



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: JR1253/2015

SAMWU OBO MEMBERS

Applicant

And

LEPHALALELE LOCAL MUNICIPALITY

First Respondent

E TUKAKGOMO

Second Respondent

Heard: 30 June 2015

Delivered: 30 SEPTEMBER 2015

EX TEMPORE JUDGMENT

WHITCHER J

Introduction

- [1] This matter came before me as an urgent application in terms of which the Applicant sought to interdict and restrain the First Respondent from making an appointment to the position of Municipal Manager and from issuing a contract of employment to the recommended candidate or any other runner-up to the position. The Applicant further sought an order directing the First Respondent to start afresh with the shortlisting of candidates for the position in question

and to invite the Applicant to participate in the selection process as an observer.

- [2] On the day of the hearing, I dismissed the application with no order as to costs and provided brief reasons for my order. What follows is an edited and supplemented version of my *ex tempore* judgment.
- [3] In summary, the application was premised on the allegations that the First Respondent, contrary to its recruitment policy, failed to invite the Applicant as an observer to the shortlisting process and that the successful candidate is due to commencement employment on 1 July 2015. The Applicant's specific allegations were that:
 - [4] On 15 June 2015 the Applicant received an invitation from the First Respondent to attend the interviews for the position of Municipal Manager. The interviews were to be held on 19 June 2015.
 - [5] On 18 June 2015 the Applicant's attorneys sent a letter to the First Respondent. In the letter the Applicant claimed that, contrary to the First Respondent's recruitment policy, it had not been invited as an observer to the shortlisting process and demanded that the interviews be stopped. The First Respondent did not respond to the letter.
 - [6] On 19 June 2015, representatives from the Applicant attended the interview process and reiterated their demand. The First Respondent refused to stop the process.
 - [7] The Applicant's representative then left the interview process before it was concluded.
 - [8] On 23 June 2015 their attorneys received a call from someone in the First Respondent's corporate services and this person identified the 1 July 2015 as the *possible* date of commencement of employment for the successful candidate.
 - [9] The Applicant referred the Court to Clause 6.3.2 of the First Respondent's Staff Provisioning Policy ("Recruitment Policy") which is headed 'Selection

Process' and contains a provision which states that: "Labour Unions may attend the proceedings as observers only".

- [10] The Applicant also referred to clause 10 which provides that the role of labour unions in the process is to ensure transparency and openness in the selection processes.

Analysis

- [11] As the matter concerns the granting of urgent final relief, the Applicant must establish urgency, the existence of a right in law and fact accruing to the Applicant; an injury actually committed or reasonably apprehended and the absence of any other satisfactory remedy. Inasmuch as the present proceedings are motion proceedings (in which the Applicants seek final relief), the rule stated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634H-635C is applicable, i.e. the application is to be decided on the First Respondent's version together with the admitted facts in the Applicants' founding affidavit and the facts stated in the First Respondent's answering affidavit are to be accepted unless the First Respondent's versions are so far-fetched or clearly untenable that the court would be justified in rejecting such version merely on the papers.

Urgency

- [12] The Applicant based this claim on an averment that the successful candidate would "*possibly*" commence employment on 1 July 2015 and this allegation was based on the alleged statements of an unidentified person.
- [13] The Applicant thus brought this application on a vague unsubstantiated claim that the successful candidate was due to commence employment on 1 July 2015.
- [14] The First Respondent further pointed out that subsequent to the interviews on 19 June 2015, in terms of the section 54A of the Local Government: Municipal Systems Act 32 of 2000, a period of at least 42 days must pass before a formal appointment may be made because various other procedures, described therein, must be followed.

[15] The relevant provisions of the Act read as follows:

“(7)(a) The municipal council must, within 14 days, inform the MEC for local government of the appointment process and outcome, as may be prescribed.

(b) The MEC for local government must, within 14 days of the receipt of the information referred to in paragraph (a), submit a copy thereof to the Minister.

(8) If a person is appointed as municipal manager in contravention of this section, the MEC for local government must, within 14 days of receiving the information provided for in subsection (7), take appropriate steps to enforce compliance by the municipal council with this section, which may include an application to a court for a declaratory order on the validity of the appointment, or any other legal action against the municipal council.

(9) Where an MEC for local government fails to take appropriate steps referred to in subsection (8), the Minister may take the steps contemplated in that subsection.

[16] In light of these factors, I found that the Applicant had failed to establish urgency.

Breach of a right in law and fact

[17] The Applicant also failed to establish that the First Respondent had or intended to breach a right in fact and law accruing to the Applicant.

[18] Anna Elizabeth Maartens, the acting Executive Manager: Corporate Services of the First Respondent deposed to an affidavit in which she alleges that she specifically called and spoke to Mr PP Thulane, the local Chairperson of the Applicant, on 11 May 2015 and informed him that the shortlisting process would be held on 12 May 2015.

[19] She also invited IMATU, the other trade union operating at the First Respondent. In this regard, the First Respondent attached to its opposing affidavit the attendance register of the shortlisting process. According to the register, IMATU attended the shortlisting process.

[20] Based on the Plascon-Evans rule, I found Ms Maarten's version plausible because she identified the specific union official she spoke to and the date she spoke to him. Moreover, her version that she invited the unions, including the Applicant, is in a sense supported by the fact that IMATU attended the shortlisting process. It also seems to me that if the First Respondent invited the Applicant to the interviews, they had no reason not to invite the Applicant to the shortlisting process.

[21] Turning to the clauses (described earlier on) in the recruitment policy, it is clear that the purpose of these clauses is to provide some on-site oversight of the recruitment process by organised labour. In my view, the purpose of the clause was fulfilled when IMATU attended the shortlisting process.

Alternative remedy

[22] The First Respondent pointed out that recruitment policy and section 54A of the Local Government: Municipal Systems Act 32 of 2000 contains numerous other safeguards and monitoring processes to ensure a fair, transparent and lawful appointment process. In this regard, the Applicant has sufficient alternative means in this particular situation to still protect the interests of its members.

Order

[23] In the premises, the following order is made:

1. The application is dismissed with no order as to costs.

Whitcher J

Judge of the Labour Court of South Africa

APPEARANCES:

On behalf of the Applicant: Adv P Kirstein (instructed by Maenetja Attorneys)

On behalf of the First Respondent: Adv B L Roode (instructed by Mohale Incorporated)

Labour Court