



REPUBLIC OF SOUTH AFRICA

Not Reportable

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG
JUDGMENT

Case no: J 1814/15

In the matter between:

SHELLA WILLIAM KEKANA

Applicant

And

**MOGALAKWENA LOCAL
MUNICIPALITY**

Respondent

Heard: 22 September 2015

Delivered: 22 September 2015

EX TEMPORE JUDGMENT

WHITCHER J

- [1] The applicant applied on an urgent basis for an order interdicting the respondent from making a permanent appointment of a new Municipal Manager pending the finalisation of a review application filed by the applicant and which was heard on 18 September 2015 in connection with the termination of his employment by the respondent. Judgment in the review application is still pending.

- [2] In my view, for this court to grant such a drastic order, namely the stopping of the appointment process, and for such an order to have any meaningful effect, the applicant had to show, amongst other things, that there is a competent prayer in the review application for the applicant's reinstatement and that the applicant has prospects of success in the review application.
- [3] The relief sought in the review application is essentially for declaratory relief. It is not coupled with a prayer for reinstatement. The applicant's counsel stated that a prayer for reinstatement was made from the bar and/or in the applicant's heads of argument in the review application. In my view this act did not bring into existence a competent prayer for reinstatement in the review proceedings.
- [4] Accordingly, the grant of the declaratory order will not restore the status quo ante and will not reinstate the applicant.
- [5] Moreover, even if there was a competent prayer for reinstatement and even if the reviewing court does find unlawfulness on the conduct of the respondent, this finding will not by itself result in the applicant's reinstatement without a consideration of the fairness or practicability of such an order. There are no averments in the review application to the effect that a reinstatement order would not operate unfairly on the respondent.
- [6] Finally, even if a competent prayer for reinstatement existed in the review application, there is no law that prohibits the respondent from proceedings with the appointment process of another municipal manager. The only consequence for the respondent is that it is taking the risk that in the event of a competent body reinstating the applicant, it may have to terminate the services of the new municipal manager. This also means that the applicant has failed to establish irreparable harm.
- [7] There is also no averment or evidence before me that the appointment process is unlawful.
- [8] Regarding the prospects of success on review, this is highly questionable considering the issues raised by the respondent in such application, namely the impractical effect of prayers for declaratory relief not coupled

with prayers for substantive relief, the issue of jurisdiction (the applicant's complaint in the review application relates to his dismissal) and the applicant's prosecution of his defence at a duly constituted disciplinary hearing.

[9] In the circumstances the applicant has failed to establish a prima facie right that deserves protection on an urgent basis and also failed to establish irreparable harm.

[10] The respondent asked for costs on an attorney-client basis. I see no reason not to order same considering the reasons why I have dismissed this applicant and considering that this is the second time that the applicant has brought the same application. On 11 September 2015 this very same application was dismissed for lack of urgency.

Order

[11] The application is dismissed. The applicant is ordered to pay the respondent's costs on an attorney client scale.

B Whitcher
Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT:

Adv M N Mangene instructed
by Mapotene Mangena Inc

RESPONDENT:

Adv T Mokhatla instructed by
Hogan Lovells (SA)
Incorporated as Routledge
Modise Inc