REPUBLIC OF SOUTH AFRICA

Reportable
Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

Case no: C 933/2014

In the matter between:

MARCEL GOLDING	Applicant
and	
HCI MANAGERIAL SERVICES (PTY) LTD	First respondent
HOSKEN CONSOLIDATED INVESTMENTS LTD	Second respondent
SABIDO INVESTMENTS (PTY) LTD	Third respondent
e tv (Pty) Ltd	Fourth respondent
REMGRO LTD	Fifth respondent

Heard: **24 October 2014**

Delivered: **27 October 2014**

Summary: Application for urgent interdict of disciplinary hearing and suspension on the grounds that it is unlawful. Held that disciplinary action is not unlawful and that employee must pursue the remedies prescribed by the LRA.

JUDGMENT

STEENKAMP J

LABOUR COURT

Introduction

[1] Marcel Golding is the executive chairman of Hosken Consolidated Investments (Pty) Ltd (HCI).[1] He is also the chief executive officer (CEO) of Sabido Investments (Pty) Ltd and e tv.[2] And he is a director of HCI Managerial Services (Pty) Ltd[3], the entity that pays his considerable salary. HCI has notified him of a disciplinary hearing into allegations of misconduct to commence today, Monday 27 October 2014. He seeks to interdict that hearing, as well as his suspension, on the grounds that it is unlawful. He also seeks ancillary interim relief.

Background

[2] Golding and his then comrade from the days when they both occupied senior positions in the trade union movement, Johnny Copelyn, founded HCI in 1997. It appears that the empire that they eventually built up was based primarily on a gentlemen's agreement. But the agreement has fallen apart and their relationship has deteriorated to the extent that decidedly ungentlemanly behaviour is displayed on the court papers. One of the startling facts of this case is that there is no written contract of employment between Golding and any of the respondents. And as will become clear, a central issue in this case is the question of who Golding's employer or employers is or are.

[3] HCI Managerial Services is the company secretary of HCI. One of the functions it fulfils is to pay salaries. Its directors are Golding, Copelyn and Theventheram Govender.

[4] HCI and Remgro hold shares in Sabido. HCI holds its shares through Seardel Investments Ltd and HCI has the controlling interest in Sabido. Sabido is an investment vehicle for its shareholders and it possesses both media and non-media assets. It owns e tv.

[5] HCI's single largest beneficial shareholder is the Southern African Clothing and Textile Workers' Union (SACTWU).

---

[1] The first respondent.

[2] The second and third respondents.

[3] The first respondent.

LABOUR COURT

[6] The good relationship between Golding on the one hand and Copelyn and other board members on the other hand has deteriorated over the last year. Golding attributes this partly to the increasing role and influence of Yunis Shaik, who represents SACTWU on the HCI board. Like Copelyn, Shaik previously worked for the union. Golding accuses Shaik of attempting to influence e tv's editorial content. For example, on 24 March 2014 Shaik sent Golding and his wife, Bronwyn Keene-Young -- who is employed as chief operating officer of Sabido – an email in the following terms:

"Marcel,

I got a call from Minister Patel[4] today. He says that President Zuma this day opened a new dam. The building of dams is a big issue and has big impact on our country for supply of water etc. He wants for us to cover it tonight.

They have sent as the feed and want for us to use it. As this is a big story, it might be a good lead story of the day. Please raise with newsdesk."

[7] Also during March 2014, Golding bought some R24 million worth of shares in Ellies Ltd, a listed company on the Johannesburg Stock Exchange (JSE). He saw it as a good investment opportunity because one of the Sabido subsidiaries is a free to air satellite platform which is dependent on the distribution of set top boxes. Ellies is a distributor of set top boxes. Golding did not disclose the purchase to the board of HCI or Sabido. The shares were held in a nominee account at Investec. Although Investec is HCI's securities broker and primary banker, Golding says the shares were held in the nominee account for the benefit of Sabido.

[8] Golding only informed Copelyn and Govender of the share purchase on 6 August 2014, on the eve of a Sabido board meeting. They did not support the purchase. It is that share purchase without authorisation that led to the pending disciplinary hearing that lies at the heart of this application.

[9] At about this time, the relationship between the parties deteriorated to the extent that they reached an in principle agreement that Golding would step down from HCI and retain control of only the media assets.

---

[44] A reference to the Minister of Economic Development, Ebrahim Patel, a former SACTWU general secretary.

LABOUR COURT

[10] The parties could not reach a final agreement, mainly because SACTWU did not agree on either of the options proposed by Golding and Copelyn.

[11] On 8 October 2014 the HCI board constituted a special investigative committee to investigate alleged misconduct by Golding concerning the unauthorised Ellies share purchase. Golding attended the board meeting where it was agreed to establish the special committee. He cooperated with and appeared before the committee.

[12] On 13 October 2014 the non-executive director of HCI who chaired the committee, Velaphi Mphande, wrote to Golding in the following terms:

"Dear Marcel

Thank you for your cooperation with the Board's Investigation Committee.

After thorough deliberations by the committee of all the facts before them by all parties, the committee has come to the following conclusion and decision:

1. This matter (Ellies transaction) is very serious and as such requires an immediate disciplinary action.
2. The committee appoints company lawyers ENS to conduct this enquiry.
3. You will be presented with the charge sheet by Tuesday, 14 October 2014.
4. You are suspended with full pay pending the outcome of this enquiry.

Your cooperation in this matter will be highly appreciated."

[13] The next day, 14 October 2014, Mphande sent Golding a further email including the "charge sheet" and stating:

"Further to the communication I sent to you on 13 October 2014, find attached herewith the charge sheet as stated. Also note that Koos Pretorius of ENS (Africa) shall chair the proceedings.

You will be required to present yourself at the offices of ENS Cape Town from 27th of October to 31 October 2014, during these proceedings, to answer to the alleged misconduct levelled against you."

[14] The "charge sheet" reads as follows:

"**YOUR CONDUCT**

During or about March 2014, you:

LABOUR COURT

1. Instructed INVESTEC SECURITIES to buy shares in ELLIES HOLDINGS LTD on terms and conditions within your peculiar knowledge.
2. Acting on your specific instruction, INVESTEC SECURITIES acquired approximately 5 998 660 m shares in ELLIES HOLDINGS LTD at the approximate cost of R24m which shares were held in an un-allocated and unassigned account to be assigned and allocated at your discretion.
3. This instruction to INVESTEC SECURITIES and the acquisition of ELLIES HOLDINGS LTD was effected without the necessary authority and mandate of the board of SABIDO INVESTMENTS (PTY) LTD and or its shareholders.
4. Subsequently, you refused, failed or neglected to make a full and complete declaration and disclosure of the transaction to the management and board of SABIDO INVESTMENTS (PTY) LTD and its shareholders.
5. In the result, and for a period, the monthly and financial statements of SABIDO INVESTMENTS (PTY) LTD may contain miss-statements [*sic*] which you were well aware of and failed to effect a correction thereof.
6. As a result of your conduct you have wilfully caused for the shareholders agreement and the covenants set out therein to be breached and in particular the Specially Protected Matters provisions of that agreement.

THE CHARGES:

Arising out of your conduct aforesaid you are charged with the following acts of misconduct:

1. DERELICTION OF DUTY:

   The wilful breach of your mandate and authority to manage SABIDO INVESTMENTS (PTY) LTD in a manner diligent, regular and proper and in accordance with the provisions of the Specially Protected Matters aforesaid.

2. GROSS NEGLIGENCE:

   The wilful breach of your duty of care for the preparation and fair presentation of annual financial statements that are free from misstatements and the letter of representation to the auditors of SABIDO INVESTMENTS (PTY) LTD.

3. DISHONESTY

   The wilful concealment of the transaction following the acquisition of the shares of ELLIES HOLDINGS LTD from:

LABOUR COURT

(a) the management and board of directors of SABIDO INVESTMENTS (PTY) LTD

(b) the management and board of directors of HCI LTD

for an extended period of time.

4. BREACH OF FIDUCIARY DUTY:

(a) for failing to present a corporate opportunity for consideration;

(b) for having prejudiced the consideration of the corporate opportunity;

(c) for acting in a manner that has resulted in a conflict of interest;

(d) for using information acquired during the course and scope of your employment for personal benefit.

5. BREACH OF THE ETHICS POLICY

Your conduct is in breach of the ethics policy that has the result of undermining the commitment to good corporate governance."

[15] On 16 October 2014 Golding was locked out of his office.

[16] On 17 October 2014 Golding's attorneys addressed a lengthy letter to HCI's board of directors. They set out their view that only the boards of Sabido and e tv have the authority in law to charge and suspend him. They demanded that HCI withdraw the suspension and disciplinary hearing by 15:00 on Monday, 20 October 2014, "failing which urgent court proceedings will be instituted to obtain appropriate relief".

[17] HCI did not do so. Instead, Shaik wrote to Golding's attorneys on 20 October 2014 and stated that he is not employed by Sabido or e tv, but by HCI and HCI Managerial Services, through which he renders management services to those subsidiaries. He stated that Golding was only suspended as an employee and not as a director. He also called upon Golding to attend the disciplinary hearing, failing which it would proceed in his absence.

[18] Golding launched these proceedings on an urgent basis late on Wednesday, 22 October 2014. The application – comprising 155 pages – was served on HCI at about 1600 on that day and filed only the next day. It was set down for hearing on Friday 24 October 2014, and called upon HCI to deliver its answering papers by 10:00 on 23 October 2014.

LABOUR COURT

The relief sought.

[19] The relief that Golding seeks is far ranging. Although it is cast in the form of a rule nisi, it would, if granted, have the effect of halting the disciplinary hearing that is set to commence today, Monday, 27 October 2014. He asks for a rule nisi calling upon the first to fourth respondents[5] to show cause on the return day, 21 November 2014, why an order should not be granted in the following terms:

19.1 Declaring that the applicant is an employee of Sabido and e tv;

19.2 declaring as unlawful the decision made by HCI to convene a disciplinary hearing in respect of the matters referred to in the charge sheet;

19.3 directing Sabido and e tv to take such steps as may be necessary in the circumstances to prevent HCI from disciplining their CEO, i.e. Golding;

19.4 declaring Golding's suspension to be unlawful;

19.5 declaring HCI's conduct in disciplining Golding "as a result of his assertion of his beliefs with respect to freedom of the media is inconsistent with the Constitution and, to the extent of that inconsistency, unlawful";

19.6 ordering HCI forthwith to restore the applicant's possession of the office at the premises of e tv at Longkloof Studios, Darters Road, Gardens, Cape Town, occupied by him;

19.7 declaring the applicant's suspension to be an unfair labour practice;

19.8 declaring the holding of the disciplinary hearing to be an unfair labour practice.

[20] The applicant further asks that subparagraphs 1 to 5 operate as an interim interdict pending the return day; and that subparagraphs 7 and 8 operate as interim orders pending the outcome of the arbitration in an unfair labour practice dispute that he referred to the CCMA on 21 October 2014, the day before launching the urgent application.

[5] He seeks no relief against Remgro.

LABOUR COURT

Urgency

[21] The applicant asks for an order dispensing with the provisions of the rules of this court relating to the time and manner of service and disposing of the matter as one of urgency in accordance with rule 8.

[22] Mr *Pretorius*, for HCI[6], argued that any urgency is self-created. The applicant was informed of the disciplinary hearing, due to commence on 27 October, on 14 October. He waited nine days to launch the application. He gave HCI, in effect, four court hours in which to file answering papers responding to an application comprising more than 150 pages and addressing complex factual issues and questions of company law and employment law.

[23] In support of his argument that this amounted to an abuse of court process, Mr Pretorius cited the case of *Gallagher v Norman's Transport Lines (Pty) Ltd*.[7] In that case, Flemming DJP expressed the view that allowing only two working days for the delivery of answering affidavits in an urgent application was inadequate. In the case before me, the applicant took nine days to draft its founding papers and then afforded HCI less than one day to deliver answering papers. Mr *Kahanovitz* argued that the application is urgent by its very nature. The matter was heard on Friday. The disciplinary hearing is due to commence today. He says that the relief sought is in the form of a rule nisi; and that, in any event, the respondents could have asked for more time. But had they done so, it would in any event have had the desired effect for the applicant, i.e. to prevent the hearing from going ahead today.

[24] As Prest[8] points out, a matter which is inherently urgent may be rendered not urgent and fall outside the provisions of the [High Court] rules where an applicant delays in bringing the application as one of urgency. A delay of nine days may not appear to be lengthy, given the deploringly slow pace at which the wheels of justice often turn; but in circumstances where

[6] Mr Pretorius appeared for the first and second respondents. I will refer to them jointly as "HCI" except where it is necessary to distinguish HCI Management Services.

[7] 1992 (3) SA 500 (W).

[8] C B Prest, *The Law & Practice of Interdicts* (Juta 1996) at 260.

LABOUR COURT

the applicant knew when the disciplinary hearing was due to commence and yet gave the respondents less than one day before this application was to be heard to file answering papers, having taken nine days to draft his own lengthy founding papers, I agree with Mr *Pretorius* that the urgency is self-created.

[25] The application should be struck from the roll for this reason alone. I will nevertheless deal with the merits.

The requirements for urgent interim relief

[26] The requirements for urgent interim relief are well known. It is that is that contained in *Webster v Mitchell.*[9] The applicant must show:

26.1 a *prima facie* right (although open to some doubt) to the final relief that will be sought in due course;

26.2 an apprehension of irreparable harm, if the application is not granted and the applicant ultimately establishes his claim;

26.3 that the balance of convenience favours him; and

26.4 the absence of any other satisfactory remedy.

[27] In considering whether the applicant has established a *prima facie* right, I shall deal with each of the elements of the relief that he seeks and the right upon which he relies.

Is the decision to discipline unlawful?

[28] The applicant's principal argument in support of his claim that HCI's decision to discipline him is unlawful, is that he is not employed by HCI, but by Sabido and e tv. The principal question to answer in this case is whether HCI is his employer and thus has the power to discipline him.

LABOUR COURT

[9] 1948 (1) SA 1186 (W). See also *Setlogelo v Setlogelo* 1914 AD 221. Recently, in *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* (CCT 38/12) [2012] ZACC 18 (20 September 2012) the Constitutional Court endorsed the applicability of the *Setlogelo* test.

Who is the employer?

[29] Golding says he is employed by Sabido and e tv, and not by HCI. In support of this argument, he explained that his productive capacity is placed mainly at the disposal of those entities. The office he occupies is in the e tv office building, but as his counsel says in his heads of argument, "he occupies this office not only as an employee of e tv but also as director of the holding company [HCI] in which he also owns substantial shares. Golding has only ever held one office per location and, at August 2014, the offices of HCI and e tv were contained in the same building in Gardens. Until the move of HCI's offices to Sea Point, Golding occupied an office in the HCI office suite and only moved into a new office in the e tv suite when HCI moved into its own building."

[30] Sabido and e tv are subsidiaries of the holding company, HCI. The Companies Act[10] defines a "group of companies" as a holding company and all of its subsidiaries; and a "holding company", in relation to a subsidiary, means a juristic person that controls that subsidiary. The parties in this case have not placed sufficient evidence before the Court to show decisively that HCI controls Sabido and e tv as its subsidiaries as contemplated in ss 2(2)(a) and 3 of the Companies Act. But at the very least, applying the rule in *Plascon-Evans*[11], the evidence shows that Sabido and e tv are subsidiaries of HCI.

[31] Golding, as CEO, is clearly an employee of Sabido and of e tv. But that does not mean that he is not an employee of HCI. The Labour Appeal Court and the Supreme Court of Appeal have held that highly placed employees in a group situation who perform services on behalf of a number of entities usually have more than one employer.[12] That is clearly the case in this instance.

LABOUR COURT

[10] Act 71 of 2008.

[11] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] 2 AllSA 366 (A); 1984 (3) SA 623 (A) at 634 H-I.

[12] *Board of Executors v McCafferty* (1997) 18 *ILJ* 949 (LAC), upheld on further appeal to the SCA on 29 November 1999 (SCA case no 442/97, unreported).

[32] The Labour Relations Act[13] defines an "employee" as –

"(a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and

(b) any other person who in any manner assists in carrying on or conducting the business of an employer."

[33] The first question to ask, then, is from whom Golding receives his substantial remuneration. HCI has attached his payslip to its answering papers. It reflects a gross monthly salary of R480 239, 00 paid by HCI Managerial Services. He does not receive any remuneration from Sabido or e tv. With regard to income tax, the only IRP5 issued to Golding reflects payments and remuneration received from HCI Managerial Services. And as recently as 22 September 2014, Golding accepted an offer to participate in the HCI employee share scheme. That scheme is open only to 'selected full-time employees of Hosken Consolidated investments Ltd ("Company") and its subsidiaries ("Group") with the opportunity to become shareholders of the Company, thereby ensuring that such employees are encouraged and motivated to pursue continued employment with the company in the Group that employs them ("Employer Company") and to contribute to the growth and profitability of the Employer Company and the group as a whole.' The "Employer Company", in turn, is HCI Management Services.

[34] It is common cause that Golding is the executive chairman of HCI. That implies, of necessity, that he is also an employee of HCI. As the court pointed out in *Fisheries Development Corporation of SA Ltd v Jorgensen*[14], there is 'a difference between the so-called full-time or executive director, who participates in the day-to-day running of the company's affairs or of a portion thereof, and the non-executive director who has not undertaken any special obligation'.

[13] Act 66 of 1995 s 213.

[14] 1980 (4) SA 156 (W) 165H, cited with approval in *Mpofu v South African Broadcasting Corporation Limited (SABC) and Others* (2008/18386) [2008] ZAGPHC 413 (16 September 2008) at footnote 8.

LABOUR COURT

[35] I am persuaded on the evidence before me that Golding is an employee of HCI. The decision of the first and second respondents to discipline him is not unlawful. Of course, I express no view on the merits of the allegations of misconduct.

Ulterior motive?

[36] Golding alleges that the only reason that HCI is taking disciplinary action against him is because of an ulterior to force him out. That is not borne out by the evidence. On the face of it, he is being charged with serious misconduct arising from the unauthorised purchase of Ellies shares. Whatever the merits of that allegation, it does not point to any ulterior motive.

[37] The allegations by Golding about interference in the editorial independence of e tv are serious and, on the face of it, not without substance. It is indeed startling and harks back to the tragic time in our history when ministers of the apartheid regime sometimes dictated the contents of news broadcasts on the SABC, that a director of HCI should suggest to the directors of e tv what they should carry as a lead story on the evening news at the behest of a cabinet minister. But the charges forming the basis of the disciplinary hearing that the applicant seeks to interdict have no bearing on editorial content.

[38] The applicant has made out to no case to show that HCI's conduct in disciplining him is "as a result of his assertion of his beliefs with respect to freedom of the media". He has not shown a *prima facie* right to have the disciplinary hearing declared unlawful because it is inconsistent with the Constitution.

Unlawful or unfair suspension?

[39] For the reasons set out above, I also found that HCI had the power to suspend Golding. The actions of the first and second respondents in that regard are not unlawful.

[40] Golding nevertheless argues that his suspension was also unfair because he was not given a hearing before the decision was made.

LABOUR COURT

[41] This allegation may have some merit. Murphy AJA[15] has held that, when dealing with holding operation suspension (as in this case) as opposed to a suspension as a disciplinary sanction, the right to a hearing may legitimately be attenuated. That is so because, as in this case, precautionary suspensions tend to be on full pay with the consequence that the prejudice flowing from the action is significantly contained and minimised. Secondly, the period of suspension often will be for a limited duration. In this case, Golding will only be suspended until the finalisation of the disciplinary hearing, envisaged to be in a week's time. Provided the safeguards of no loss of remuneration and a limited period of operation are in place, Murphy AJA held that the balance of convenience in most cases will favour the employer.

[42] But in this case, Golding was not given the opportunity to make any representations at all before he was suspended. That may well be unfair in itself, despite the fact that he has been suspended on full pay and that it will be of a limited duration.

[43] However, he faces a further hurdle. That is that he has an alternative remedy. As Murphy AJA also pointed out in *Gradwell*[16]:

> "Section 186(2) of the LRA defined an unfair labour practice to mean inter alia any unfair act or omission that arises between an employer and an employee involving the unfair suspension of an employee. Grogan *Workplace Law* suggests that the term 'suspension' in s 186(2) refers only to suspension imposed as a disciplinary penalty and not to the situation when an employer suspends an employee pending a disciplinary hearing. I assume his interpretation rests on the express wording of s 186(2)(b), which reads: 'the unfair suspension of an employee or any *other* unfair disciplinary action short of dismissal in respect of an employee' (emphasis added).
>
> The prohibition evidently targets unfair disciplinary action. That purpose, however, does not operate to exclude unfair acts or omissions in relation to precautionary suspensions. As Grogan rightly points out, in so far as a precautionary suspension invariably forms part of the procedure leading to

[15] In *MEC for Education, North West Provincial Government v Gradwell* (2012) 33 *ILJ* 2033 (LAC); [2012] 8 BLLR 747 (LAC) paras 44-46.

[1616] Supra paras 43 and 46.

LABOUR COURT

disciplinary action, it is inherently disciplinary in nature. Consequently, the dictates of fairness (procedural and substantive) apply to all suspensions equally, regardless of the form a particular suspension takes, be it employed as a holding operation or as a disciplinary sanction or penalty.

…

Disputes concerning alleged unfair labour practices must be referred to the CCMA or a bargaining council for conciliation and arbitration in accordance with the mandatory provisions of s 191(1) of the LRA. The respondent in this case instead sought a declaratory order from the Labour Court in terms of s 158(1)(a)(iv) of the LRA to the effect that the suspension was unfair, unlawful and unconstitutional. A declaratory order will normally be regarded as inappropriate when the applicant has access to alternative remedies, such as those available under the unfair labour practice jurisdiction. A final declaration of unlawfulness on the grounds of unfairness will rarely be easy or prudent in motion proceedings. The determination of the unfairness of suspension will usually be better accomplished in arbitration proceedings, except perhaps in extraordinary or compellingly urgent circumstances. When the suspension carries with it a reasonable apprehension of irreparable harm, then, more often than not, the appropriate remedy for an applicant will be to seek an order granting urgent interim relief pending the outcome of the unfair labour practice proceedings."

[44] In this case, the applicant does seek an order granting urgent interim relief pending the outcome of the unfair labour practice dispute that he referred to the CCMA. But he referred that dispute belatedly, one day before launching this urgent application. He has not taken any steps to have the arbitration before the CCMA expedited. And he has not shown any irreparable harm. The harm to his reputation that he is undoubtedly suffering will be vindicated if he attends the disciplinary hearing and it is found that it did not commit the misconduct complained of. He is not suffering any financial harm. The hearing is set to take place this week. Should he cooperate with the hearing, the suspension – and thus his reputational harm if he did not commit the misconduct – will be short-lived. He has not shown any exceptional circumstances why this Court should intervene, as required by *Booysen*.[17]

[17] *Booysen v Minister of Safety & Security* (2011) 32 *ILJ* 112 (LAC) par [54].

LABOUR COURT

Spoliation

[45] Given my view on the identity of the employer and the lawfulness of its actions, I am not persuaded that the applicant is entitled to have the possession of his office restored to him. He has been lawfully suspended pending the finalisation of the disciplinary hearing. During that period of suspension, he is not entitled to attend the workplace and to occupy his office.

Balance of convenience

[46] The applicant contends that the disciplinary proceedings are "likely to be long", that the harm to the companies of which he is the CEO will be grave, and that his continued suspension will gravely affect his standing in the community. But he offered no evidence for the contention that the disciplinary proceedings are likely to be long. It is set down for one week. The allegations of misconduct are relatively simple. There should be no reason for the proceedings to be drawn out if everyone concerned cooperates. It is by no means certain that the chairperson will find in HCI's favour; even if he does, it is by no means certain that he will recommend dismissal as a sanction; and even if he does, the applicant will have recourse to the dispute resolution procedures prescribed by the LRA and available to any other dismissed employee.

[47] The applicant has also cast doubt on the independence of the chairperson, Koos Pretorius[18]. I share his concern that the hearing will be chaired by HCI's attorney. But, as HCI's counsel pointed out, in almost every disciplinary hearing a representative of the employer acts as the chairperson. It would have been preferable for the parties to agree to a truly independent chairperson, such as a senior attorney or advocate who is not beholden to either of them; or even better, to an enquiry by an arbitrator in terms of section 188A of the LRA. But the appointment of an ENS attorney to chair the disciplinary proceedings does not vitiate those proceedings; and in any event, should the applicant be able to show a

[18] No relation to HCI's counsel.

LABOUR COURT

reasonable apprehension of bias, he can ask for the recusal of the chairperson at the beginning of those proceedings.

Conclusion

[48] The applicant has not made out a *prima facie* right to the relief that he seeks. The balance of convenience does not favour him and, in any event, he has adequate alternative remedies at his disposal as provided for in the LRA. Any harm that he may suffer is not irreparable: he will have a full opportunity to be heard at the disciplinary hearing, and even should his fears of dismissal be well founded, he may use the dispute resolution remedies prescribed by the LRA.

Costs

[49] This court has a discretion to award costs according to the requirements of the law and fairness.[19] The applicant has been unsuccessful. But there is still an ongoing relationship between the parties, acrimonious as it may be. An adverse cost order at this stage, on the first day of the disciplinary hearing, may well jeopardise any hope of restoring the relationship. In fairness, I do not think that a cost order is appropriate.

Order

The application is dismissed.

_____

Anton Steenkamp
Judge

APPEARANCES

APPLICANT:	Colin Kahanovitz SC (with S e Câmara and AA Brink)

[19] LRA s 162.

LABOUR COURT

Instructed by	Herold Gie.
FIRST AND SECOND RESPONDENTS:	Paul Pretorius SC
Instructed by	Edward Nathan Sonnenbergs .

LABOUR COURT