HB 254-18
HC 2603/18

JAMES MALUSO
versus
DELTA BEVERAGES (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 3 OCTOBER 2018 AND 25 OCTOBER 2018

Urgent Chamber Application

A Sibanda with *Adv S Siziba* for the applicant
Ms J Mugova for the respondent

MOYO J: This is an urgent application wherein the applicant seeks the following interim relief:

> "Pending the finalization of this matter, applicant be and is hereby granted the following relief:
> Pending the finalization of this matter, disciplinary proceeding before the respondent's internal tribunals is hereby stayed."

The facts of the matter are that the parties are an employee and an employer and they have a labour dispute that has been taken to the labour court before. The labour court ordered in the dispute that was before it between the parties that:

> "Appeal being with merit it be and is hereby allowed. The guilty verdict and dismissal penalty in respect of appellant are set aside. The matter is remitted to the respondent to deal with it afresh in a procedurally correct manner paying attention to all the issues raised by the appeal. The hearing is to be done within three months of this order. Each party bears its own costs."

It would appear that the order of the labour court to conduct a hearing within three months was not adhered to by the parties as the order was granted on 20 October 2017 and to date no hearing had been conducted except the hearing that led to the filing of this urgent application which was intended for 3 October 2018.

Applicant avers that the matter is urgent since respondent now wants to conduct a hearing outside the three months provided for by the labour court order and therefore such hearing is unlawful and should be permanently stayed.

The three months from the date of the labour court order should have elapsed on 20 January 2018.

Correspondence between the parties reveals that as early as January 2018, the parties were liasing on the lapse of the three months period and the failure by respondent to convene a disciplinary hearing. Applicant's lawyers wrote to respondent's lawyers on 30 January 2018 to express their clients' views on the failure to convene a disciplinary hearing within the period prescribed by the labour court.

By an email dated 16 February 2016, the respondent's lawyers expressed their client's unwillingness to reinstate applicant and instead offered to negotiate damages in *lieu* of reinstatement.

The parties seemingly went further by way of correspondence but they did not agree. The respondent has raised a number of points *in limine*, the first being that that the matter is not urgent, seeing the three months lapsed in January and applicant did not take any legal steps to protect his rights which were already under threat then and only sought to act eight months later simply because the respondent has called him to a disciplinary hearing.

I tend to agree with the respondent for the following reasons:

a) Applicant's right to a hearing and a finalization of his labour matter became under threat when the three months given by the labour court elapsed and there had been no hearing.

b) The need to act arose at the expiration of the three months period, because with no hearing having been conduct, no assurances on a reinstatement and the actual reinstatement taking place, no agreement on the way forward, applicant needed to act to protect his rights. If applicant had for instance at that juncture approached this court through an ordinary notice of motion, and sought any relief he so wished at the material time, this matter would long have been concluded without the need for urgency.

For applicant to sit back, for eight months, seek to engage in slippery negotiations with no concrete resolutions and only to jump when respondent now wants to proceed with the hearing means that applicant himself had no urgency in dealing with his own predicament.

Urgency entails that once a right is under threat, protection of that right cannot wait. An applicant approaching the court on the basis of urgency must show the court that he acted swiftly in a bid to protect his right against the perceived harm. What is urgent cannot wait, save in exceptional circumstances where cogent reasons are given for the failure to act. An applicant who wants to meet the standard so as to qualify to have his matter jump the queue, must show that he acted reasonably within normal expectations of the rules of urgency to protect his rights. A matter is not only urgent when the day of reckoning arrives, a matter is not only urgent when another party, who has long failed to act appropriately then takes the matter a step further like in this instance, where the respondent long neglected or failed to honour the labour court order, with applicant fully aware of the respondent's attitude, but only sought to rush to court at the last straw of a process that commenced eight months ago.

As it was held in the case of *Kuvarega* v *Registrar General* 1988 (1) ZLR 188, that is not the urgency envisaged by the rules of this court.

It is for these reasons that I uphold the point *in limine* raised on urgency. Respondent raised a couple of other points *in limine* but I hold the view that this application must fail on this very critical point, there will be no need for me to attend to rest of the points.

It is for the reason alluded to herein that I hold that this matter is not urgent and I accordingly decline to hear it on that basis. Applicant is to pay the costs.

Mhaka Attorneys, applicant's legal practitioners
Gill Godlonton & Gerrans, respondent's legal practitioners