

VIC & DUP/JOHANNESBURG/LKS

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

DATE: 17 March 2000

CASE NO. J1044/00

In the matter between:

NDHLELA, JOE

Applicant

and

PREMIER SOCCER CLUB AND ANOTHER

Respondents

J U D G M E N T

PILLAY, AJ:

[1] This is an urgent application for disclosure of documents for purposes of a disciplinary enquiry. The applicant seeks an opportunity to file a reply to the respondent's affidavit. The respondent requests that the jurisdictional point be dealt with first. I am able to deal with the jurisdictional point on the papers as they are and the submissions from the bar.

[2] Mr Sihlali for the applicant submitted that the documents requested were relevant and indispensable to a fair enquiry. Furthermore, from the transcript of the enquiry he submitted that the chairperson appeared not to know what his powers were. The documents that the applicant seeks may be entirely relevant for the purposes of a fair hearing. Furthermore, the resolution, if it sets out the powers of the chairperson, might also be relevant so that it sets out the terms of reference for the enquiry. However, the relevance or

otherwise of the documents, are matters which must be pertinently placed before the chairperson of the enquiry for a ruling. If the chairperson has not had an opportunity, it is premature for this court to intervene. This court has declined to intervene in proceedings where a final decision has not been made. That is not to say that the court has no jurisdiction to do so. There may be circumstances when, in the interests of justice, such an intervention may be warranted.

[3] Crucial to the consideration whether the court should intervene is whether the applicant has an alternative remedy. The labour relations regime is such that the applicant does have remedies which it has not exhausted before approaching the court. The first is that the chairman of the enquiry must be invited to make a ruling on the disclosure of documents. If his ruling is wrong, then the applicant can invoke the second remedy, that is to ask the CCMA, if he is dismissed that is, to hold that his dismissal was unfair for want of a fair hearing. If the applicant is unhappy with the outcome of the CCMA proceedings he may approach this court on review.

[4] To approach the court before these steps have been exhausted is premature. The court is generally reluctant to review rulings in pending proceedings. It is being asked in this matter to intervene when the proper authority, i.e. the chairperson of the enquiry, has not itself made a ruling. The fact that the applicant held a very senior position does not affect the legal principle under consideration. If this court were to grant the order, then it must be prepared to open the floodgates for every applicant to approach the court for some or other order in pending disciplinary proceedings. Such a result it would be untenable and inconsistent with the way in which it was conceived that the new labour relations regime would function.

[5] The application is accordingly refused, the applicant to pay the costs.

PILLAY, AJ

LABOUR COURT OF SOUTH AFRICA

: MR SIHLALI

:

: ADV N A CASSIM SC

: Brian Bleazard Attorneys

: 17 MARCH 2000