

Reportable

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG**

CASE NO: JR1525/07

In the matter between:

NGWATHE LOCAL MUNICIPALITY

APPLICANT

and

**SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL**

FIRST RESPONDENT

LEPONO JOSHUA LEKALE N.O

SECOND RESPONDENT

**SOUTH AFRICAN MUNICIPAL WORKERS
UNION obo MEMBERS**

THIRD RESPONDENT

**INDEPENDENT MUNICIPAL AND ALLIED
TRADE UNION obo MEMBERS**

FOURTH RESPONDENT

JUDGMENT

JULY AJ

INTRODUCTION

- 1 This is an application to review and set aside an in limine ruling made by the second respondent. Although the ruling by the second respondent is attached

to the papers before this Court, it is not complete. For instance, it does not have the actual ruling that was made. However, the ruling is quoted on page 378 of the paginated bundle as follows:

“6.1 In the premises the dispute between the parties was not settled on or about the 2nd August 2006 and still exists;

6.2 The Council shall, therefore, reschedule the matter for arbitration hearing;

6.3 I make no ruling as to costs.”

2 In terms of the above ruling, the second respondent found that the Council has jurisdiction to arbitrate the dispute referred to the Council by the third respondent. It is this ruling that the applicant seeks to be reviewed and set aside.

3 The applicant and the fourth respondent signed a settlement agreement, on 2 August 2006, the terms of which are replicated herein below. Although the third respondent did not sign the settlement agreement it does, however, consider itself bound by it.

4 It is my view that the settlement agreement signed between the applicant and third respondent not only settled the disciplinary hearing, but also put to rest the dispute about the unilateral change to the terms and conditions referred by the third respondent. In the circumstances, the ruling by the second respondent is reviewed and set aside and is replaced with the following finding that the first respondent has no jurisdiction to hear the dispute. Hereinunder are the full

reasons for my decision.

SUMMARY OF THE FACTS

- 5 I do not intend to give the full details of the history of this matter. Most of the facts are common cause. The facts are briefly that the applicant revised a shift system from 3 shifts to 4 shifts. In January 2006, the applicant charged employees (members of the third respondent) who refused to work according to the new shifts system. On or about May 2006, the third and fourth respondents referred the dispute as one of “unilateral change to terms and conditions of employment or interpretation / application of collective agreement.”
- 6 The dispute remained unresolved as at 22 June 2006 and a certificate of outcome was issued. The third and fourth respondents further referred a dispute to arbitration.
- 7 As stated above, before the dispute was set down for arbitration on 24 April 2007, the applicant on the one hand and the third and fourth respondents on the other hand signed a settlement agreement. Notwithstanding, that the third respondent was not a signatory to the settlement agreement, it, however, considers itself bound by it. For completeness sake I quote the full settlement agreement:

"IN THE DISCIPLINARY HEARING

1 Recordal

1.1 It is recorded that the Municipality has instituted disciplinary proceedings against several employees who are members of IMATU and SMWU as per Annexures "A" and "B".

1.2 It is further recorded that the UNIONS have referred a joint dispute to the SALGBC of alleged unilateral change to terms and conditions of employment or dispute about interpretation/application of a Collective Agreement under Case Reference Number FSD 050060.

2 WHEREBY IT IS AGREED AS FOLLOWS

2.1 The disciplinary hearing against the employees will be suspended with immediate effect subject to the following conditions:

2.1.1 that the employees agree and undertake to work in accordance with the 4 shift system with effect from today, the 2nd August 2006;

2.1.2 that the Municipality shall pay a 10% shift allowance based on the bruto salary of each employee;

2.1.3 that the Municipality shall pay a night work allowance from the date of starting to work the 4 shift allowance at a rate to be determined at the negotiations that will take place between the date of signature of this agreement and 1 November 2006;

2.1.4 The Municipality shall pay overtime in accordance with the existing Collective Agreement, as well as in accordance with the Municipality's existing overtime policy.

2.2 The Municipality undertakes to consider any claim for unpaid overtime submitted to management in the normal course and to pay any overtime due within a reasonable time of submission of the claim.

2.3 This agreement shall apply to all employees within the fire services

and employer of Ngwathe Local Municipality".

- 8 It would seem that before the signing of the settlement agreement, there was a draft settlement agreement with a clause:

"2.2 The Unions together with the employers agree and undertake to withdraw the dispute referred to the SALGBC under Case Number FSD 050606."

- 9 According to the third respondent, the above clause was deleted in the final settlement agreement. The third respondent relies on the deletion of the clause to drive the point that the settlement was not intended to settle the dispute referred to the first respondent.
- 10 At the arbitration hearing scheduled on 24 April 2007, the applicant, relying on the settlement agreement, raised a point in limine challenging the jurisdiction of the first respondent to entertain the dispute which it considered to have been settled.
- 11 The third respondent opposed the *in limine* jurisdictional point on the basis that the settlement agreement intended to settle only the disciplinary hearing and not the dispute referred to the first respondent. In support of this agreement, the third respondent relies on clause 2.2 above that was deleted.

INTERPRETATION OF THE SETTLEMENT AGREEMENT

12 It is not in dispute that the settlement agreement exists. What is in dispute is whether or not the settlement agreement settled the dispute that was referred to the first respondent. It is the third respondent's contention that the settlement agreement was intended to settle the disciplinary hearing. In other words the settlement agreement did not intend to settle the dispute referred to the respondent. However, this argument is not supported by the provisions of the settlement agreement. For instance, the very first clause of the settlement agreement states that the employees agree to work according to the 4 shift system with effect from today, the 2nd August 2006. That to me addresses the cause of the dispute, which is the introduction of the shift unilaterally. Now the parties have reached an agreement. It does not really matter what are the circumstances of the agreement. Further, the fact that such an agreement was reached at the disciplinary hearing is immaterial.

13 Although the charges were about insubordination, the parties deemed it necessary to refer to the shift system that was introduced by the applicant. The charges of insubordination were informed by the employees' refusal to work the 4 shift system. This situation changed on 2 August 2006 when the parties agreed that the employees would work according to the 4 shift system. As a result of this agreement the disciplinary hearing did not proceed. With regard to the dispute, the settlement agreement took care of it. At the time of referral of the dispute there was no agreement to work the 4 shift system. What is of significance is that the employees have accepted the 4 shift system. The

dispute therefore becomes academic.

14 I am not convinced that the deletion of the original clause 2.2 is a determining factor on whether or not the parties have settled the dispute. An undertaking to withdraw a dispute plays no major role on the resolution of a dispute. That clause is normally included to give effect to what parties had agreed upon. It is not in itself a settlement of the dispute. Whether the clause to withdraw a dispute is included or not does not affect the settlement of a dispute. In other words the fact that the clause to withdraw the dispute is not part of the settlement agreement that in itself does not mean the issue in dispute has not been settled. Once the parties have agreed on the 4 shift system that to me indicates the end of the dispute. There is nothing left to be resolved. Whether there is a further undertaking to withdraw the dispute, or not, is irrelevant.

15 In the circumstances, I am convinced that the settlement agreement put to rest the dispute concerning the unilateral change to the terms and conditions of employment referred by the third respondent, insofar as this related to both the disciplinary hearing and the dispute before the first respondent.

CONCLUSION

16 In the premises, the ruling by Arbitrator Lepono Joshua Lekale is reviewed and set aside and replaced with a finding that the first respondent has no jurisdiction to hear the dispute.

SANDILE JULY

ACTING JUDGE OF THE LABOUR COURT

Date of application: 15 December 2010

Date of judgement: 26 May 2011

For the applicant: Adv. A Mosam
Instructed by Lebea & Associates

For the third respondent: Mr. Richard Moultrie
Instructed by Cheadle Thompson