



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case No: **4134/2017**

In the matter between:-

TWILIGHT BREEZE TRADING 119 CC
[Registration number: 2003/065363/23]

First Applicant

SAMILA ABDULA

Second Applicant

and

MANTSOPA LOCAL MUNICIPALITY

First Respondent

**THE MUNICIPAL MANAGER: MANTSOPA
LOCAL MUNICIPALITY**

Second Respondent

NTILANE HANYANE

Third Respondent

CORAM:

MBHELE, J

HEARD ON:

26 OCTOBER 2017

DELIVERED ON:

01 FEBRUARY 2018

[1] On 11 August 2017 a rule *nisi* was granted in favour of the First and Second Applicants calling upon the respondents to show cause why the following order should not be made final:

- 1.1 "That, pending the outcome of the relief claimed in Part B of this application, First and Second Respondent are interdicted and restrained from evicting First and Second Applicants from the property known as Melrose Farm, from which the First Respondent's pound is conducted ("the property).
- 1.2 Second Respondent is interdicted and restrained from threatening, either directly or indirectly, to evict First and Second Applicants from the Property by way of unlawful means.
- 1.3 Pending the outcome of the relief claimed in Part B of this application, First and Second Respondents are interdicted and restrained from giving effect to a decision by either the First Respondent's Council or the Second Respondent, to appoint Third Respondent as Pound Master for the First Respondent.
- 1.4 Pending the outcome of the application for the relief claimed in Part B of this application, Third Respondent is restrained from performing or exercising any rights and / or duties arising out of the decision by the Council of First Respondent and / or by the Second Respondent- to appoint him as Pound Master for the First Respondent, alternatively, arising out of the actual appointment as such.
- 1.5 First Respondent is to pay the costs of this application, alternatively, and in the event that the application be opposed by any of the remaining Respondents, such Respondents who

oppose this application are ordered to pay the costs thereof, jointly and severally."

- [2] In part B of the notice of motion the applicants pray for an order in the following terms:

PART B

- (a) Reviewing and setting aside the decision taken by the Council of First Respondent or taken by the Second Respondent to appoint Third Respondent as the Pound Master for the First Respondent, alternatively, the decision to award the tender for appointment of Pound Master for First Respondent, to the Third Respondent ("the Decision").
- (b) Declaring invalid – and setting aside the appointment of Third Respondent as Pound master for First Respondent under and in terms of the Decision.
- (c) Declaring invalid – and setting aside any contract or Service Level Agreement concluded between First and Third Respondent, subsequent to the Decision, or otherwise concluded with Third Respondent.
- (d) Substituting the Decision with one in terms of which the tender is awarded to the First Applicant, alternatively ordering that the First and / or Second Applicant be appointed as the Pound Master for First Respondent.

Alternatively:

- (e) Ordering that the tender be re-advertised and adjudicated in accordance with the First Respondent's Supply Chain Management Policy.

Alternatively:

- (f) Granting such order as the above Honourable Court deems just.
- (g) Ordering the First Respondent to pay the cost of this application and in the event of it being opposed by any of the other Respondents, that such Respondents, (together with First Respondent) pay the cost of the application jointly and severally.

BACKGROUND

- [3] First applicant is a closed corporation with its registered office at M 739 Thusanong Manyatseng , Ladybrand. The second applicant is the sole member of the first applicant.
- [4] The Second Applicant entered into a service level agreement with the First Respondent in terms of which she

was appointed as the Pound Master for the area of Ladybrand.

- [5] The appointment followed an advertisement by the First Applicant in the local newspaper calling upon individual members of the community to submit applications accompanied by CVs and covering letters for appointment as Pound Master.
- [6] The first applicant responded to the call. The second applicant acted on behalf of the first applicant. The appointment letter was issued in the name of the second applicant. The Second applicant's appointment was for a period of 1 year commencing on 1 July 2014.
- [7] On 30 July 2015 the then Municipal Manager, Selepe (Selepe) addressed a letter to the second applicant informing her that the lease agreement would be renewed for a period of 2 months with effect from 1 August 2015.
- [8] Subsequently, first respondent advertised in the local press seeking applications from interested parties for appointment of Pound Master, with the closing date being 28 August 2015.

"APPLICATIONS ARE HEREBY AWAITED FOR THE POSITION OF POUND MASTER FOR MANTSOPA LOCAL MUNICIPALITY REQUIREMENTS: A sound knowledge of the Pound By-laws of

Mantsopa Local Municipality, Animal Identification Act, 2002 (Act No. 6 of 2002) and the Pound Ordinance, 1952(Ordinance 18 of 1952, as amended)

- Ability to handle animals
- Ability to identify different sickness in animals and quarantine of such animals
- Ability to liaise with State Vet on all aspects of animals in the pound
- A valid driver's licence
- Previous experience as Pound Master will be preferential

Key performance areas:

- Receiving of animals by pound master, issuing of receipts for impounded animals,
- Ensure separate number of enclosures for different animal as per municipal by-laws,
- Keeping of pound register and ensuring availability at all times of register, for inspection, free of charge, to any authorised officer of the municipality, veterinary surgeon, any member of the police service, submission of pound register entries to municipality after pound sales within fourteen (14) days, adhere to fees as determined by council,
- Ensure notice of sale,
- Arrange for auctioneer if not done by pond master, must ensure, that animals are properly fed and kept in safe and clean environment.
- Provide reports on the pound and its stock to the Municipality monthly and on ad hoc basis as and when required to do so.

A SERVICE AGREEMENT WHICH WILL STIPULATE POUND FEES AND CONDITIONS WILL BE ENTERED INTO BETWEEN MANTSOPA LOCAL MUNICIPALITY AND THE APPOINTED POUND MASTER

Please forward your CV and covering letter (including three contactable references) and certified copies of qualifications.

To the following address: The Municipal Manager
Mantsopa Local Municipality,
P O Box 64, LADYBRAND
9745 or hand deliver 38 Joubert
Street, LADYBRAND, 9745.

Fax and E-mail applicants will not be considered.

Further enquiries contact Mr S M Selepe: 051 924 0654/5
Fraudulent qualifications, documentation or driver's license from applicants will immediately be disqualified.

A candidate/ applicant who canvasses any Councillor for preference will also be disqualified from the selection process or from appointment.

The Municipality reserves the right to appoint or not to appoint any of the applicants.

CLOSING DATE: 28 AUGUST 2015 AT 16:30"

- [9] Second applicant submitted an application, in response to the advert, on behalf of the first applicant.
- [10] The first respondent, where after, issued a letter to the second applicant informing her that the Council of the first

respondent resolved to renew the contract between the second applicant and the first respondent for a period of 1 year commencing on 1 August 2015 on the same terms and conditions as the previous agreement.

- [11] The First respondent once again called for the application for the appointment of a pound master through advertisement placed in a local newspaper with a closing date on 02 December 2016. The advertisement was crafted as follows:

“APPLICATIONS ARE HEREBY AWAITED FOR THE POSITION OF POUND MASTER FOR MANTSOPA LOCAL MUNICIPALITY

REQUIREMENTS:

A sound knowledge of the Pound By-laws of Mantsopa Local Municipality, Animal Identification Act, 2002 (Act No. 6 of 2002) and the Pound Ordinance, 1952(Ordinance 18 of 1952, as amended) Ability to handle animals. Ability to identify different sicknesses in animals and quarantine of such animals. Ability to liaise with State Vet on all aspects of animals in the pound. A valid drivers' licence. Previous experience as Pound Master will be preferential

KEY PERFORMANCE AREAS:

Receiving of animals by pound master, issuing of receipts for impounded animals, ensure separate number of enclosures for different animals as per municipal by-laws, ensure destruction of dangerous or contagious animals, keeping of pound register and ensuring availability at all times of register, for inspection, free of charge, to any authorised officer of the municipality, veterinary

surgeon, any member of the police service, submission of pound register entries to municipality after pound sales within fourteen (14) days, adhere to fees as determined by council, ensure notice of sale, arrange for auctioneer if not done by master, must ensure that animals are properly fed and kept in safe and clean environment. Provide reports on the pound and its stock to the Municipality monthly and on ad hoc basis as and when required to do so.

A SERVICE LEVEL AGREEMENT WHICH WILL STIPULATE POUND FEES AND CONDITIONS WILL BE ENTERED INTO BETWEEN MANTSOPA LOCAL MUNICIPALITY AND THE APPOINTED POUND MASTER

Please forward your CV and covering letter (including three contactable references) and certified copies of qualifications.

To the following address: The Municipal Manager Mantsopa
Local Municipality, PO Box 64,
LADYBRAND 9745 or hand deliver
38 Joubert Street, LADYBRAND,
9745.

Fax and E-mail applications will not be considered.

Further enquiries contact Mr S M Selepe: (051) 924 0654/5

Fraudulent qualifications, documentation or driver's license from applicants will immediately be disqualified. A candidate/applicant who canvasses any Councillor for preference will also be disqualified from the selection process or from appointment. The Municipality reserves the right to appoint any of the applicants.

CLOSING DATE: 02 December 2016 15:30

S.M SELEPE MUNICIPAL MANAGER"

- [12] On 23 June 2017 Selepe wrote a letter, with the following contents, to the third respondent informing him of the council resolution of 12 May 2017 to appoint him as Pound Master.

“APPOINTMENT OF POUND MASTER: MANTSOPA LOCAL MUNICIPALITY

Please note that Council resolved vide resolution C131 dated 12 May 2017 as follows:

- (a) That Ntelane Johnson Hanyane be appointed for a period of three (3) years on the same terms and conditions as the previous agreement.
- (b) That rent and services be paid to the municipality.
- (c) That a percentage must be paid to the municipality from proceeds from any sale of animals.

Written acceptance of the above is awaited whereafter an agreement between yourself and the municipality will be drawn up.”

- [13] On 3 July 2017 the second applicant received a notice dated 28 June 2017 stating that the contract has expired and the Council resolved not to extend it any further. In terms of the notice she had to vacate the premises by 30 June 2017. The letter was signed by Selepe who left the employ of the first applicant on 30 June 2017.

- [14] Attached to the notice was a letter dated 19 October 2016 which was advising first applicant to stop operating as a Pound Master and vacate the premises by 31 October 2016. Second applicant denies receiving the letter dated 19 October 2016.
- [15] On 20 July 2017 the second applicant had a meeting with the Acting Municipal Manager, Palesa Moloi (Moloi). Moloi informed her that the council of the first respondent appointed the third respondent as a Pound Master and she had to work with him until end of July 2017 whereafter she had to vacate the premises.
- [16] The parties are at variance as to whether the first and second applicant applied for a position of a pound master in response to an advertisement that closed on 02 December 2016. It is the first respondent's case that the second applicant did not submit her application as per the said advertisement.
- [17] The second applicant avers that she submitted her tender by placing it in a designated tender box. She resists the process because the tender box was not opened in public and she was not informed of the outcome. The second applicant alleges that she was contacted by Selepe during May 2017 requesting her to submit a copy of her bid as it was not amongst those that were in possession of the municipality.

CONTENTIONS BY THE PARTIES

[18] Mr. Louw, on behalf of the applicants, submitted that the second applicant has a right to stay in occupation of the premises pending the review application as the appointment of the third respondent as Pound Master is illegal. He contended further that the first respondent's process of appointing the third respondent was irregular in that the first respondent failed to observe its Supply Chain Management policy. He argued that the first and second applicant had a right to be informed of the outcome of the tender process. He argued further that the fact that the second applicant did not submit a tender in her personal capacity is not a reason valid enough to disqualify her bid. He further argued that failure by the first respondent's council to adjudicate the tender that was advertised in August 2015 deprived the second applicant of an opportunity to participate in a competitive bidding process.

[19] Mr Manyi, on behalf of the first and second respondent submitted that the first respondent did not invite tenders but invited individuals to apply for a position of a Pound Master.

He, further, argued that the second applicant's appointment in 2014 was as a result of a similar process and that if she finds the current process irregular she has no right to hold on to her appointment.

He, further, argued that the first and second applicant failed to adhere to the requirements as stipulated in the advertisement. He contended that the second applicant cannot claim a right flowing from a process she considers flawed. It is the first respondent's case that when it called for applications for appointment of Pound Master with closing date of 2 December 2016 the first and second applicants' applications were not among those received by the first respondent.

LEGAL PRINCIPLES

[20] The Free State Provincial Notice No.192 of 2011 defines the Pound Master and Pound as follows:

- I. Pound means a fenced - off area consisting of one or more camps established by the Municipality and placed under the control of a pound master, for the housing and care of animals which are astray, lost or at large;
- II. Pound master, a person who may be:
 - a) a part time or full time employee of a Municipality or be appointed under a service delivery agreement to keep and operate a pound.
 - b) appointed under a service delivery agreement to keep and operate a pound.

- [21] A lessee of a property has no security of tenure in perpetuity. If the period of lease is left undetermined, it can be terminated on notice. Beyond the period of lease, the lessee has no security of tenure. (See **Maphango (Mgidlana) and Others v Aengus Lifestyle Properties (Pty) Ltd** 2011 (3) SA 535 SCA).
- [22] It is well established under **Plascon Evans** rule that in application proceedings, a final order can be granted only if the facts averred in the applicant's affidavit, which have been admitted by the respondent, together with the facts alleged by the latter, justify such order. (See **Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd** 1984 (3) SA 623 (A) and **National Director of Public Prosecutions v Zuma** 2009 (2) SA 277 SCA)
- [23] It is clear from all the advertisements that the first respondent did not call for tenders. It invited natural persons to submit applications for a position of a pound master. There is no indication that there was a designated tender box for that purpose. Second applicant's version that she submitted her tender /bid in a tender box is far -fetched and untenable as the available evidence does not support such version.
- [24] The second applicant is aggrieved by the appointment of the third respondent because, in her view, his application does not comply with the supply chain management policy of the first respondent. In her view, failure by the

third respondent to attach tax clearance and BEE certificates disqualifies him for appointment. The advertisement did not require submission of such documents. This argument cannot hold centre.

- [25] The advertisement required interested parties to submit a CV, driver's licence and a covering letter for consideration. This is in line with the Provincial Notice which requires a pound master to be a natural person. Third respondent responded to the application in terms of what was required in the advertisement.
- [26] Paragraph 16 of the service level agreement signed and entered into between the second applicant and the first respondent provides for renewal of the contract upon 14 days' notice prior to the expiry of the contract.
- [27] The Council of the first respondent has a right to accept or refuse such renewal. There is no indication in the contract that the appointment was permanent.
- [28] The question to ask is whether the second applicant has a right to continue running the business as a pound master when her contract with the first respondent has expired. She runs a business of receiving animals into the pound at the instance of the first respondent.
- [29] The second applicant's occupation of the property designated as a pound stems from her position as the

pound master. Her contract expired in 2016. It was not renewed by the first respondent. With the contract having expired and no proof of submission of her application, in line with the requirements set out in the advertisement, she has no right to continue operating the pound.

[30] The first respondent appointed third respondent as the pound master and such appointment has not been set aside. As of current the second applicant is not a pound master for the first respondent and she is not entitled to run the pound.

[31] The argument by Mr. Louw that the allocation of land from which a pound is run must be done through competitive bidding is to be answered in the review application. It is clear that a natural person has to be appointed to run a pound and thereafter municipality has to allocate land designated for that purpose.

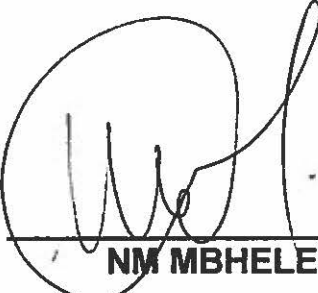
[32] The applicants' occupation of the pound is unlawful as there is no contract authorizing such occupation. She cannot continue running the pound in absence of the contract authorising her to act as pound master. The argument that the applicants' pending review application gives applicants a right to stay in occupation of the pound cannot be sustained.

In view of the above the rule *nisi* must be discharged.

ORDER

ORDER

1. The rule *nisi* is discharged;
2. First and second applicant to pay the cost of this application jointly and severally, one paying to absolve the other.
3. Costs to include costs of one counsel.



NM MBHELE

On behalf of the Applicant:
Instructed by:

Adv M Louw
Hill, McHardy & Herbst Inc
BLOEMFONTEIN

On behalf of the Respondents:
Instructed by:

Adv TL Manye
Rampai Attorneys
BLOEMFONTEIN