IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not reportable

Case No: 2025-043863

In the matter between:

MADONSELA ZANDILE	**Applicant**
and	
THE LEGAL PRACTICE COUNCIL	**1st Respondent**
NZUZA CHARITY	**2nd Respondent**
BRIEL IGNATIOS	**3rd Respondent**
SISOL LABOUR PROJECTS	**4th Respondent**
MAGOBATLOU SOLOMON	**5th Respondent**
TOKISO DISPUTE SETTLEMENT (PTY) LTD	**6th Respondent**
AHMED CACHALIA	**7th Respondent**

Heard: **2 April 2025**

Delivered: **This judgment was handed down electronically by circulation to the parties' legal representatives by email and publication on the Labour Court's website. The date for hand-down is deemed to be 14 April 2025.**

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

[1] The mandate of the first respondent, Legal Practice Council (LPC), is to set the norms and standards in the legal profession. In accordance with section 5 of the Legal Practice Act[1], the LPC's objectives are *inter alia*, to promote and protect the public interest; enhance and maintain the integrity and status of the legal profession; to determine, enhance and maintain appropriate standards of professional practice and ethical conduct of all legal practitioners and candidate legal practitioners.

[2] It follows that if the LPC or its officials do not live up to the above ethos, the legal profession as a whole and the judiciary should be concerned. This application, *albeit* concerned with the final relief sought by the applicant, has its genesis in the alleged unethical conduct of legal practitioners, who are said to have been involved in an elaborate corrupt scheme with the employees of the LPC, with a view of enabling them to circumvent the LPC's regulatory processes, more particularly into their conduct and fitness as practitioners.

Background:

[3] The applicant, (Ms Zandile Madonsela), is employed by the LPC since 2019 in its Gauteng Office as an Administrator in the Risk and Assessment Department. During 2024, it came to the attention of the LPC through an anonymous tip-off and an internal investigations, that its employees in the Risk and Compliance Department in Gauteng, were involved in a corrupt scheme with legal practitioners in exchange of money, which included the facilitation of irregular and unlawful falsification of attorneys' audits, and irregular issuing of Certificates of Good Standing and Fidelity Fund Certificates.

[4] Disciplinary proceedings were instituted against the employees who were allegedly involved in the scheme including the applicant. Some of these employees have elected to resign mid-stream the proceedings.

[5] With this application, the applicant approached this Court on an urgent basis, seeking a declaratory order that any disciplinary proceedings against her by the

[1]Act 24 of 2014.

First, Second (Executive Officer of LPC), Third (Director), Fourth, Fifth (Initiator), Sixth and Seventh (Chairperson of Disciplinary enquiry) Respondents (respondents) be declared as unlawful, unconstitutional and a breach of her employment contract. She also contended that the respondents are in breach of a settlement agreement between the parties in terms of which they had agreed that the disciplinary process against her will be terminated in exchange for providing information related to the involvement of other employees and assist the LPC's on-going investigations. The sixth and seventh respondents have not filed answering affidavits.

[6] This application was launched on 31 March 2025 against the following background;

6.1 Resulting from the tip-off, the applicant was placed on precautionary suspension on 11 May 2024. On 20 January 2025, she was served with a notice to appear at a disciplinary hearing scheduled for 27 January 2025. Broad charges of fraud, falsifying documents pertaining to the corrupt scheme with legal practitioners as referred to above were preferred against her.

6.2 At the first sitting of the hearing, the applicant sought legal representation which was granted. The matter did not proceed on account of unavailability of her legal representatives and was re-scheduled for 30 January 2025.

6.3 At the hearing on 30 January 2025, the applicant through her legal representatives raised various preliminary points, including demanding a discovery of further documents. The Chairperson of the hearing issued a ruling on 7 February 2025 effectively disposing of the preliminary points. The hearing was re-scheduled for 10 February 2025.

6.4 The matter did not proceed on 10 February as the applicant contends that she was declared medically unfit. In her absence, her legal representative entered into settlement discussions with the Initiator. The LPC contends that the discussions came after the applicant's legal representatives had indicated that she was in possession of evidence

that implicated other employees that were involved in the corrupt scheme with the legal practitioners. The applicant's legal representatives further indicated that the applicant would provide this information to the LPC on condition that the disciplinary hearing against her will be permanently terminated.

6.5 The Initiator had confirmed with the applicant's legal representative that if she provided any credible information to the LPC that was not already in its possession or knowledge, then the disciplinary hearing would still proceed against her, but that should the chairperson find her guilty on the charges, then the LPC would make submissions that she be issued with a lesser sanction rather than a dismissal. The applicant's legal representatives were also informed that any settlement arrangements would however have to be sanctioned by the Executive Officer of the LPC.

6.6 It is not in dispute that on 20 February 2025, the applicant in the light of the conditions of her suspension, was granted access to the premises and to her computer and emails, for the purposes of printing and providing the information as promised by her legal representatives.

6.7 On 27 February 2025, the applicant had provided the information to the LPC in a hardcopy format. Upon the perusal of the information, the LPC concluded that it (the information) was inconsistent with the one already in its possession, and/or was of no value to its investigations. Against these conclusions, the LPC informed the applicant through her legal representatives on 4 March 2025, that its Executive Officer had decided that the disciplinary hearing against her should proceed on 2 and 4 April 2025, as previously agreed before the Chairperson on 10 February 2025 when the matter was postponed.

6.8 In a response on 14 March 2025, the applicant's legal representatives *inter alia* complained about breach of the settlement agreement, the unlawful nature of the disciplinary proceedings, and spoliation of her

evidence which she had voluntarily handed over to the LPC, and which she required to be returned to her.

6.9 In response, the LPC on 17 March 2025, sent correspondence to the applicant's legal representatives and essentially refuted that a settlement agreement was reached on 10 February 2025; or that there was any breach in that regard; or that the disciplinary proceedings were unlawful, or that there was any spoliation of evidence. The applicant's legal representatives were further advised that the disciplinary hearing would proceed on 2 April 2025 as previously scheduled.

6.10 On 24 March 2025, the applicant's legal representatives sent correspondence to the LPC, indicating *inter alia* that it came to their attention that the sixth respondent (TOKISO), under whose auspices the Chairperson of the disciplinary enquiry was appointed, had acted in 'compromising' a disciplinary hearing which involved the SABC and its employees. The applicant essentially cast aspersions on the impartiality of the Chairperson based on his appointment by, and involvement of TOKISO in her disciplinary hearing. Her legal representatives demanded that in the light of this information, the disciplinary proceedings ought to be permanently stayed.

6.11 In a response on 28 March 2025, the LPC indicated that the SABC matter had no bearing on the applicant's disciplinary hearing and was irrelevant to the outcome of her hearing. It was reiterated that the disciplinary hearing would proceed on 2 and 4 April 2025.

The urgent application and evaluation:

[7] This application was launched on 31 March 2025, and served on the respondents via e-mail on the same date at about 16:09. The matter was enrolled for a hearing on 1 April 2025. The applicant's attorneys then sent another e-mail confirming that the matter was instead enrolled for 2 April 2025.

[8] The respondents complained about the truncated time periods set by the applicant, and having given them less than one business day to answer to the

founding affidavit, which spanned 142 pages together with its annexures. There is no doubt that the respondents' complaints are indeed legitimate. There was no justification in the light of the extensive and prolix nature of the founding affidavit, for the applicant to set such stringent truncated time periods. This is particularly in the light of the clearly self-created urgency as shall be dealt with below.

[9] Because of the unreasonable truncated periods, the matter had to be postponed when it came before the urgent court on 2 April 2025, on the basis that the applicant was only served with an answering affidavit on the morning of the hearing and needed to file a replying affidavit .

Urgency:

[10] Central to the respondents' opposition is that this application is not urgent, and that any urgency claimed is self-created. This was in view of the timeline since the applicant was informed on 17 March 2025 that the disciplinary hearing would proceed on 2 and 4 April 2025. Yet this application was launched on 31 March 2025.

[11] The applicant contends that the matter is urgent in that any continuation of the disciplinary hearing is unlawful, a breach of her contract of employment and of the settlement agreement reached between the parties that the proceedings would be terminated, and in addition, due to the alleged spoliation of her evidence. The applicant further averred that the application was urgent in view of the requirements of final relief which she seeks having been met.

[12] The requirements to be met when urgent relief is sought are trite emanating from familiar authorities[2]. Whether a matter is urgent depends on the relief sought seen in the context of the facts of a case, and not purely based on the mere say-so of the applicant. This Court under the provisions of Rule 38 of its Rules may dispense with the forms and manner of service provided for in the

[2] See *Jiba v Minister: Department of Justice and Constitutional Development and Others* (2010) 31 ILJ 112 (LC) at para 18; *Tshwaedi v Greater Louis Trichardt Transitional Council* [2000] 4 BLLR 469 (LC) at para 11; *Dynamic Sisters Trading (Pty) Limited and Another v Nedbank Limited* [2023] ZAGPPHC 709 (21 August 2023); *Luna Meubel Vervaardigers v Makin and* Another 1977 (4) SA 135 (W) at 136H-137F).

Rules of Court where urgent relief is sought. The applicant must demonstrate explicitly why the matter is said to be urgent and why she will not be afforded substantial redress at a later hearing. Further considerations the Court must take into account are whether the urgency claimed is not self-created; the interests of the respondent party, any prejudice the respondent may suffer if the matter is disposed of on an urgent basis, and whether the requirement of urgent final relief have been met.

[13] One of the fundamental requirements when seeking urgent relief is to approach the Court at the first available opportunity[3]. This in my view implies that where harm, prejudice or unlawfulness is likely to arise from a set of facts, a party must take immediate action to protect its rights against the alleged harm.

[14] In this case, the applicant sought to argue that the application is urgent based on the fact that she had satisfied the requirements of final relief she seeks (a clear right; a reasonable apprehension of irreparable harm and imminent harm to the right; and no other satisfactory remedy available to her)[4]. Clearly these requirements are a separate and distinct issue to that of the requirements of urgency as already pointed out above. They do not in themselves determine whether a matter is urgent.

[15] Notwithstanding the above, the facts of this case clearly point to the urgency claimed being self-created. Based on the applicant's grounds for urgent intervention, it can be accepted if ever there is any urgency in this matter it ought to have been triggered on 4 March 2025, with the LPC's response on 4 March 2025, when it informed the applicant's legal representatives that the information she had provided was of no value and that the hearing would proceed on 4 April 2025. It is at that point that she ough to have acted.

[16] The applicant nonetheless took 10 days until 14 March 2025, when she had through her attorneys, continued to engage the LPC in long correspondence between that date and 17 March 2025, when the LPC reiterated its stance that the hearing would proceed. Thus, all other submissions regarding the alleged

[3] *Association of Mine Workers and Construction Union and others v Northam Platinum Ltd and another* [2016] 11 BLLR 1151 (LC).
[4] *Setlogelo v Setlogelo* 1914 AD 221 at 227

perception of bias in the proceedings resulting from the Chairperson's association with TOKISO which she allegedly became aware on 24 March 2025 in my view constitute a red herring. TOKISO's alleged involvement in the SABC matter had nothing to do with the appointment of the disciplinary hearing Chairperson in the applicant's disciplinary proceedings. The events after 4 March 2025 could not have triggered urgency, hence the conclusion that such urgency is self-created.

[17] Against the above considerations, the facts of this case point to the urgency claimed as being self-created, in the sense that the applicant was supine and took her own time in bringing this application[5]. She only approached this Court when the penny had dropped that the disciplinary hearing was going to proceed on 4 April 2025. The consequence of a finding of self-created urgency is fatal to any urgent application.

[18] Of importance is that the applicant has not stated in her founding affidavit why it should be concluded that she lacks substantive redress in due course. In *East Rock Trading 7*[6]*,* the Court held that a delay in instituting proceedings is not on its own a ground for refusing to accord a matter urgency, and that the issue is whether despite the delay, the applicant can or cannot be afforded substantial redress at the hearing in due course. It is trite that what amounts to substantial redress depends on the circumstances of the case, and the nature of the rights involved, and is a distinct issue from that of a lack of an alternative remedy. Thus, if the applicant can demonstrate that she will not be afforded substantial redress at the hearing in due course, then the matter should be accorded urgency. If, however, such substantial redress is available in due course, then the Court ought to refuse to accord the matter urgency[7].

[19] The applicant has however not indicated in what manner it can be said that she has no substantial redress in due course. She elected to address the issue by equating it to a lack of alternative remedy, which did not assist her case.

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[5] *Roets N.O. and Another v SB Guarantee Company (RF) (PTY) Ltd and Others* [2022] ZAGPJHC 754 (6 October 2022) at para 26.
[6] At paras 8 – 9.
[7] *Mogalakwena Local Municipality v The Provincial Executive Council, Limpopo* [2014] ZAGPPHC 400; [2014] 4 All SA 67 (GP); 2014 (JOL32103) (GP) at paras 63 – 64.

However, her reliance on the provisions of section 1(c) of the Constitution in claiming urgency or lack of substantial relief in due course is misplaced. Her allegations that she will be denied the right to adduce evidence are contrived particularly since evidence has not even been led at the disciplinary proceedings, where she can address her concerns before the Chairperson. In any event, the failure to address the issue of substantial redress in due course in the founding affidavit is as equally fatal. The matter accordingly ought to be struck off the roll, and for it to be re-enrolled on the ordinary roll on proper notice and compliance with the Rules of this Court[8].

Other considerations:

[20] Even if the Court were to strike the matter off the roll, it is however compelled to dispose of it finally, lest it found itself back on the Court's ordinary roll, and unnecessarily so. The Court's approach is based on the primary grounds upon which final relief is sought, and which it needs to be said are lacking in merit.

[21] Prior to dealing with the three main grounds upon which final relief was sought, it needs to be reiterated that recently, the Labour Appeal Court (LAC) in *Passenger Rail Agency of South Africa and Others v Ngoye and Others (Ngoye)*[9] observed that it has become commonplace, mostly for white-collar employees, to challenge their dismissals or disciplinary action initiated by their employers on the basis of unlawfulness and/or breach of contract, rather than to dispute the fairness of the employer's action. This observation is apposite to the facts of this case.

[22] It is accepted that this Court has jurisdiction and the discretion to intervene in on-going internal disciplinary proceedings[10]. The proviso however is that for the

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[8] See *SARS v Hawker Air Services (Pty) Ltd* [2006] ZASCA; 2006 (4)SA) 292 (SCA); *Public Servants Association of SA and Another v Minister of Home Affairs and Others* [2016] ZALCJHB 439 at paras 12 - 18; *City of Tshwane Metropolitan Municipality v Afriforum and Another* 2016 (6) SA 279 (CC) at paras 24 – 25; *IL&B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd and Another; Aroma Inn (Pty) Ltd v Hypermarkets (Pty) Ltd and Another* 1981 (4) SA 108 (C)

[9] [2024] ZALAC 18; (2024) 45 ILJ 1228 (LAC); [2024] 7 BLLR 706 (LAC); 2025 (2) SA 556 (LAC) at para 1

[10] *Jiba v Minister: Department of Justice and Constitutional Development* at para 11 – 12, and also para 17, where it was held;

> "Although the court has jurisdiction to entertain an application to intervene in uncompleted disciplinary proceedings, it ought not to do so unless the circumstances are truly exceptional. Urgent applications to review and set aside preliminary rulings made during the course of a

Court to intervene, let alone on an urgent basis, the applicant must demonstrate that exceptional circumstances necessitate such intervention, and to also demonstrate factors giving rise to such exceptional circumstances, such as that grave injustice will result should the Court not intervene[11].

[23] It can however only be repeated that an extremely high threshold has been set for this Court's to intervene in such instances. This fact could not have been clearer than in *Jiba*[12] where it was stated that the circumstances must be *'truly exceptional'*. To emphasise the point, the LAC in *Member of the Executive Council for Education, North West Provincial Government v Gradwell*[13], held that the court's intervention should only be permissible in cases of *extraordinary or compellingly urgent circumstances*[14].

[24] The rationale behind this stringent approach is that this court should respect employers' prerogative to institute disciplinary proceedings against its employees, and should be wary of unwarranted intrusion, lest the expeditious resolution of internal disputes is frustrated. A second consideration is that the LRA's dispute resolution system remains intact and should be utilised by employees who are aggrieved by internal disciplinary processes. It has repeatedly been stated that this Court should not regarded as the first port of call when employees complain about internal disciplinary processes, and it is not its function to micromanage those processes. Most importantly, the court

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disciplinary enquiry or to challenge the validity of the institution of the proceedings ought to be discouraged. These are matters best dealt with in arbitration proceedings consequent on any allegation of unfair dismissal, and if necessary, by this court in review proceedings under s 145."

[11] See *Booysen v Minister of Safety and Security and others* [2011] 1 BLLR 83 (LAC); (2011) 32 ILJ 112 (LAC) at para 54, where it was held;

> "To answer the question that was before the court a quo, the Labour Court has jurisdiction to interdict any unfair conduct including disciplinary action. However, such an intervention should be exercised in exceptional cases. It is not appropriate to set out the test. It should be left to the discretion of the Labour Court to exercise such powers having regard to the facts of each case. Among the factors to be considered would in my view be whether failure to intervene would lead to grave injustice or whether justice might be attained by other means. The list is not exhaustive."

See also City of Cape Town v South African Municipal Workers Union obo Abrahams & others [2012] 6 BLLR 535 (LAC) at para [16]; *Magoda v Director-General of Rural Development and Land Reform and another* [2017] 12 BLLR 1267 (LC); *Zondo and Another v Uthukela District Municipality and Another* (2015) 36 ILJ 502 (LC) at para 38; *Phahlane v National Commissioner of the South African Police Services and Others* [2020] ZAGPPHC 159 (4 May 2020) at paras 25 – 29.

[12] At para 17

[13] (2012) 33 ILJ 2033 (LAC).

[14] *Id* at para 46

must equally guard against the abuse of its own process by employees whose primary objectives are not noble but are merely intended to frustrate internal disciplinary processes in order to escape from having to answer to allegations of serious misconduct.

[25] The respondents were correct in pointing out that the applicant failed to show any exceptional circumstances in this case. In fact, such circumstances are not specifically pleaded in the founding affidavit. In the applicant's replying affidavit, it was however contended that exceptional circumstances only need to be demonstrated where she relied on unfairness under the provisions of the LRA, which provisions she had disavowed. She contended that she relied primarily on the direct application of the Constitution in challenging the alleged unlawful disciplinary proceedings, which she viewed as an infringement of her employment contract, and with further specific reliance on the provisions of section 158 of the LRA and section 77(3) of the Basic Conditions of Employment (The BCEA) [15], and other attendant provisions for a declaratory order.

[26] It is not clear what is the legal basis of the argument that an applicant need only demonstrate exceptional circumstances where reliance is placed on the provisions of the LRA[16]. What is clear is that the court based on the provisions of section 175(5) of the LRA, will lack jurisdiction to determine the fairness of employer action where the nature of the dispute is one that requires it to be determined by arbitration.

[27] It is trite that exceptional circumstances necessary for this court's intervention will always depend on the facts of each case, and not necessarily on the provisions of statute relied on. Such circumstances as already indicated, may include whether miscarriage of justice, grave injustice or prejudice might otherwise occur. To exempt litigants from demonstrating exceptional circumstances where they seek the urgent intervention of this Court simply because they have disavowed reliance on the fairness procedures under the

[15] Act 75 of 1997
[16] See *Magoda v Director-General of Rural Development and Land Reform and another* [2017] 12 BLLR 1267 (LC) at paras 16 - 17

LRA will be untenable. To hold otherwise will create a special category of disputes, where anything outside of the four corners of the fairness regime under the LRA, may be a basis for the court to intervene irrespective of the facts of the case. This contention must be rejected. Thus, where a litigant seeks to challenge an on-going disciplinary process whether on the basis of fairness, legality, unlawfulness, validity or any complaint, there is still an obligations to demonstrate truly exceptional circumstances for this Court to intervene.

[28] Against the above, the Court will examine the three primary grounds upon which the applicant seeks its intervention in the disciplinary proceedings.

(i) Reliance on the applicant's contract of employment:

[29] In *Ngoye*[17], the LAC reiterated that this Court is afforded jurisdiction in terms of section 77(1) read with section 77(3) of the BCEA, and that these provisions authorise the Court to hear and determine any matter concerning a contract of employment, irrespective of whether a basic condition of employment constitutes a term of the contract. The LAC upon an exposition of various precedents confirmed that the legal position in regards to this Court's jurisdiction in such matters is as set out by the Constitutional Court in *Baloyi*[18]. In this regard, the LAC held that;

> 'It (Constitutional Court) found that more than one cause of action flows from the termination of a contract of employment, a litigant could therefore choose which cause of action to pursue. It is only where a litigant chose to pursue an unfair dismissal claim, that the dispute resolution procedures in the LRA would apply. The same could not be said where the litigant chose to pursue the dispute as a contractual claim, as contractual rights existed independently of LRA rights, as confirmed in *Makhanya*. *Gcaba* was used as authority for the assertion that jurisdiction must be based on the pleadings and not on the substantive merits.' [19]

[30] The LAC having expressed its reservations regarding the approach in *Baloyi*, however pointed out that;

[17] At para 5.
[18] *Baloyi v Public Protector and Others* [2020] ZACC 27; 2021 (2) BCLR 101 (CC); [2021] 4 BLLR 325 (CC); (2021) 42 ILJ 961 (CC); 2022 (3) SA 321 (CC).
[19] At para 23.

> 'The motive for litigants choosing to follow an alternate route to that which is set out in the LRA is seemingly to be awarded a quicker remedy than that which is available in terms of the LRA. However, it appears that litigants are not aware of the requirements that must be met to qualify for a contractual remedy such as specific performance or damages. This is potentially the reason for the proliferation in the use of contractual recourse.'[20]

[31] The essence of the authorities referred to in *Ngoye*, and deriving from the LAC's own pronouncement on the issue of jurisdiction, is that since the use of contractual recourse is unhindered, litigants must take heed of the impediments that exists in obtaining a successful contractual remedy when deciding on the cause of action to be pursued. This was so in that if a claim is made in terms of contract, only contractual remedies are competent. Thus, unlike in the LRA, the claimant must prove an unlawful breach, bearing in mind that specific performance consequent upon a breach is a discretionary relief. The LAC warned that employees should think carefully about the prospects of success before deciding to lodge contractual disputes or challenge the lawfulness of dismissals or other disciplinary action. Thus, while this Court had jurisdiction to deal with other alleged unlawful employer conduct, this however did not translate into a successful outcome for litigants[21].

[32] Against the above principles, the applicant had made numerous references to the LPC Disciplinary Code and her contract of employment. It is not necessary for the purposes of this judgment to repeat these provisions relied upon in claiming unlawfulness. All that needs to be said is that the applicant had complained about non-compliance with procedures and the alleged confiscation and spoliation of her evidence and thus a denial of her right to present evidence and state her case. She complains about the lack of partiality of the Chairperson based on his association with TOKISO.

[33] It is my view as already indicated, that all these grounds are utter red herring. Since January 2025 when the disciplinary hearing was scheduled to commence, that hearing is not even near started. The proposition that the

[20] At para 29.
[21] At paras 29 – 30.

Chairperson's partiality is suspect is without any merit, and if this was due to the two rulings (on discovery and postponement), these rulings are not even issues that are before this Court. If the partiality of the Chairperson is suspect based on his association with TOKISO, this proposition is clearly hogwash and is based on conjecture without any foundation to the extent that the merits of the allegations against the applicant have not even been ventilated. Worst still, rather than seeking a formal recusal of the chairperson due to any perceived impartiality, this has not been done. To repeat, any basis of the alleged unlawfulness of the entire disciplinary process based on any of the provisions of the contract of employment is contrived and ought to be rejected.

[34] Further as it was correctly pointed out on behalf of the respondents, and further in view of what was said in *Ngoye*, any alleged breach of a contractual provision in the employment contract alleged to be unlawful and can give rise to a claim for either specific performance or damages. More fatal to the applicant's arguments that there was a breach of her contract of her employment, is that she has not in her Notice of Motion or anywhere in her papers, sought the relief of either specific performance or damages for the enforcement of the alleged breach. This put paid to the applicants' allegations of a breach of her contract.

(ii) The alleged settlement agreement:

[35] Any suggestion that the LPC is in breach of a settlement is even more ludicrous. It is common cause that in the absence of the applicant at the disciplinary hearing scheduled for 10 February 2025, the Initiator and the applicant's legal representative had entered in some sort of settlement discussions, the outcome of which the applicant has completely misconstrued and deliberately misinterpreted for her own nefarious reasons.

[36] In confirmation of the discussions with the applicant's legal representative, the LPC through its HR representative, Mr Sifiso Dlungele had on 11 February 2025, recorded that both parties reached an agreement to *'suspend'* the disciplinary hearing, pending discussions, and that the Chairperson had agreed to the *suspension* (of the proceedings). As part of the discussions, it was agreed that the applicant's representative was to provide the LPC with the necessary

statements and substantive evidence. Significantly, there was no response by the applicant to Dlungele's correspondence. She had not refuted that it was agreed that the proceedings would be *suspended*. Of course, there is a difference between an agreement to *suspend* the proceedings as opposed to *terminate*. The applicant refuses to acknowledge this obvious distinction.

[37] It is common cause that some 12 days after Dlungele's deadline on which the information was to be provided had passed, the applicant had on 27 February 2025, provided some documentation to the LPC, which she contends constituted some 150 pages, and upon which she alleged spoliation.

[38] On 4 March 2025, the LPC Director had refused to sanction any settlement agreement, on the basis that the documents and information shared by the applicant was either within its knowledge or was of no value. The applicant's legal representatives only responded on 14 March 2025 and alleged the breach of settlement agreement, and spoliation of her evidence.

[39] Counsel for the applicant had submitted that the agreement was binding irrespective of whether it was signed by the parties. Other than the fact that this issue raises factual disputes which are non-suited for motion proceedings unless the Court deems it appropriate to dispense with those disputes by application of the *Plascon-Evans*[22] principle, it needs to be said that any verbal agreement cannot be said to be legally binding simply on the say-so of one party.

[40] Our law recognises that verbal agreements are binding and enforceable. This is on condition that they meet the basic contract requirements, being an offer and acceptance, intention to create legal obligations, consideration; legality and capacity. The Court ultimately determines the existence and binding nature of verbal agreements based on the sufficiency of the evidence.

[41] In this case it is safe to conclude that based on the undisputed evidence as per Dlungela's correspondence a day after discussions, the arrangements between the parties was simply to *suspend* the hearing pending the submission of

[22] *Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd.* [1984] 2 All SA 366 (A).

information that the applicant had in her possession. The information that the applicant had provided was not of any value to the LPC, and in such circumstances, the LPC was within its rights to proceed with the hearing in the light of the seriousness of the allegations against the applicant. In the end, clearly there is no sufficiency of evidence to prove intention of both parties to create legal obligations arising from their verbal arrangements, i.e., that the disciplinary hearing will be permanently stopped. The idea that there was indeed an intention to terminate the disciplinary hearing is a figment of the applicant's imagination, with a clear intent to circumvent whatever consequences of the outcome of the hearing. The proceedings were merely suspended, and it would have been illogical for the LPC to terminate disciplinary processes in circumstances where an employee is alleged to have committed serious act of misconduct.

(iii) The alleged spoliation of evidence:

[42] The complaint in this regard was that the applicant's right to adduce evidence has been taken away as the evidence she intended to lead was confiscated or spoliated by the respondents.

[43] For evidence to be regarded as spoliated, the applicant in this case is required to demonstrate that the very same evidence, which is relevant to her case and which she had handed over to the LPC on 27 February 2027 in the presence of her legal representatives, has since been deliberately, negligently, or even accidentally destroyed, or that the LPC has concealed it.

[44] The Court does not deem it necessary to say much on this allegation for the simple reason that the very same evidence that is allegedly spoliated or confiscated, or destroyed, is not only one that she had handed over voluntarily in the presence of her legal representatives, but is in any event in her possession, including on her private G-mail. It is not clear what would be the point of returning information (150 pages of it), which in any event remains in the applicant's possession.

Conclusions.

[45] It is safe for the Court to hold the view on the facts of this case, that the applicant has taken all necessary means to frustrate the finalization of the disciplinary inquiry into serious allegations of misconduct preferred against her. This assessment is based on her attempts in advancing contrived arguments surrounding alleged breach of her contract of employment; alleged unlawfulness of the disciplinary proceedings; and alleged breach of a settlement agreement, which agreement does not even exist either in law or fact. The assessment is further based on the applicant's antics since she was formally notified of the hearing up to the point that she launched this application. Incidents include the postponement of the matter on several occasions when she was not in attendance, or when she raised preliminary points, or when her legal representatives were not available

[46] Arising from the above, it is equally apparent that there is no basis upon which it can be said that the applicant has satisfied the requirements for final relief. It was correctly pointed out on behalf of the respondents that the applicant does not have a clear right not to be subjected to an internal disciplinary hearing. This is even moreso given the gravity of the allegations against her, and the implications thereof (to the extent that the charges are proven), on the integrity and reputation of the LPC and the legal profession.

[47] The applicant cannot claim any injury committed against her because she had not even yet pleaded against the misconduct charges against her. The disciplinary hearing is not even out of the starting blocks because of her various attempts at frustrating its finalisation or at most as evident with this application, to have it permanently terminated. In the end, should an adverse finding be made against her by the Chairperson, like all other multitudes of affected employees, the dispute resolution mechanisms as provided for in the LRA remains available to her as a remedy. To the extent that the applicant sought a declaratory order, it has long been stated that a declaratory order will normally be regarded as inappropriate where the applicant has access to alternative

remedies, such as those available under the unfair labour practice jurisdiction[23]. There is nothing spectacularly exceptional or special about the applicant's case that entitles her to jump the proverbial litigation queue. In the end, a mere claim of unlawfulness does not open the door for final relief in this Court, where strictly speaking, at the core of the complaint is fairness.

Costs:

[48] It can only be reiterated that this Court has constantly rebuked parties for approaching it on an urgent basis based on spurious grounds, and with the main purpose of either stalling or completely putting an end to internal disciplinary hearings. The self-created nature of the urgency claimed in this case and a clear failure to satisfy the requirements of the relief sought point to this pattern. What is even more extraordinary is that given the implications of the allegations against the applicant, she has been legally assisted from inception of the disciplinary hearing, including by Silk. It was never indicated that such services are *pro bono*, nor is it being suggested that she is not entitled to legal representation, let alone by Silk. All that is said is that against a costs order sought against her, it was argued that any such order was inappropriate as she was 'a simple Administrator'. This argument of course does not add to why a costs order is warranted. It is safe to conclude that if the applicant as a 'simple Administrator' can afford the services of a Silk, then she must be able to pay the costs of this application. The fact remains that this application, which was brought on an extremely urgent basis, was ill-considered and misconceived, causing the LPC costs and inconvenience. The LPC was however compelled to oppose it . Furthermore, to the extent that the application was brought *inter alia* under section 77 of the BCEA, the provisions of section 162 of the LRA do not find application, and it follows that costs should follow the results.

[49] Accordingly, the following order is made;

[23] *Mantzaris v University of Durban - Westville and Others* [2000] 10 BLLR 1203 (LC) at 1212; *MEC for Education, North West Provincial Government v Gradwell* [2012] ZALAC 8; [2012] 8 BLLR 747 (LAC); (2012) 33 ILJ 2033 (LAC) at para 46.

Order:

1. The applicants' urgent application is dismissed with costs.

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Edwin Tlhotlhalemaje

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant:	Adv. M. Kufa, instructed by Machaba Attorneys.
For the 1st – 5th Respondents:	Adv L. Adams, instructed by R.W Attorneys