



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Reportable

Case No: J 2436/15

In the matter between:

LAMOLA ISHMAEL SELLO

Applicant

and

**CITY OF TSHWANE METROPOLITAN
MUNICIPALITY**

First Respondent

**STEVE NGOBENI: CHIEF OF POLICE, TSHWANE
METROPOLITAN POLICE DEPARTMENT**

Second Respondent

**JASON NGOBENI: HEAD OF ADMINISTRATION,
THE CITY OF TSHWANE METROPOLITAN
MUNICIPALITY**

Third Respondent

Date heard: 11 December 2015

Judgment delivered: 11 December 2015

JUDGMENT

NKUTHA-NKONTWANA AJ

- [1] This is an urgent application in terms of which the Applicant essentially seeks, by way of an final interdict, a declaration that his suspension is unlawful and setting aside same.

- [2] I was, however, advised by the counsel for the First Respondent that the impugned suspension has since been withdrawn as per the letter date 11 December 2014. Accordingly, the matter has become moot.
- [3] The only issue that remains for determination is costs. The counsel for the Applicant submitted that up until the day of the hearing of the matter, the suspension had not been withdrawn, in a sense that the *status quo ante* had not been reinstated. I note that the First Respondent was alerted by the Applicants' attorneys of record that its conduct in suspending the Applicant was unlawful as early as 20 November 2015. It was only four days later that the First Respondent replied and persisted that the suspension was lawful and hence these proceedings were launched.
- [4] Instead of opposing, the First Respondent sought to uplift the suspension with a tender to pay costs on a party to party scale. However, the Applicant did not accept the withdrawal of his suspension since it did not restore the *status quo ante* but it sought to transfer him to another department. The First Respondent only acceded to Applicant's demand in a letter dated 11 November 2015, the day of the hearing of the matter.
- [5] Given the First Respondent's conduct, it is my view that an order sought by the Applicant is appropriate. Also, the prevalence of these kinds of matters in this court, I am convinced that it is about time the punitive costs should be awarded in order to dissuade the employers within the local government sector from flouting the provisions of the SALGBC Disciplinary Procedure and Code Collective Agreement.
- [6] For the above reasons, I make the following order:
1. The matter has become moot due to the withdrawal of the Applicant's suspension.
 2. The First Respondent is to pay the costs at the scale as between attorney and own client.

Nkutha- Nkontwana, AJ
Acting Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant: Adv Mathabedi SC with Adv P Jara

For the Respondents: Adv T Mkhwanazi

LABOUR COURT