

REPORTABLE

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE – PORT ELIZABETH)**

Case No: 644/2011
Date Heard: 17/06/11
Date Delivered: 30/09/11

In the matter between

FREDERICK PAUL DENNIS

Applicant

and

KOUGA MUNICIPALITY

Respondent

JUDGMENT

REVELAS J

[1] Mr Dennis, the applicant, had been in the employ of the respondent as director of its Department of Planning and Development, when he was dismissed on 31 January 2011, without due notice and without any disciplinary hearing being held into the allegations levelled against him in a charge sheet, which was given to him some time before his dismissal.

[2] The relief sought by the applicant is a declarator to the effect that the “purported termination of [his] employment contract with the

respondent be declared to be unlawful, and in breach thereof". He also seeks "reinstatement" in his former position, with "retrospective effect". In other words, the applicant wants the status quo restored with payment of an amount equal to the salary he would have earned, but for his dismissal.

[3] Noteably, the applicant's complaint is not about a procedurally and substantively unfair dismissal which would have required him to invoke the dispute-resolution machinery available to him in terms of the Labour Relations Act, Act 66 of 1995 ("the LRA"), if I correctly understand the judgment of the Constitutional Court, in *Gqaba v Minister and Security* 2010(1) SA 238(CC).

[4] The applicant has based his claim for reinstatement on an alleged breach contract of certain material terms of his employment, which he maintains were the following:

- (a) The respondent failed to hold a disciplinary hearing before dismissing him, as required by the applicable disciplinary code and procedures being in this case, those provided for in the South African Local Governing Bargaining Council.
- (b) There was no compliance with clause 15.2 of the contract of employment, which enjoins the respondent to effect dismissals in accordance with the LRA. The obligation of the respondent to comply with the LRA was expressly incorporated into the applicant's contract of employment. (The applicant alleges that this term of the contract was breached in that the respondent failed to afford him an opportunity to state his case prior to terminating his contract of employment, and to dismiss him for a "fair reason".)
- (c) The respondent failed to give him the one calendar month's notice

prescribed in his contract of employment.

[5] The respondent, perhaps wisely so, did not attempt to persuade me that the applicant's dismissal was not procedurally flawed. Since there was no hearing at all, it was also not established that there was a lawful basis for the dismissal of the applicant. Allegations of negligence in *inter alia*, selling certain of the respondent's properties without following proper procedures, were made in the charge sheet given to the applicant at some stage prior to his dismissal, but were never proved or even tested in a hearing. He was suspended and invited to a hearing but was dismissed before it could take place.

[6] The respondent opposed the application primarily by challenging the jurisdiction of this Court, as opposed to the Labour Court, to entertain a matter which concerns the dismissal of an employee who seeks reinstatement with retrospective effect. It argued that the applicant should have invoked the dispute-resolution machinery available to him under the LRA.

[7] The respondent's case was that the applicant's claim is quintessentially a labour related matter, which falls within the exclusive jurisdiction of the Labour Court, irrespective of how the applicant has characterized his case in his notice of motion and founding affidavit. In support of the assertion the respondent relied on the following passage in the judgment of *Gcaba (supra)* at paragraph [75]:

"Jurisdiction is determined on the basis of the pleadings, as Langa CJ held in *Chirwa*, and not the substantive merits of the case. If Mr *Gcaba's* case was heard by the High Court, he would have failed for not being able to make out a case for the relief sought, namely review of an administrative decision. In the event of

the Court's jurisdiction being challenged at the outset (*in limine*), the applicant's pleadings are the determining factor. They contain the legal basis of the claim under which the applicant has chosen to invoke the Court's competence. While the pleadings including, in motion proceedings, not only the formal terminology of the notice of motion, but also the contents of the supporting affidavits must be interpreted to establish what legal basis of the applicant's claim is. It is not for the court to say that the facts asserted by the applicant would sustain another claim, cognisable only in another court. If, however the pleadings, properly interpreted establish that the supplicant is asserting a claim under the LRA one that is to be determined exclusively by the Labour Court, the High Court would lack jurisdiction".

[8] Interpreting the papers is not a simple matter. The concept of fairness which is the bedrock of Labour Law, if referred to in litigation concerning dismissals in particular, still seems to cause some practitioners to lose sight of the fact that a labour contract or employment contract is just another contract. The fact that there is a designated specialist court which deals with employment matters does not mean that where an unfair dismissal is alleged, the employee concerned only has recourse to the LRA remedies. Despite what was held in *Gqaba* (*supra*) the jurisdiction of the High Court over labour matters, is still a question which is consistently raised. For almost a decade there has been an ongoing debate about the jurisdictional conundrums presented by section 157 of the LRA with its ouster clause (contained in section 157(1) and the current jurisdiction conferred on the High Court and Labour Court (section 152 (2)). Many judges have had occasion to consider these questions and interpret the various divergent decisions on them. In this judgment I will refer only to those cases which are considered relevant to the facts of this particular matter and which, in accordance with the *stare decisis* principle, are binding. The Constitutional Court considered the question in three of its judgments:

Fredericks and Others v MEC for Education and Training, Eastern

Cape and Others 2002(2) SA 693(CC);

Chirwa v Transnet Ltd and Others 2008 (4) SA 367 (CC);

Gcaba v Minister For Safety and Security (*supra*).

[9] A good starting point in this judgment would be to quote the relevant portions of section 157 of the LRA, in which the Legislator has sought to define the jurisdiction of the Labour Court.

[10] Section 157(1) is the ouster clause which provides that, subject to the Constitution and section 173 (which defines the jurisdiction of the Labour Appeal Court) and “except where the LRA provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in this Act or in terms of any other law are to be determined by the Labour Court”.

[11] Section 157(2) provides that the “Labour Court has concurrent jurisdiction with the High Court” in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution “and arising from –

- a) “employment and from Labour Relations;
- b) any *dispute* over the constitutionality of any executive or administrative act or conduct by the State in its capacity as employer; and
- c) the application of any law for the administration of which the *Minister* is responsible”.

[12] Some consideration must also be given to the reasons why some employees, prefer to seek redress for their dismissals in the High Court, rather than to invoke the dispute-resolution mechanisms of the LRA. The principal objective of the LRA, to provide the effective and expeditious resolution of labour dispute has sadly not been attained. It happens not

infrequently that due to several interim review applications pertaining to rulings of the Commission for Conciliation and Arbitration (“the CCMA”) and other factors, a decade may go by between the actual dismissal of an employee, and a judgment of the Labour Appeal Court or Supreme Court of Appeal, which finally determines the matter. Another factor is the limitation on the amount of compensation which can be awarded under the LRA to an employee who has been successful under the LRA. Section 194 of the LRA distinguishes between ‘automatically unfair dismissals’ and “other” unfair dismissals, for which the maximum amounts payable as compensation are equal to 24 and 12 months’ remuneration respectively. Employees are not always awarded the maximum amount of compensation. For a high earning employee aggrieved about his or her dismissal, the limited compensation under the LRA may sometimes be cold comfort. It is therefore understandable that many dismissed employees would prefer to institute their dismissal claims in the High Court.

[13] The earliest matter in which the Supreme Court of Appeal dealt with a case where an employee sued for damages following an alleged breach of an employment contract and was faced with a jurisdictional challenge was in *Fedlife Assurance Ltd v Wolfaardt*.¹ The respondent in that matter instituted an action for damages his employer (the appellant) for an alleged breach of his fixed term contract in the High Court. The applicant filed a special plea contending that the Labour Court had exclusive jurisdiction in terms of section 157(1) of the LRA. The respondent’s exception to the special plea was upheld on the ground that the Labour Court did not have exclusive jurisdiction over the simple matter of enforcing a contract of employment. On appeal the appellant argued that the respondent had no remedies other than those provided in Chapter 8 of the LRA, and these remedies were not enforceable in the High Court.

¹ 2002(1) SA 49

(Chapter 8 deals with unfair dismissals, compensation and reinstatement). The appellant (the employer) also argued that the remedies available to an unfairly dismissed employee were exhaustive, and that in any event, the common-law right to enforce a fixed term contract was abolished by the LRA. The majority of the Court *per* Nugent AJA, as he then was, (Froneman AJA, as he then was, dissenting) held in paragraph [13] at 57F-G, that the clear purpose of the Legislature when it introduced a remedy against unfair dismissal, had been to supplement the common law rights of an employee whose employment could lawfully terminated at the will of the employer. The court specifically held that Chapter 8 of the LRA was *not* exhaustive of the remedies available to the employee and that he was entitled to sue for damages as he had pleaded a clearly identifiable common-law claim for damages based on a breach of contract. As to whether the respondent's claim for damages, based on his employment contract, was nevertheless a question for determination by the Labour Court exclusively in terms of section 157(1), the learned judge reasoned as follows: if an employee accepted repudiation and cancelled the contract of employment, the Labour Court would not order the primary remedy for unfair dismissal namely reinstatement or re-employment in terms of section 193(2) of the LRA. That would leave compensation, which was limited (section 194(1)) and the employee would not be entitled to damages over and above the amount representing compensation envisaged in section 194. The Court held that where the matter was clearly about a dispute concerning the "fairness" of a dismissal, as opposed to its "unlawfulness", it was a matter which could be adjudicated only by the Labour Court. It was further held that the fact that a dismissal could be both unlawful and unfair did not detract from the aforesaid propositions. Nugent AJA pertinently observed that the respondent had plainly intended to plead a common-law claim for damages arising from the "unlawful" premature repudiation of his contract and had "studiously refrained" from reliance on an unfair labour practice and making a claim for compensation in terms of the Act (paragraph [21]

at 59 I-60 E).

[14] The applicant *in casu*, also stressed the fact that the question of jurisdiction must be determined by considering what has been pleaded and not that the dispute may also be capable of being determined under the LRA.

[15] In *Fredericks and Others v MEC for Education and Training, Eastern Cape and Others* 2002(2) SA 693 the applicants launched proceedings in the High Court to set aside the respondents' refusal of their applications for voluntary retrenchment packages in terms of a collective agreement reached between the parties. The applicants argued that their right to equality and administrative justice, protected by sections 9 and 33 of the Constitution had been breached and that the State, as their employer, had acted in a manner which was procedurally unfair. A Full Bench of the High Court held that its jurisdiction to hear the matter had been ousted by section 157(1) of the LRA, because the applicable Bargaining Council resolution which was published in a Government Gazette constituted a collective agreement in section 24 of the LRA, and not a contractual undertaking to pay voluntary severance packages. The Constitutional Court held that the applicants' dispute was not to be excluded from the jurisdiction of the High Court. O'Regan J, in paragraph [38] of the Court's unanimous judgment stated the following:

"Section 157(1) therefore has the effect of depriving the High Court of jurisdiction in matters that the Labour Court is required to decide, except where the Labour Relations Act provides otherwise. Deciding which matters fall within the exclusive jurisdiction of the Labour Court requires an examination of the Labour Relations Act to see which matters fall 'to be determined' by the Labour Court. It is quite clear that the Labour Relations Act does not confer a general jurisdiction on the Labour Court to deal with all disputes arising from employment".

[16] It was observed in *Gqaba* at paragraph 28 at 250, *Fredericks* was not a labour matter or where direct reliance was placed on the LRA. The applicants based their case on administrative rights.

[17] In *Boxer v Superstores Mthatha and Another v Mbenya* 2007(5) SA 450, the dismissed employee, Miss Mbenya, approached the High Court seeking reinstatement, seven months after her dismissal. She applied for an order to have the disciplinary hearing which preceded her dismissal set aside, and that her dismissal be declared 'unlawful' and also be set aside. In addition, she sought a declaratory order to the effect that her dismissal was unlawful and of no force. She wanted her reinstatement order to be with retrospective effect as in *Chirwa (supra)*. In her founding affidavit she alleged that her dismissal was procedurally and substantively unfair. The High Court dismissed her employer's objection to jurisdiction. The employer's appeal was dismissed and the High Court's jurisdiction upheld. Cameron JA (as he then was) at 453 A-C restated the position of the competing jurisdictions as found in *Fredericks* and *Fedlife*, namely that the jurisdiction of the High Court is not ousted by section 157(1) of the LRA simply because a dispute is one that falls within the overall sphere of employment relations. Provided that the employee's claim as formulated does not purport to be one that falls within the exclusive jurisdiction of the Labour Court, the High Court has jurisdiction even if the claim, (as in the present matter) could also have been formulated as an unfair labour practice.

[18] In *Boxer Superstores* another question arose which is also pertinent in the present matter, namely whether an employee may sue in the High Court for relief on the basis that the disciplinary proceedings and the dismissal were "unlawful" without alleging any loss apart from salary.

Cameron JA's answer to the question is found in paragraph [6] at 453G-H of his judgment:

"In my view, the answer can only be Yes. This Court has recently held that the common-law contract of employment has been developed in accordance with the Constitution to include the right to a pre-dismissal hearing ... This means that every employee now has a common-law contractual claim - not mere a statutory unfair labour practice right - to a pre-dismissal hearing".

[19] In *Chirwa (supra)* the Constitutional Court had another opportunity to consider these questions. It was not a unanimous decision. The facts need to be restated briefly. The applicant was charged with incompetence and notified to attend a disciplinary hearing, which she failed to do, because she objected to the impartiality of the person chairing the hearing. Following her dismissal *in absentia*, the applicant referred a dispute about an unfair dismissal to the CCMA where conciliation was certified to have been unsuccessful and the unresolved dispute had to be set down for an arbitration hearing. At this point she abandoned the dispute-resolution measures provided for by the LRA (arbitration) and chose to approach the High Court seeking to have her dismissal set aside and to be reinstated, on the grounds of the chairperson of the hearing being biased and that she had not been afforded the opportunity to avail herself of legal representation. The High Court reinstated her, having found that the respondent's breach of the applicant's right to natural justice had rendered her dismissal a nullity. The respondent appealed against the High Court's judgment on the basis that the High Court did not have jurisdiction over the matter. The Supreme Court of Appeal upheld the respondent's appeal. Two judges upheld the judgment of the High Court on the basis that the dismissal did not constitute administrative action (*Mthiyane and Jafta JJA*). Conradie JA did so on the basis that the High Court lacked jurisdiction to entertain the matter. Mpati DJP and Cameron JA held that the High Court indeed had

jurisdiction. The applicant then applied for leave to appeal to the Constitutional Court, which was, given the circumstances, naturally granted.

[20] The applicant's main argument in *Chirwa* was that her case was reviewable under Promotion of Administrative Justice Act, 3 of 2000 (PAJA) because the respondent had failed to comply with the Code of Good Practice for dismissals in Schedule 8 of LRA. Skweyiya J, who wrote the majority judgment regarded her case as one contemplated in section 188 of the LRA which is a dismissal which the employer cannot prove was for "*a fair reason*", relating to "*the employee's conduct or capacity*" and was not "*effected in accordance with a fair procedure*". The question of jurisdiction also arose because the applicant was a government employee or civil servant and that her dismissal therefore involved the right to fair labour practices and the right to fair administrative action (for justice). By pleading a failure on the part of her employer to effect a fair procedure in terms of the LRA in dismissing her, the majority of the Court held that the matter was one over which the Labour Court had exclusive jurisdiction and the High Court had none. The majority judgment was also no doubt motivated by the spectre of opening the flood gates to thousands of disgruntled employees seeking to by-pass the LRA by litigating in the High Court.

[21] The minority judgment in *Chirwa* (*per* Langa CJ; Mokgoro and O'Regan JJ concurring) which held that the High Court indeed had the necessary jurisdiction to hear the matter, was founded on the view that the Constitutional Court had already decided in *Fredericks* (*supra*) that the High Court had such jurisdiction. Langa CJ also observed that because the applicant had premised her case on PAJA, the High Court had jurisdiction because section 157(2) of the LRA specifically conferred such

jurisdiction on it.

[22] In the case of *Makhanya v University of Zululand* 2010 (1) SA 62 (SCA), Nugent JA summarized the position of the competing jurisdictions after the *Chirwa* judgment, at paragraph 18 of his judgment as follows:

“Thus to summarize:

- The labour forums have exclusive power to enforce LRA rights (to the exclusion of the High Courts).
- The High Court and the Labour Court both have the power to enforce common-law contractual rights.
- The High Court and the Labour Court both have the power to enforce constitutional rights so far as their infringement arises from employment”.

In terms of the second paragraph quoted above the applicant’s claim for reinstatement should be permitted.

[23] In the *Makhanya* case, the appellant instituted an action against the respondent whom he alleged had terminated his contract of employment in breach of its terms. Despite the termination he continued to render and tender his services for which he was not remunerated. He accordingly sought to enforce payment of his remuneration and other monies, to which he was entitled to in terms of his contract of employment. Notably, he was not seeking reinstatement based on the unlawful breach of his employment contract. The respondent defended the action on the basis that Professor *Makhanya’s* claim was an employment matter over which the High Court had no jurisdiction, as did the respondent in this matter.

[24] Nugent JA described the jurisdictional challenge in *Makhanya* as

curious because claims for enforcements of contracts were commonplace in the High Courts. He then referred to *Fedlife* where the argument that claims for the enforcement of contracts of employment had been excluded from the jurisdiction of the High Courts by the LRA, was rejected. He then added that:

“... if there is any residual doubt as to whether a High Court has the power to consider such a claim it is put to rest by section 77(3) of the Basic Conditions of Employment Act 75 of 1997 (BCEA), which was enacted after the LRA and which makes it perfectly clear that the High Courts have not been divested of their ordinary jurisdiction to enforce contracts”.

[25] The BCEA remedies are for monetary orders and do not include reinstatement. Reinstatement (with retrospective effect and otherwise) is the primary remedy under the LRA when an employee has been unfairly dismissed, unless there are circumstances present which dictate that only compensation should be awarded. An employee seeking damages for reinstatement based on a breach of contract in the High Court may have certain advantages which he would not have had under the LRA as pointed out above. When seeking reinstatement in terms of the common-law, that might not always be the case.

[26] This is what Cameron JA had to say about the remedy sought by the employee in paragraph [9] in *Boxer Superstores Mthatha and Another v Mabenya*:

“... the employee was careful to formulate her claim on the basis that her dismissal was ‘unlawful’. She did not complain about its unfairness; nor did she invoke the benefits the LRA confers on employees through the protection of the Labour Court’s unfair labour practice jurisdiction. It is true that the relief she claimed went far beyond a *declarator*, including reinstatement and back-pay. In *Transnet Ltd and Chirwa*, I observed that the employee’s insistence on approaching the ordinary courts - when the LRA afforded ample remedies,

including retrospective reinstatement and compensation if the employer failed to discharge the burden of proving that the dismissal was both procedurally and substantively fair – could involve a penalty regarding relief. The ordinary courts should be careful in employment-related matters not to usurp the Labour Courts’ remedial powers, and their special skills and expertise”.

[27] His Lordship then pointed out in paragraph [10] of his judgment, that Ms Mbenya might only have been entitled to having the disciplinary hearing set aside and remitted to the employer for another hearing, because she did not exhaust her right to an internal appeal. Because the majority concluded that the appeal should be allowed, this aspect was not taken much further.

[28] The following passage in *Gqaba* at paragraph [74], 262G-263A-B is also important in this regard:

“Where the judgment of Ngcobo J in *Chirwa* speaks of a court for labour and employment disputes, it refers to labour-and employment-related disputes, for which the LRA creates specific remedies. It does not mean that all other remedies which might lie in other courts, like the High Court and Equality Court and can no longer be adjudicated by those courts. If only the Labour Court could deal with disputes arising out of all employment relations, remedies would be wiped out, because the Labour Court (being a creature of statute with only selected remedies and powers) does not have the power to deal with the common law remedies ²”.

[29] Recently, Nugent JA considered this jurisdiction debate in *Manana v King Sabata Dalindyebo Municipality* ³ once again, and said the following about it:

“... a debate that I thought had run its course once *Gqaba* was decided. It was

² Paragraph [73] at 262 F-G, 263 A-B.

³ 345/09 [2010] ZA SCA 144.

submitted that the facts of this case ground a claim for relief under the Labour Relation Act. In those circumstances, so I understood the submission, it cannot be a claim that is good in law in the high courts. Counsel said that the decisions of this court in *Makhanya v University of Zululand*⁴ and *South African Maritime Safety Authority v Makenzie*⁵ support that submission. They do no such thing. The evidence in this case establishes the existent of a contract of employment between the municipality and Mr *Manana* and he wishes to enforce the contract. It is conceded that the high court had jurisdiction to do so, which is clearly does”.

[30] The aforesaid summary of cases show that it has been clearly established that an alleged breach of an employment contract may be enforced in the High Court, provided that the pleadings reflect that. Where the claim against the employer is one sounding in money, the claim can be enforced in the High Court based on a breach of contract. The wider range of remedies provided for in the LRA, should also not be a bar to the High Court to order reinstatement. Where a breach of contract is established, reinstatement may be granted as a form of specific performance. In this particular case, no objection can be raised, such as that the applicant did not exhaust all his other internal remedies, because there was simply no hearing. In such a case, unconditional reinstatement with retrospective effect is the only appropriate remedy, where the dismissed employee chooses to claim specific performance as opposed to claiming damages. However, where a hearing was held and the dismissal is challenged on procedural or other grounds, the warning of Cameron JA in *Boxer Superstores (supra)* should not be ignored. None of those considerations however apply to the present matter.

[31] Counsel for the applicant referred me to the matter of *Mangope v*

⁴ *Supra*, footnote

⁵ 2010(3) SA 601 (SCA).

*SA Football Association*⁶ where Molahlehi J of the Labour Court summed up the applicable principles succinctly and clearly at 1139 F-H to 1140 A-D:

"[17] In general the remedies of an employee whose employment contract has been terminated by an employer can be found in either the concept of breach of contract under the common law or the unfair dismissal concept under the LRA.

[18] In terms of the LRA an employee who claims unfair dismissal has to show that there was a dismissal and once that has been established the employer has to show that the dismissal was for a fair reason. Although, as the authorities have stated, the need for fairness in the termination of employment as set out in the LRA has softened the harshness of a dismissal, it has not taken away the principles governing the need for a lawful termination of an employment contract in terms of the common-law principles neither has it taken away the remedies provided for in terms of the principles of the law of contract. See *Member of the Executive Council, Department of Health, Eastern Cape v Odendaal & Others* (2009) 30 ILJ 2093 (LC).

[20] In terms of the common law any material breach of the terms of an employment contract can be regarded as a repudiation of the contract entitling the affected party (commonly referred to as the 'innocent party') the right to accept the repudiation and sue for such a breach. The affected party may elect to hold the other party to the contract and claim specific performance or claim damages caused by the breach. Breach of a contract generally arises when an employee or an employer fails in a material way to comply with his or her duties as set out in the contract. See *Stewart Wrightson (Pty) Ltd v Thorpe* 1977 (2) SA 943 (A); [1977] 3 ALL SA 267 (A) and *WL Ochse Webb & Pretorius (Pty) Ltd v Vermeulen* (1997) 18 ILJ 361 (LAC); [1997] 2 BLLR 124 (LAC)." (emphasis added)

[32] If the above principles are understood, the question of jurisdiction should not present any difficulty. In this case the applicant's contract of employment ensured him a disciplinary hearing before he could be dismissed. The general principles of fairness as well as the relevant

⁶ (2011) 32 ILJ 732 LC.

provisions of the LRA were also incorporated in his employment contract. Since no hearing was held at all, his dismissal was clearly in breach of his contract. The applicant was entitled to reject the repudiation and hold his employer to the contract. He has based his claim on a breach of his contract of employment which cause of action is set out in his notice of motion and supported by the facts alleged in his founding papers.

[33] The applicant's case is very simple and its facts enabled him to plead a cause of action that would be sustainable in both the High Court and the Labour Court. He has pleaded his case to fall within the High Court's jurisdiction as a breach of contract and he is entitled to do so. The fact that the respondent's conduct towards him also violated his right to fair labour practices, that his dismissal was not for a fair reason, and it was procedurally unfair, does not alter his position. The applicant is also entitled to be reinstated on the same terms and conditions which were applicable to him at the time of his dismissal, in this Court.

[34] The respondent is however not precluded from conducting a disciplinary hearing if it believes there are grounds to do so, once the applicant has resumed his duties in terms of the order I intend making.

[35] The applicant has argued that a punitive costs order should be made against the respondent. I am not inclined to make such an order. The respondent acted in response to a Government directive (on national level) which was aimed at curtailing a waste of public funds by *inter alia*, outlawing the suspension of employees on full pay for long periods and "golden handshakes" in lieu of disciplinary action. The respondent then decided not to keep the applicant on suspension and summarily dismissed him without a hearing. The directive in question may have been

somewhat capricious despite its laudable aims, but the respondent's response thereto, albeit wrong, does not invite a punitive costs order, in my view.

[36] The following order is made:

1. The termination of the applicant's contract of employment without a hearing, constitutes a breach of contract.
2. The respondent is ordered to reinstate the applicant forthwith in his position as Director: Planning and Development, with retrospective effect from the date of his dismissal.
3. The respondent is to pay the applicant's costs, including the costs of two counsel, on a scale as between party and party.

E REVELAS
Judge of the High Court

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