

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG

Not Reportable
Case no: J840/11

In the matter between:

GREATER TAUNG LOCAL MUNICIPALITY

Applicant

and

THUSO BLOEM

Respondent

Date of Hearing:

Date of Judgment: 24 June 2011

DECISION

VAN VOORE AJ

1. On 24 June 2011, I handed down an order that the rule *nisi* be discharged and that there is no order as to costs. I have been asked to give reasons for that decision. Those reasons are set out below.

2. On 24 June 2011, the Greater Taung Local Municipality (the Municipality) applied for an order confirming the rule *nisi* issued on 20 May 2011. The Municipality in effect sought final relief against the Respondent (Bloem). The Municipality had earlier approached the Labour Court on an urgent basis seeking relief including an order that Thuso Bloem (Bloem) vacates the Municipality's premises, that should he refuse to do so, that the Sheriff of the High Court and / or members of the South African Police Services (the SAPS) are authorised to remove him from the Municipality's premises,

that he is ordered to vacate the premises pending finalisation of investigations against him or until his suspension is revoked by the Municipality or is declared invalid by a competent forum, that his interdicted from acting in any manner contrary to the terms of the letter of suspension, more particularly, from entering the Municipality's premises except to the prior consent of the Municipality's municipal manager or a person so delegated and authorised by the Municipality's municipal manager.

3. The founding affidavit in the application for interim relief was deposed to by Mpho Simon Mofokeng (Mofokeng). Bloem is an employee of the Municipality. It was alleged against Bloem that:

"there are allegations that [he has] committed act/s of misconduct and / or conducted himself in a manner that he is in breached of the Municipality policies and legislation."

4. The notice of suspension specifically records that it is alleged against Bloem that he abused a municipal vehicle and absented himself from duty without leave or permission and 'campaigned' during working hours, that he was in unauthorised possession of the Municipality's property and caused malicious damage to the municipality's property, that he was in possession of a stolen municipal computer and information which was obtained illegally, that he (individually or with others) participated in conduct which had the effect of disrupting the operations of the Municipality and that he wrongfully disclosed privileged information.

5. The papers do not describe the documents and information allegedly stolen from the Municipality and do not give proper and full details about those documents and

information. In relation to the suspension, the notice of suspension records that ‘your suspension is based on the reasons that if you are at the work premises, you may [tamper] with the investigations as well as witnesses.’ No factual basis is offered for this view. The Municipality does not inform the Court when it commenced investigations or who on behalf of the Municipality is conducting those investigations and what the investigations will entail. The claim as to alleged interference with the investigation and witnesses is unsupported by facts and are no more than claims in the air. To my mind, this does compromise the application for confirmation of the Rule.

6. An employer who is investigating allegations of misconduct against an employee has a range of adequate alternative remedies available to it should the employee refuse to abide the terms of a proper suspension. Those remedies include taking proper and timeous steps to deny the employee against whom serious allegations of misconduct have been made from accessing the premises of the employer without the employer’s consent. These issues are not canvassed, whether properly or at all, on the papers before this Court. It is not alleged that the Municipality took such steps and that those responsible for preventing Bloem from gaining access to the premises have informed the Municipality that, notwithstanding their best efforts, Bloem has accessed the premises without consent. Since the date of the Rule *nisi* there was sufficient opportunity to supplement the papers. The papers have not been supplemented and accordingly the matter must be determined on the papers as they stand.

7. Final interdictory relief is a drastic step and should not be granted lightly. An applicant for such relief is required to set out a proper factual basis. In this matter, no proper case has been made for final relief and the Rule *nisi* falls to be discharged.

8. I should add that I have concerns as to the Labour Court having jurisdiction to intervene in a dispute such as the present. If the central issue is effectively one of trespass then the Municipality has other alternative remedies available to it.

Van Voore AJ

Appearances;

For the Applicant:

For the Respondent: