

## WHEN CAN AN EMPLOYEE INTERDICT OR PROHIBIT A DISCIPLINARY HEARING FROM PROCEEDING

In certain matters where an employee finds that a disciplinary hearing is not being conducted properly, or finds that the correct procedure was not followed, such employee can make an application to the Labour Court to interdict the disciplinary hearing. What this essentially means is that the disciplinary hearing will stop until a decision is made by the Labour Court concerning the interdict which is brought by an employee.

In the recent matter held in the Labour Court of **Magoda v Director – General of Rural Development and Land Reform and Another [2017] 11 BLLR 1149 (LC)** an employee working as a civil servant for the Department of Rural Development and Land Reform had been subjected to a disciplinary hearing, however, during the course of the disciplinary hearing, the employee had asked the chairperson of the hearing to postpone the matter due to her feeling sick and unwell.

The chairperson refused to postpone the matter and proceeded to conclude the hearing whereby he would provide his outcome once the evidence led had been considered. The employee decided to interdict the matter as she had not led all of her evidence due to her falling ill during the process.

In order for the Labour Court to interdict a disciplinary hearing it must be proven by the employee that they have a legal right to review procedural rulings which means that provision must be made in terms a contract of employment or in the disciplinary codes and procedures provided by an employer to an employee.

It is further provided by the Labour Court that for an employee to bring an application to interdict a disciplinary hearing it must be proven that due to how the process was handled either by the employer or the appointed chairperson that such employee will suffer irreparable harm or prejudice.

It must then also be indicated that the balance of convenience was in her favour which means that the relief which the employer seeks must be weighed up against the harm which the employee could suffer, therefore due to the process not being followed correctly the employee stands to be at a disadvantage. Lastly the employee must provide that this they had no alternative remedy in the given circumstances.

The court held that the employee had other alternative remedies in terms of the Labour Relations Act (LRA) and that an application to interdict a disciplinary hearing would generally be heard where a disciplinary hearing is uncompleted and as a result would cause great injustice to the employee involved. Therefore the Labour Court held that an employee that interdicts a disciplinary hearing due to gross errors such a procedural defects in a hearing would not warrant an interdict being heard in the Labour Court. The application to interdict was subsequently dismissed by the Labour Court.

Therefore, it should be noted by employers that only in highly exceptional cases the Labour Court will entertain applications to interdict a disciplinary hearing brought by an employee.

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