FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 3250/2010

In the matter between:-

M.C. MOKITLANE	Plaintiff
and	
THE HEAD OF THE DEPARTMENT OF EDUCATION, FREE STATE PROVINCE	1st Defendant
THE MEC: DEPARTMENT OF EDUCATION, FREE STATE PROVINCE	2nd Defendant
THE CEO: PROVINCIAL TREASURY, FREE STATE PROVINCE	3rd Defendant

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HEARD ON: 23 OCTOBER 2012

JUDGMENT BY: KRUGER, J

DELIVERED ON: 8 NOVEMBER 2012

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[1] Plaintiff, a public office bearer as defined in the Remuneration of Public Office Bearers Act, 20 of 1998, claims payment of a once-off gratuity set out in clause 3.3 of Proclamation 52 published in Government Gazette 31597 dated 12 November 2008.

[2] At the trial no evidence was led and the parties agreed on facts set out in a Stated Case according to which the plaintiff served in the following capacities for the periods:

"11.6.1999 to 17.6.1999	-	Member of the Free State Provincial Legislature;
18.6.1999 to 29.6.2001	-	MEC: Safety & Security, Free State Province;
30.6.2001 – 6.5.2005	-	Member of the Free State Provincial Legislature: Chief Whip;
7.5.2005 to 15.8.2007	-	MEC for Agriculture, Free State Province;
16.8.2007 – 5.2.2009	-	MEC for Education, Free State Province."

On 5 February 2009 plaintiff resigned. On 6 May 2009 plaintiff again became a member of Legislature, now for COPE, getting a new salary, again a member of the pension fund. For the above periods plaintiff was a member of the ANC political party.

[3] According to the stated case:

“3.

Plaintiff resigned as MEC of the Department of Education and as a member of the Legislature, Free State Province on **5 February 2009**. Plaintiff furthermore resigned as a member of the ANC.

Plaintiff’s resignation was accepted by the Premier for the Free State Province.

4.

Subsequent to his resignation, Plaintiff applied for his pension, which was paid out to him in full by the Public Office Bearers Pension Fund.

5.

On **6 May 2009** Plaintiff was once again sworn in as a member of the Free State Legislature, as a member of the COPE political party.

As such, Plaintiff has received a fresh remuneration as from the said date and has once again become a member of the Political Office Bearers Pension Fund.

6.

The quantum of Plaintiff’s prospective claim is to be held over pending adjudication of his claim on the merits.”

[4] The following question of law must be decided as formulated in the stated case:

"7.

QUESTIONS OF LAW:

Plaintiff will request the Court to adjudicate the following:

7.1 Whether he is entitled to the gratuity as set out in clause 3.3 of Proclamation 52 published in Government Gazette 31597 dated **12 November 2008**;

7.2 Plaintiff's contention is that he is entitled to such gratuity as pleaded in paragraph 6.4 of Plaintiff's Particulars of Claim.

7.3 Defendant's contention is that:

7.3.1 Plaintiff is not entitled to any gratuity as his term of office did not end as envisaged in clause 3.3 of Proclamation 52, in that Plaintiff resigned voluntarily;

7.3.2 The proclamation has no retrospective effect insofar as the once off gratuity is concerned. The provisions of clause 3.3 do therefore not apply to any period preceding the promulgation of the aforementioned proclamation."

[5] Ms Norman, for the defendants, contends that plaintiff does not qualify for the once-off gratuity, because he is still a member of the Political Office Bearers Pension Fund and still serves in the legislature. She says the gratuity is only payable to members who retire from the pension fund.

However, Ms Norman seems to lose sight of the fact the paragraph 5 of the stated case, quoted above, states that plaintiff has received fresh remuneration from 6 May 2009 and has once again become a member of the pension fund. The dates and wording of the stated case make it clear that there was an interruption in plaintiff's membership of the pension fund. With reference to **MINISTER OF FINANCE AND ANOTHER v VAN HEERDEN** 2004 (6) SA 121 (CC) par [61] Ms Norman submits that the Political Office Bearers Pension Fund came into force on 23 September 1998 when it was adopted by Cabinet on the same day. The fund took effect retrospectively from 27 April 1994 (**VAN HEERDEN** above par [9]). The rules of the new pension fund were registered in terms of section 4(4) of the Pension Funds Act, 24 of 1956 (**VAN HEERDEN** above par [9]).

[6] Ms Norman submits that Proclamation 52 was promulgated in order to benefit those members whose term ended due to effluxion of time. She bases this submission on the ordinary grammatical meaning of the words "has ended" in paragraph 3.3 of Proclamation 52.

[7] In answer to the defendants' first special plea, namely that the plaintiff is not entitled to the once-off gratuity because he resigned, Mr Williams makes the following submissions:

> "4.1 Although Plaintiff is a member of the Political Office Bearers Pension Fund, and serves in the Legislature, it is incorrect to argue that he is **still** such a member and **still** serving in such capacity.
>
> 4.2 It is clear that Plaintiff resigned from the Legislature and as a member of the ANC on **5 February 2009**.
>
> 4.3 Thereafter, some three months later, on **6 May 2009**, he was **once again** sworn in as a member of the Legislature, this time as a member of COPE.
>
> 4.4 Of fundamental importance, however, is that Plaintiff applied for and received his full pension benefits upon his resignation on **5 February 2009**.
>
> **STATED CASE, PAR. 4**
>
> 4.5 As such, there was a break in between his service as a member of the Legislature and member of the Pension Fund for some three months. The fact that Plaintiff now receives a fresh remuneration in terms of his new appointment and is now once again a member of the Pension Fund does not disentitle him to receiving the gratuity."

[8] The starting point in statutory interpretation is that words must be attributed their ordinary, literal, grammatical meaning. A court may depart from the ordinary literal meaning of the words only where not to do so would lead to an absurdity so glaring that it could never have been contemplated by the legislature or lead to a result contrary to the intention of the legislature, as shown by context or other considerations - **RANDBURG TOWN COUNCIL v KERKSAY INVESTMENTS (PTY) LTD** 1998 (1) SA 98 (SCA) 107 A – B.

[9] Mr Williams points out that the plaintiff's term of office, either as member of the Provincial Legislature or MEC could have ended in one of the following ways:

(i) Automatically five years after being elected as MEC (section 108 (1) of the Constitution, Act 108 of 1996);

(ii) In the event of the Premier dissolving the provincial legislature before the expiry of the five year term (section 109 (1) and (2) of the Constitution, Act 108 of 1996);

(iii) If dismissed by the Premier as MEC before expiry of the five year term (section 132 (2) of the Constitution, Act 108 of 1996);

(iv) death;

(v) resignation.

[10] Mr Williams says that the gratuity is calculated with reference to every five year period or pro rata part thereof. Thus paragraph 3.3 also refers to cases where there was no completion of the full five year period. There was no intent to discriminate between office bearers on the basis of the manner in which their terms of office came to an end. There is no reason why the President would have intended to allow the once-off gratuity to an MEC who is dismissed by a Premier, midstream through his five year term, but not allow a similar benefit to an MEC who resigns because of ill health or personal reasons or other reasons. Mr Williams says the purpose of paragraph 3.3 is to provide a bonus to a certain category of public office bearers and the plaintiff falls in this category.

[11] In my view there is no basis to give the words "has ended" in paragraph 3.3 the restricted meaning Ms Norman contests for. There is no basis to depart from the literal meaning of the words (**<u>RANDBURG</u>**-case at 107 C – D with reference to **<u>R v VENTER</u>** 1907 TS 910 at 915). Dismissal by the Premier has not been excluded. Why should resignation then be excluded? "Has ended" can be the result of several events and paragraph 3.3 does not restrict those events. Resignation means "has ended" for purposes of paragraph 3.3.

[12] The defendants' argument as to retrospectivity is equally without merit. The Proclamation applies to all persons whose term ends after the Proclamation came into operation. On the face of it, the Proclamation does not apply to persons whose term ended before Proclamation 52 came into operation. It is absurd to allege that the period of entitlement commences on the date the Proclamation came into being. Proclamation 52 applies to the plaintiff, because it came into operation on 12 November 2008 and plaintiff resigned on 5 February 2009, some three months later. As Mr Williams points out, use of the words "has served" and

whose term “has ended” indicates a past tense. If the intention was to award the benefit to be calculated only in respect of terms of office served after 12 November 2008, the present tense would have been used, a person who “serves” and whose term “comes to an end”. There is no merit in the second special plea.

[13] The stated case (paragraph 6) provides that the quantum of plaintiff’s claim be held over pending adjudication of his claim on the merits. There is no reference to costs in the stated case. It follows as a matter of logic that defendants must pay plaintiff’s costs.

[14] **ORDER**

1. The question in the stated case is answered as follows:

   Plaintiff is entitled to the gratuity as set out in clause 3.3 of Proclamation 52 published in Government Gazette 31597 dated 12 November 2008.

2. Defendants are ordered to pay plaintiff’s costs to date.

A. KRUGER, J

On behalf of plaintiff:	Adv A Williams Instructed by: Lovius Block BLOEMFONTEIN
On behalf of defendants:	Adv T V Norman SC Instructed by: State Attorney BLOEMFONTEIN

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