

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO.  YES  NO.  
(2) OF INTEREST TO OTHER JUDGES: YES/NO.  YES  NO.  
(3) REVISED.

25/07/2023

DATE

*[Signature]*

SIGNATURE



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J616/23

In the matter between:

**NELLY LETSHOLONYANE**

**Applicant**

and

**MINISTER OF HUMAN SETTLEMENTS**

**First Respondent**

**ACTING DIRECTOR GENERAL: DEPARTMENT OF**

**HUMAN SETTLEMENTS**

**Second Respondent**

Decided: **In Chambers**

Delivered: **25 July 2023**

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**JUDGMENT: APPLICATION FOR LEAVE TO APPEAL**

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**MAKHURA, AJ**

- [1] On 15 May 2023, this Court declared the decision of the first respondent to summarily dismiss the applicant, to be unlawful and reinstated the applicant with effect from the date of her dismissal.

- [2] The respondents have now applied for leave to appeal the above judgment and order. They raise six (6) grounds upon which they seek leave to appeal. The applicant opposes this application. I address these grounds below.
- [3] The sixth ground is that this Court has no jurisdiction to entertain the application. Reliance is placed on the same judgment which I addressed in detail in paragraphs 17 to 19 of the main judgment. Again, the same arguments are advanced, and this Court is alleged to have erred in finding that it has jurisdiction. The application was brought in terms of section 77(3) and 77A(e) of the Basic Conditions of Employment Act (BCEA)<sup>1</sup>. The applicant's case was not based on fairness. *Mohlala-Mulaudzi v Property Practitioner Regulatory Authority and Another*<sup>2</sup> is no authority for the proposition that this Court has no jurisdiction to entertain a claim based on section 77 of the BCEA. This ground has no merit.
- [4] Grounds 1 to 5 are all directed at the finding that the decision was unlawful. First, the respondents argue that I should have considered that clause 2.6 of Chapter 7 of the Senior Management Service (SMS Handbook) states that for more serious form of disciplinary action, the employer "may initiate a disciplinary enquiry" and that the representations made by the applicant was part of the disciplinary process as contemplated and set out in clause 2.6 above. What is contemplated in this provision and other provisions of the SMS Handbook is that for the less serious offences, there is no requirement to hold a formal disciplinary hearing. However, for serious forms of misconduct, a disciplinary hearing must be constituted where the initiator and chairperson must be appointed, and the chairperson given the powers to pronounce on the appropriate sanction.
- [5] The argument that the process of written representations constituted a disciplinary process is based on a fundamental misconception of the SMS Handbook and the facts of the matter. After the representations, the Minister decided to place the applicant on suspension. Clause 2.7(2)(c) of the SMS Handbook is triggered

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<sup>1</sup> Act 75 of 1997.



<sup>2</sup> *Mohlala – Mulaudzi v Property Practitioners Regulatory Authority and Another* [2023] JOL 57988 (LC).

immediately after the suspension. The disciplinary hearing must be held within 60 days. Accordingly, even if I accept that the representations were submitted as part of the disciplinary process (which I do not), the Minister faced at least two hurdles. Firstly, she did not show that it was impracticable to hold a disciplinary hearing in terms of the SMS Handbook, justifying a deviation from the prescribed process. However, even if she did, the fact that she became a complainant, initiator and chairperson would have called for more scrutiny of her conduct. Secondly, the Minister decided to place the applicant on suspension after consideration of the written representations. Having taken this decision, she was required to constitute a disciplinary hearing within 60 days.

- [6] The criticism that this Court applied a criminal justice model and standard in finding that the Minister has no power to dismiss because such power is reserved for the chairperson of the disciplinary hearing in terms of clause 2.7(4)(a) of the SMS Handbook is unfounded and without merit. The Minister has undoubtedly given herself powers she does not have. The respondents failed to direct this Court to the source of the Minister's powers.
- [7] Having considered the grounds and arguments upon which leave to appeal is sought and the main judgment, it is my considered view that the appeal would have no reasonable prospects of success. Further, there are no compelling reasons for the appeal to be heard by the Labour Appeal Court. Accordingly, the respondents have failed to satisfy the test for leave to appeal applications.
- [8] Finally, the applicant employee is a successful party in this matter. She approached this Court in terms of section 77(3) of the BCEA to enforce her contractual right. This Court exercised its jurisdiction under the above provision, not the LRA. Therefore, the rule in this case is that costs follow the results unless there are exceptional circumstances. There are no exceptional circumstances to deprive the applicant of costs.
- [9] In the premises, I make the following order:

Order

1. The application for leave to appeal is dismissed.
2. The respondents are ordered to pay the costs of this application, jointly and severally the one paying the other to be absolved.

  
pp   
M. Makhura  
Acting Judge of the Labour Court of South Africa

LABOUR COURT