since fallen away, as no other allegations of financial misconduct were levelled against her.

Evaluation:

[6] Since the applicant seeks final relief, she must therefore establish a clear right; an injury actually committed or reasonably apprehended; and the

absence of similar protection by any other ordinary remedy[4]. Other than these hurdles, the applicant, as argued before this Court, needs to demonstrate that the Court has the requisite jurisdiction to determine the application, and to thereafter satisfy the Court that the application deserves its urgent attention.

[7] In regards to jurisdiction, it was the respondent's contention that to the extent that it was contended in the applicant's attorneys of record correspondence of 2 December 2018 that the suspension was unfair, the court lacked jurisdiction as she should have approached the SALGBC for relief.

[8] The applicant, as I understood her case from the founding papers and submissions made on her behalf, relied on the unlawfulness of her suspension, further contending that if it were to be found that indeed the suspension was unlawful, that would be the end of the matter. The basis of these contentions appear to be Regulation 6 of the Regulations for Senior Managers 2010[5].

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[4] See *Setlogelo v Setlogelo* 1914 AD 221

[5] **6. Precautionary suspension**

(1) The municipal council may suspend a senior manager on full pay if it is alleged that the senior manager has committed an act of misconduct, where the municipal council has reason to believe that-
  (a) the presence of the senior manager at the workplace may -
    (i) jeopardise any investigation into the alleged misconduct;
    (ii) endanger the well-being or safety of any person or municipal property; or
    (iii) be detrimental to stability in the municipality; or
  (b) the senior manager may-
    (i) interfere with potential witnesses; or
    (ii) commit further acts of misconduct.

(2) Before a senior manager may be suspended, he or she must be given an opportunity to make a written representation to the municipal council why he or she should not be suspended, within seven [7] days of being notified of the council's decision to suspend him or her.

(3) The municipal council must consider any representation submitted to it by the senior manager within seven [7] days.

(4) After having considered the matters set out in subregulation (1), as well as the senior manager's representations contemplated in sub-regulation (2), the municipal council may suspend the senior manager concerned.

(5) The municipal council must inform -
  (a) the senior manager in writing of the reasons for his or her suspension on or before the date on which the senior manager is suspended; and
  (b) the Minister and the MEC responsible for local government in the province where such suspension has taken place, must be notified in writing of such suspension and the reasons for such within a period of seven [7] days after such suspension.

(6) (a) If a senior manager is suspended, a disciplinary hearing must commence within three months after the date of suspension, failing which the suspension will automatically lapse.

[9] The issue of whether alternative available remedies are available or not ought to be disposed of quickly. Central to the applicant's case is that the suspension is unlawful. To the extent that the applicant has disavowed any reliance on unfairness, the fact that her attorneys of record had in correspondence to the respondent alleged that the suspension was unfair, is not a bar to the jurisdiction of this court. This Court can only determine this application in accordance with what the applicant had pleaded. To this end, it is trite that the SALGBC would not have jurisdiction to decide whether the suspension was lawful[6]. Accordingly, I accept that no alternative remedy is available to the applicant.

[10] In regards to allegations of unlawfulness of the suspension, and to the extent that the applicant placed reliance on the Regulations in contending a clear right, her further contentions were that there was no basis for the suspension as the misconduct in question was not disputed, that there was no need for further investigations as the issues were now in the public domain with investigations having completed, and that therefore her removal was unnecessary as there was no rational basis under the provisions of the Regulation 6 (1) to continue with the suspension. On these grounds, it was submitted that the charges which were not denied could only be used to institute disciplinary proceedings against her, rather than for the purposes of a suspension.

[11] The respondent's contention is that the applicant has not laid a basis for the allegation of unlawfulness, nor placed any facts before the court to allege and point to the existence of the right to professional reputation (including integrity) and dignity as she had alleged. It was submitted that she had failed to show how such rights have been substantively infringed by the precautionary suspension. In the end, it was contended that the applicant was not entitled to any relief as she has not established any clear rights; had not

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{b) The period of three months referred to in paragraph (a) may not be extended by council."

[6] See *IMATU obo Shihambi and Others v City of Ekurhuleni Metropolitan Municipality and Others* (J1832/18) [2018] ZALCJHB 239 (6 June 2018) at para [15]

shown that she suffered any harm or established any well-grounded apprehension of harm.

[12] In *MEC for Education, North West Provincial Government v Gradwell*[7], it was held that;

> "As a general rule, a decision regarding the lawfulness of a suspension in terms of paragraph 2.7(2) will call for a preliminary finding on the allegations of serious misconduct as well as a determination of the reasonableness of the employer's belief that the continued presence of the employee at the workplace might jeopardize any investigation etc. The justifiability of a suspension invariably rests on the existence of a *prima facie* reason to believe that the employee committed serious misconduct. Only once that has been established objectively, will it be possible to meaningfully engage in the second line of enquiry (the justifiability of denying access) with the requisite measure of conviction. The nature, likelihood and the seriousness of the alleged misconduct will always be relevant considerations in deciding whether the denial of access to the workplace was justifiable."

[13] Even though *Gradwell* dealt with the provisions of "Senior Management Service Handbook" (The SMS Handbook), which applies to senior management in the public service, the principles enunciated therein resonates equally in this case insofar as the suspension of the applicant was effected in accordance with almost similar provisions under the Regulations.

[14] In this case, it was not in dispute that the applicant was afforded an opportunity to give reasons why she should not be suspended. The respondent having rejected her reasons, the applicant however holds the view that the process followed in that regard was a charade or an academic exercise.

[15] It has however been held that the object of Regulation 6 of the Regulations is to afford an employee a hearing before the decision to suspend him or her is taken. That object is achieved by calling on the employee to show cause why he or she should not be suspended pending an investigation or disciplinary

[7] [2012] 8 BLLR 747 (LAC); (2012) 33 ILJ 2033 (LAC) at para [28]

hearing[8]. The mere fact that a Municipal Manager's representations were not accepted for the purposes of a precautionary suspension does not necessarily make an exercise in that regard academic, particularly in view of the factors that the respondent took in rejecting her reasons, which approach is in line with that was stated in *Gradwell*.

[16] In this case, the misconduct in question, which pertains to financial management involving vast amounts of public money was admitted. The misconduct in question is serious in the extreme, and once it was admitted, a clear case of misconduct, rather than a *prima facie* one, has been established.

[17] The principles that can be extrapolated from *Lebu v Maquassi Hills Local Municipality & others*[9], and *IMATU obo Hobe v Merafong City Local Municipality and Others*[10], on which the applicant relied upon are that it is not required of a municipality to set forth *evidence* to show that the person involved may interfere in the conduct of the investigation against him or herself, and that reference to the position of the senior official and the attendant powers and responsibilities that he or she has, read with the allegations of misconduct as set out in the pre-suspension letter, should suffice[11]. Furthermore, it can further be deduced from *Hobe* that it may be necessary to suspend an employee while an investigation is being conducted[12]. In my view, to the extent that a disciplinary board was tasked with conducting *preliminary* investigations, the implications thereof are that its conclusions and recommendations can only be preliminary, necessitating a further investigation.

[18] In line with *Gradwell*, since the misconduct in question in this case is serious, a second line of enquiry is then necessary to deal with the justifiability in denying access to the workplace. The nature, likelihood and seriousness of the alleged misconduct would be the relevant considerations.

[8] See *IMATU obo Hobe v Merafong City Local Municipality and Others* [2017] 10 BLLR 1040 (LC) at para [20]
[9] (2012) 33 ILJ 653 (LC)
[10] [2017] 10 BLLR 1040 (LC)
[11] *Hobe* at para 12.2
[12] At para [15]

[19] Flowing from the above, even if the disciplinary board had made recommendations that there was no basis for a further investigation, its report cannot trump over the Council's resolution that further investigations were still necessary. This is even moreso where such a report given the nature of the investigations should be regarded as preliminary.

[20] The recommendations of the Limpopo Provincial Government as referred to by the applicant[13] further adds impetus to the gravity of the matter of investments with VBS, and the applicant's averments that she would cooperate for the purposes of the disciplinary proceedings or that any further investigation is unnecessary is small comfort given the following observations;

20.1 The mere fact that the applicant had admitted to the misconduct in question cannot by all accounts be the end of the matter. The nature of the investigation should be such that it is important for the Municipality to get to the bottom of the misconduct in question, to further investigate how these lapses took place, and to further put mechanisms in place to ensure that there is no repeat of the misconduct. Those investigations cannot be properly conducted with the applicant being at the workplace given her senior position, as she is clearly conflicted since she was the principal accounting officer with various other officials reporting to her, who might also have been party to the misconduct.

20.2 What is further disconcerting in this case is that the applicant claimed to have been not aware of the applicable prescripts insofar as the investments with VBS were made. Any accounting officer in the position of a Municipal Manager ought to be aware of his or her financial and fiduciary obligations under the provisions of the MFMA, the PMFA and other regulations governing the financial affairs of a municipality and its related entities, and be fairly familiar with those provisions. To claim ignorance of the law under such circumstances can only either point to sheer incompetence on the applicant's part, or at worst, a complete and wilful disregard of these prescripts, which if not checked, the respondent might see a repeat.

[13] At paras 65 – 57 of the Founding Affidavit

20.3 If the facts of this case point to either the applicant's sheer incompetence or wilful disregard of the prescripts and dereliction of duties, how then can it be expected of the Municipality to keep her in its employ, whilst investigations are on-going, with the expectation that she would be trusted to perform her duties with due diligence and care, and be of assistance to any investigation?

20.4 What is even more astonishing in this case is that the applicant, by virtue of the fact that all the investments were withdrawn on time together with interest, seriously and unashamedly contends that the municipality has not suffered any prejudice. On account of this shamelessness, the applicant deems herself to have saved the day. The irony with her contentions is palpable. To borrow from the respondent's counsel's analogy in this case, the applicant's contentions are akin to a pilot navigating an Airbus A380 full of passengers over a densely populated area towards an airport. The pilot, having wilfully broken all known aviation and navigation rules, would somehow manage to crash-land that huge plane in a safe area without fatalities. For the pilot to thereafter gleefully expect a standing ovation and hero's medal, and not be subjected to some investigation to determine the cause of the incident, is in my view perverted and callous. The *maxim*, *commodum ex injuria sua non habere debet* remains apposite in such cases.

20.5 The moral of the above analogy in this case is that the applicant is not a heroine who saved the respondent from the VBS rot contrary to her belief, and she should not be a beneficiary of her own wrong-doing. Nothing should stop further investigations into her conduct and the impact thereof simply because she had conceded to the misconduct, or that the respondent recouped its investments plus interests, or that the disciplinary board had recommended that no further investigations were necessary. The lack of her appreciation of the consequences of her action in my view makes the likelihood of any further financial misconduct on her part more realistic, and to have her at the workplace

whilst the investigations are ongoing would not serve the purpose those investigations were designed to achieve.

18.1 For the applicant to attempt to regard herself as some saviour because the respondent recovered its investments with interest is also cruel irony. This is so in that as things stand, from the report that is in the public domain, the whole scheme and *modus operandi* of the VBS rot appears to have entailed '*robbing Peter to pay to Paul*". Thus, the interests accrued to the Municipality as a result of the investments unlawfully made, is actually money that was literally robbed from ordinary investors, who appeared on our national newspapers and television screens, standing and waiting for hours on end in queues outside VBS Bank branches, with an expectation that they would manage to salvage whatever little investments they had made with that bank. That sight and cruelty as witnessed nationally, should be engrained in our collective memory forever, and the perpetrators and participants in that national tragedy, inclusive of individuals such as the applicant, should hang their heads in shame.

[21] To conclude on the issue of alleged unlawfulness then, it is clear from the pleadings that there is still a need for thorough investigations into how the applicant unlawfully made investments into VBS, and in the light of the concessions made, the municipality has not yet made a pronouncement on her guilt, and it ought therefore in the public interests, be allowed unhindered, to conduct whatever investigations it seeks to conduct, with the aim of getting to the bottom of this tragedy.

[22] In the light of all the above, I am satisfied in the circumstances that the notice of intended suspension was sufficiently clear to have enabled the applicant to make representations. She made her representations which were sufficiently considered by the respondent, and which were equally rejected for sound and rational reasons. There was therefore no obligation on the Municipality to inform the applicant or to demonstrate what other investigations needed to be conducted or the nature of those investigations prior to placing the applicant

on suspension. Accordingly, there can be no complaint that the suspension was unlawful.

[23] A final issue to be dealt with in this case pertains to urgency, it being the applicant's contentions that;

23.1 She was issued with her notice of suspension on 7 December 2018, and had then approached her attorneys of record who were unavailable. She was only able to consult with her attorneys from 11 December 2018, and the papers were settled the following day.

23.2 She was suffering irreparable harm to her professional reputation, integrity and dignity due to her unlawful suspension, and that the prejudice could not be cured through a challenge to the lawfulness of her suspension in the ordinary course, and further that any relief that she may have will not effectively provide her with any form of redress if not granted now.

[24] I accept in this case that based on the timeline, the applicant acted with due diligence in coming to court, and that she did so with the requisite degree of urgency. The mere fact however that an applicant approached the Court with alacrity does not however imply the Court must of necessity regard and treat the matter as urgent. It is more the reasons or the facts set out in the founding papers that determines whether the matter should receive the urgent attention of this court or not, within the meaning of Rule 8 of the Rules of this Court[14], and more particularly, whether a case for final relief has been made out.

[14] See *AMCU v Northam Platinum Ltd* (2016) 37 ILJ 2840 (LC); [2016] 11 BLLR 1151 (LC) at paras [21] – [22], where it was held that;

"What would an applicant who seeks to make out a case of urgency then have to show?

In *Mojaki v Ngaka Modiri Molema District Municipality and Others* , the Court referred with approval to the following dictum from the judgment in *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* :

> "…. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress."

[25] The respondent correctly points out that the only averments made in the founding affidavit are to be found in its paragraphs 49 to 50, where the urgency is relied on the alleged irreparable harm to the applicant's professional reputation, integrity and dignity, due to the alleged unlawful suspension, and the lack of alternative remedies.

[26] It was stated *in Tshwaedi v Greater Louis Trichardt Transitional Council* [15], that;

> '… An applicant who comes to court on an urgent basis for final relief bears an even greater burden to establish his right to urgent relief than an applicant who comes to court for interim relief…'

[27] The applicant not having established a clear right to the extent that it has been found that the suspension is not unlawful, that should ordinarily be the end of the matter. However, given the averments made in regards to the reasons this application should be treated as urgent, the court is compelled to deal with this final issue.

[28] The applicant contends that the grounds of urgency are grounded on the alleged irreparable harm to her professional reputation, integrity and dignity. It should be accepted that any suspension or dismissal for that matter, impacts negatively on an employees' professional reputation, integrity and dignity. It however gets worse where the employee's alleged misdemeanours are related to public funds, or where such misdemeanours are in the public domain, and/or where as evident from the VBS rot, the public demands

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Similarly, *Maqubela v SA Graduates Development Association and Others* dealt with the consideration of urgency as follows:

> "Whether a matter is urgent involves two considerations. The first is whether the reasons that make the matter urgent have been set out and secondly whether the applicant seeking relief will not obtain substantial relief at a later stage. In all instances where urgency is alleged, the applicant must satisfy the court that indeed the application is urgent. Thus, it is required of the applicant adequately to set out in his or her founding affidavit the reasons for urgency, and to give cogent reasons why urgent relief is necessary. As Moshoana AJ aptly put it in *Vermaak v Taung Local Municipality*:
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> > 'The consideration of the first requirement being why is the relief necessary today and not tomorrow, requires a court to be placed in a position where the court must appreciate that if it does not issue a relief as a matter of urgency, something is likely to happen. By way of an example if the court were not to issue an injunction, some unlawful act is likely to happen at a particular stage and at a particular date.'"

[15] [2000] 4 BLLR 469 (LC) at para 11.

'retribution'. In instances however such as in this case, where the misdemeanours are admitted, the public hysteria and rebuke is understandable. The court however is compelled to look at the facts and the law, without being influenced by extraneous factors.

[29] The facts of this case however do not make the applicant's task easier in an attempt to establish whether she has established harm to her reputation, integrity or dignity. In my view, the applicant's contentions in this case in the light of her misdemeanours, her lack of appreciation of the consequences of her conduct, and the impact on ordinary people the VBS tragedy had caused as a result of her conduct can at best be described as narcissistic. The effects of her conduct were not only confined to the respondent. As already indicated elsewhere in this judgment, ordinary and indigent members of our communities have lost whatever little investments made with VBS Bank, with the expectation of returns. The interest paid to the municipality arising from the unlawful investments made by the applicant, are monies that belonged to these ordinary members of our communities as already indicated, who were not so lucky to recoup their investments. Even if they could do so at some point in the future as a result of the curatorship, as at this point (taking into account the holiday season), they have no dignity whatsoever to speak of, and all that they are left with is hope.

[30] The applicant on the other hand despite her gross misdemeanours, is still employed and earning a salary, until the respondent decides to proceed with a disciplinary enquiry against her. For the applicant to therefore be concerned with her reputation, integrity or dignity in circumstances where she was a party to the rot that befell and adversely affected ordinary members of our communities is indeed a cheap shot. In the result allegations of harm to one's reputation, integrity or dignity in the light of the facts and circumstances of this case can hardly serve as a basis for the matter to be treated as urgent.

[31] In conclusion, the applicant has not established a clear right to the relief that she seeks. Her precautionary suspension is not unlawful, and it follows that her application ought to fail. I have further had regard to the requirements of law and fairness in regards to the issue of costs. It is my view that this

application was ill-considered especially in circumstances where the applicant had conceded to the misconduct in question, and where she continues to be placed on precautionary suspension with full pay at the expense of the tax payer.

[32] In such circumstances, this Court has always lamented the fact that well-heeled senior employees are quick to approach it with contrived urgent applications based on no reason other than alleged harm to their reputation, integrity or dignity. The Court has in the past shown its displeasure at such abuse of its processes, and there is no basis in law or fairness, why the tax payer must be burdened further with the costs of defending such ill-considered urgent applications. Accordingly, this court should show its similar displeasure with a punitive cost order, and thus the following order is made;

Order:

1. The applicant's application is dismissed.

2. The applicant is ordered to pay the respondent's costs on attorney and own client scale, including counsel's costs.

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Edwin Tlhotlhalemaje

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant:	HW Sibuyi SC
Instructed by:	Mosomane Inc Attorneys
For the Respondent:	K Mosime
Instructed by:	Nkadimeng Attorneys Inc