

JUDGMENT

PRICE WATERHOUSE COOPER (PWC) 5th Respondent

THE CHAIRPERSON: VHEMBE FET COLLEGE COUNCIL 4th Respondent

THE PRINCIPAL : VHEMBE FET COLLEGE 3rd Respondent

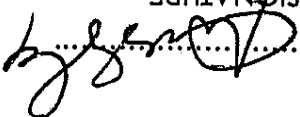
DIRECTOR GENERAL: DEPARTMENT OF HIGHER EDUCATION AND TRAINING 2nd Respondent

MINISTER OF HIGHER EDUCATION AND TRAINING 1st Respondent

MUNDALAMO NTSHENGEDZENI ADOLF Applicant

and

In the matter between:

(1)	REPORTABLE: YES / NO	☒ YES / ☐ NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO	☒ YES / ☐ NO
(3)	REVISED.	
	DATE	27/11/2014
	SIGNATURE	

CASE NO: 470/14

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA
(functioning as LIMPOPO LOCAL DIVISION, THOHAYANDOU)



[1] This matter came before my brother Mpshe AJ on 17 July 2014 as an urgent application in terms of which the applicant sought the following orders:

1.1 Treating the application as one of urgency in terms of Rule 6(12)(a).

1.2 Declaring that the precautionary suspension of the applicant dated June 2014 imposed by the 1st Respondent be declared unlawful.

1.3 Directing that with immediate effect the 1st and 2nd Respondents uplift the applicant's precautionary suspension and permit him to resume duties as Deputy Principal Corporate services of the 4th Respondent.

1.4 Ordering 1st, 2nd and 3rd Respondents to disclose and furnish the investigation report prepared by Price Waterhouse Coopers (PWC) (6th Respondent) during September / October 2013 and

1.5 Costs of suite on attorney and client scale.

[2] The application was then postponed to the 24th day of July 2014 for arguments before me.

[3] The application is opposed by 1st to 5th Respondents who filed opposing affidavits and also raised the following points in *limine* namely:

- 3.1 lack of urgency;
- 3.2 absence of a cause of action; and
- 3.3 material disputes of fact.

- [4] In light of my ruling on the first objection in *limine* I did not find it necessary to proceed to deal with the second and third points in *limine*. It is however my *prima facie* view that regards being had to the range of material facts in dispute the court would not have been able to resolve some of the disputes on the papers. It is also conceivable that the applicant should have realised that a serious dispute of facts on the papers was bound to develop.
- [5] I accordingly deal with the first point in *limine* later in this judgment.
- [6] It would be appropriate to set out briefly the facts regarding the background of this matter for the proper perspective of this application.
- [7] The Applicant is an employee of the Department of Higher Education and Training (1st Respondent) stationed at Vhembe further Education Training (FET) College (4th Respondent). The applicant is the Deputy Principal Corporate Services since June 2009.
- [8] During the year 2012 investigations were initiated by the 1st Respondent on a range of allegations of financial mismanagement and also financial

mismanagement relating to tenders corruption. The JET education service was tasked to conduct such investigations. The said investigating forum was unable to make any finding.

[9] A second investigation was conducted on the same allegations by the same JET education services. The applicant was not furnished with reports of the second investigation despite demand.

[10] During August to October 2012 another investigation was conducted on similar allegations by the office of the Limpopo Premier. Despite demand the applicant was not provided with reports of the outcome of the investigations.

[11] During October 2013 there was yet another investigation conducted on the same matter by Price Waterhouse Coopers (PWC), 6th Respondent.

[12] It is again strange that even in the latest investigation, the applicant was not furnished with a report on the findings despite demand.

[13] On 11 April 2014 applicant received a letter from the 1st Respondent giving notice of the intended precautionary suspension. The reason advanced in the letter was "You are disrupting the PWC forensic investigation that is currently underway at Vhembe FET College in the form of attempts aimed at delaying the process".

[14] On the 2nd July 2014 applicant received another letter from 1st Respondent advising applicant of his immediate precautionary suspension pending investigation by the PWC on serious allegations.

[15] It was against this background that applicant approached this court by way of an urgent application seeking orders as set out in paragraph [1] above.

[16] In their answering affidavits the 1st to 5th Respondents raised *points in limine* referred to in paragraph 3 above.

[17] At the hearing of this matter Advocate GI Hulley (SC) with him Advocate P. Verveen appeared on behalf of 1st to 5th Respondents. Mr Vhutshilo Nange, an attorney, appeared on behalf of the applicant.

[18] I must pause to mention that I am indebted to Counsel for both parties in referring me to various useful legal authorities.

[19] I now return to the first point in *limine*.

LACK OF URGENCY

[20] Mr Nange vehemently argued that the matter was urgent to warrant dispensing with forms and times prescribed by the rules. Mr Hulley argued to the contrary submitting that the circumstances of the case did not warrant departure from established filing and sitting times of the court. In his words Mr Hulley argued "*there are no sufficient grounds for the applicant to jump the queue*".

[21] It is trite that in urgent applications applicant should demonstrate:

21.1 the urgency and

21.2 the degree of the urgency to justify the matter to be treated as

urgent.

22.1 The explanation advanced by the applicant as to why this matter is urgent is that the applicant will remain suspended throughout. I fail to understand how applicant's mere suspension would render the application urgent particularly when the suspension is with benefits pending finalization of the investigation.

22.2 The applicant also submitted that he will suffer prejudice in that his name and reputation is being tarnished and he is continuously suffering psychological harm.

[22] Regarding the element of urgency the present application manifested the following shortcomings:

See: Luna Meubel Vervaardigers (Edm) Bpk v Makin t/a Making Furniture Manufacturers 1977(4) SA 135 (W) at 339 E-H

IL & B Marcow Caterers vs Greatermans SA Ltd & Another

Aroma Inn (Pty) Ltd vs Hypermarkets Pty (Ltd) & Another 1981 (4) SA 108 (C) at 113 – 114.

22.5 It is trite that the party seeking urgent relief should set out the reasons for urgency and why urgent relief is necessary. The applicant provided no factual detail to support his allegations of prejudice or harm to his dignity or reputation.

(D) at 469 C – E.
See Hart v Pinetown Drive-in Cinema (Pty) Ltd 1972 (1) SA 464

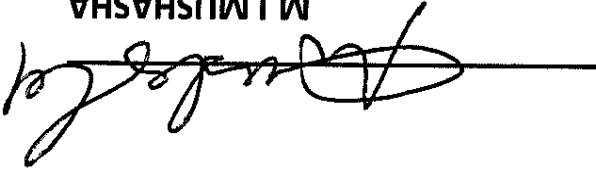
22.4 In motion proceedings the affidavits take the place of the essential evidence which would be led at a trial.

22.3 There is also no explanation provided as to why the submission of the PWC report is urgent.

In my view, the upliftment of suspension may still be achieved by other means and failure by this court to intervene on urgent basis would not lead to grave injustice.

ACTING JUDGE OF THE HIGH COURT

M J MUSHASHA



of two Counsels.

with costs which shall include those attended upon by the employment

[33] In the result, the application is struck off the roll for lack of urgency

point in *limine*.

establish urgency in his papers. I accordingly uphold the Respondents first

[25] In the circumstances I rule that the applicant has dismally failed to

required by sub-rule 6 (12)(b) of the Uniform Rules.

set forth explicitly the circumstances which render the matter urgent as

[24] Be that as it may I am accordingly of the view that applicant has failed to

which the papers were prepared.

shortcomings should occur. It may have been attributable to the haste in

[23] It is regrettable, in the view which I take of the matter that these

Counsel for the Applicant	:	Mr VL Nange
Instructed by	:	Vhutshilo Nange Attorneys
Counsel for the Respondents	:	Adv GI Hulley (SC) with him Adv. P Verveen
Instructed by	:	Verveen Attorneys
Heard on	:	24 July 2014
Judgment delivered on	:	27 November 2014