



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: J 2289 / 19

In the matter between:

BARTHOLOMEW SERAPELO MATLALA

Applicant

and

GREATER TZANEEN LOCAL MUNICIPALITY

Respondent

Heard: 28 November 2019

Delivered: 03 January 2020

Summary: Interdict application – principles stated – application of principles to matter – issue of clear right considered

Suspension – whether suspension unlawful – provisions of Municipal Regulations as it stands determinative as to whether suspension unlawful

Clear right – interpretation of Municipal Regulations – substantial compliance not shown – employer failed to comply with regulations in material respects

Interdict – no clear right shown – alternative remedies not available – proper case for relief made out – order granted and suspension uplifted

REASONS

SNYMAN, AJ

Introduction

- [1] This matter concerns an urgent application by the applicant seeking an order declaring that his suspension by the respondent is invalid and unlawful, and consequently that his suspension be uplifted with immediate effect and he be reinstated into his normal duties at the respondent. The application is opposed by the respondent.
- [2] This matter does not concern any issue of unfairness or unfair labour practice, and the applicant does not rely on any of the provisions of the Labour Relations Act ('LRA').¹ The case of the applicant is squarely founded on whether his suspension was lawful in terms of the Local Government: Disciplinary Regulations for Senior Managers ('the Municipal Regulations')². The crux of the case is that the respondent had failed to comply with the pre-suspension processes as contemplated and prescribed by the Municipal Regulations itself, when effecting his suspension.
- [3] The applicant is seeking final relief, and as such, the applicant must satisfy three essential requirements which must all be shown to exist, being: (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the absence of any other satisfactory remedy.³
- [4] The application was argued before me by both parties on 28 November 2019. Having heard argument, and having considered the matter, I made the following order:
1. The application is heard as one of urgency in terms of Rule 8.

¹ Act 66 of 1995 (as amended).

² GN 344 as contained in GG 34213 of 21 April 2011.

³ *Setlogelo v Setlogelo* 1914 AD 221 at 227; *V & A Waterfront Properties (Pty) Ltd and Another v Helicopter & Marine Services (Pty) Ltd and Others* 2006 (1) SA 252 (SCA) at para 20.

2. The suspension of the applicant by the respondent on 12 November 2019 is declared to be in contravention of Regulation 6(1) of the Local Government: Disciplinary Regulations for Senior Managers, 2010 and consequently unlawful.
3. The applicant's suspension is uplifted and the respondent is ordered to immediately allow the applicant to resume his duties as the Municipal Manager of the respondent.
4. There is no order as to costs.
5. Written reasons for this order will be handed down on 6 December 2019.

[5] This judgment now constitutes the written reason as contemplated by paragraph 5 of the order, above, commencing with a summary of the relevant background facts.

Background facts

[6] As these are motion proceedings in which the applicant seeks final relief, insofar as there are factual disputes between the parties these disputes are to be decided in terms of the principles enunciated in *Plascon Evans Paints v Van Riebeeck Paints*.⁴ In *Thebe Ya Bophelo Healthcare Administrators (Pty) Ltd and Others v National Bargaining Council for the Road Freight Industry and Another*⁵ the Court summarized these principles as follows:

‘.... where an applicant in motion proceedings seeks final relief, and there is no referral to oral evidence, it is the facts as stated by the respondent together with the admitted or undenied facts in the applicants' founding affidavit which provide the factual basis for the determination, unless the dispute is not real or genuine or the denials in the respondent's version are bald or uncreditworthy, or the respondent's version raises such obviously fictitious disputes of fact, or is palpably implausible, or far-fetched or so clearly untenable that the court is

⁴ 1984 (3) SA 623 (A) at 634E-635C; See also *Jooste v Staatspresident en Andere* 1988 (4) SA 224 (A) at 259C – 263D; *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) at paras 26 – 27; *Molapo Technology (Pty) Ltd v Schreuder and Others* (2002) 23 ILJ 2031 (LAC) at para 38.

⁵ 2009 (3) SA 187 (W) at para 19.

justified in rejecting that version on the basis that it obviously stands to be rejected.'

What follows below is the relevant background facts arrived at by way of applying the above principles.

- [7] Being a municipality, the respondent is governed by the provisions of the Local Government: Municipal Systems Act (the 'Systems Act')⁶. The conducting of discipline against the senior managers of the respondent is regulated by the disciplinary regulations forming part of and promulgated in the Municipal Regulations referred to above, which regulations are in turn derived from the Systems Act.
- [8] Where it comes to the suspension of senior managers as part of the disciplinary process in the Municipal Regulations, this is determined by Regulation 6 of the Municipal Regulations. The relevant part of this Regulation reads:

'(1) The municipal council may suspend a senior manager on full pay if it is alleged that the senior manager has committed an act of misconduct, where the municipal council has reason to believe that —

- (a) the presence of the senior manager at the workplace may —
 - (i) jeopardise any investigation into the alleged misconduct;
 - (ii) endanger the well-being or safety of any person or municipal property; or
 - (iii) be detrimental to stability in the municipality; or
- (b) the senior manager may —
 - (i) interfere with potential witnesses; or
 - (ii) commit further acts of misconduct.

(2) Before a senior manager may be suspended, he or she must be given an opportunity to make a written representation to the municipal council why he or she should not be suspended, within seven (7) days of being notified of the council's decision to suspend him or her.

(3) The municipal council must consider any representation submitted to it by the senior manager within seven (7) days.

⁶ Act 32 of 2000.

(4) After having considered the matters set out in subregulation (1), as well as the senior manager's representations contemplated in subregulation (2), the municipal council may suspend the senior manager concerned.

(5) The municipal council must inform —

(a) the senior manager in writing of the reasons for his or her suspension on or before the date on which the senior manager is suspended; and

(b) the Minister and the MEC responsible for local government in the province where such suspension has taken place, must be notified in writing of such suspension and the reasons for such within a period of seven

(7) days after such suspension.'

[9] The applicant was indeed appointed by the respondent in terms of Section 54A of the Systems Act as a senior manager, having been appointed as its municipal manager in terms of a written contract of employment signed on 11 April 2018, and commencing 1 April 2018. Clause 14.1 of the applicant's employment contract provides that he may be suspended if it was alleged he committed a '*serious offence or misconduct*', and the respondent believed that his presence at the workplace might jeopardize any investigation in the alleged misconduct or endanger the well-being or safety of any person or municipal property. The clause further provides that the applicant must be given a reasonable opportunity to make representations why he should not be suspended. In terms of clause 2.1 of the employment contract, the employment of the applicant is made subject to the provisions of the Systems Act.

[10] According to the applicant, what happened to him and which ultimately gave rise to this application arose from two tenders that were awarded by the respondent to Tshiamiso Trading 135 (Pty) Ltd ('Tshiamiso'), for two road construction projects, known as the Mulati Street project and the Codesa Street project. In order for these tenders to be lawfully awarded, there must be compliance with the Local Government: Municipal Finance Management Act ('MFMA')⁷ and the regulations published in terms thereof.

⁷ Act 56 of 2003.

- [11] The applicant stated in his founding affidavit that under his administration, it was discovered that the tenders awarded to Tshiamiso relating to the Mulati Street project and the Codesa Street project, prior to his appointment, were tainted by irregularity. The irregularity arose from a misrepresentation of the figures relating to the Bills of Quantities in respect of the projects. This misrepresentation not only advantaged Tshiamiso as bidder over other bidders, but would enable Tshiamiso to claim almost double in revenue from the projects that was contemplated.
- [12] As municipal manager, the applicant instructed attorneys to provide legal opinion on the matter. Having received legal opinion and opinion from counsel, together with a comprehensive report provided by such attorneys, the applicant instructed the attorneys to bring proceedings in the High Court in Polokwane to challenge the awarding of the tenders. An application was brought on 19 August 2019 under case number 5267 / 19, seeking to set aside the award of such tenders. In answering this application, Tshiamiso appeared to concede the errors referred to above, labelling it as '*inadvertent casting errors*'. Tshiamiso conceded that these errors may have misled the respondent in awarding the tenders to it, and that if it was not for these errors, it was likely that it would not have been the successful bidder. It conceded that it had no defence to the respondent's case. This application is however still pending.
- [13] The applicant also commenced an internal investigation in the respondent as to how these irregularities could have arisen in the first place, considering its own internal processes, and whether some of its personnel could be held accountable. The applicant reported to the respondent's council on 8 October 2019 concerning all the particulars relating to the matter, as well as recommendations made by his office as to how such tender award processes should be conducted going forward (the actual report by the attorneys, referred to above, was also provided during this period). The applicant also sought ratification of the High Court case.
- [14] On 22 October 2019, the respondent's council, having received the aforesaid report, adopted a resolution. It is important to quote the relevant parts of this resolution as it stands. It reads:

- '(a) That Council notes the Municipal managers' report on Mulati access road and Codesa to Hani street projects.
- (b) That Council believes there is misleading information regarding the access road and street projects.
- (c) That council mandate the Mayor to write a letter to the Municipal manager to give reasons why he should not be put on suspension while Council do an investigation on the matter.
- (d) That the Municipal Manager be given seven (7) working days to respond to the Mayor's letter.
- (e) That upon receipt of the Municipal manager's response, Council be convened to consider such a response. ...' (sic)

[15] On 23 October 2019, and clearly pursuant to the above resolution, the mayor then indeed sent a letter to the applicant. The letter recorded that the respondent's council considered the report. The letter then states:

'Council holds a view that there are a lot of challenges as highlighted in the report but also problems that Councillors have seen emanating from those roads. To demonstrate on few:

- 3.1 Discrepancies on the Bill of Quantities (BOQ) and the contract amount.
- 3.2 Appointment without discovering or exposing discrepancies.
- 3.3 Consulting Engineer's discovery, advice to Greater Tzaneen Municipality (GTM) and GTM proceedings amid discrepancies.
- 3.4 Resultant sub-contractors and employees disruption of Council, attack on Municipal manager, legal battled, deployment of high threat risk security, terminations, project stoppage etc.' (sic)

The letter concluded as follows:

'In the light of the above examples, Council seek more scientific information on the following:

- 4.1 Your role as Accounting Officer on the whole development which led to where we are currently, project stoppage and way forward.

- 4.2 Provide accountability / reasons to the mayor why Council should not put you on suspension pending investigation on two roads.
- 4.3 Your response should be forwarded to the Mayor on or before end of seven (07) working days from today ...'

[16] It is virtually impossible to establish from the resolution of 22 October 2019 and the letter of 23 October 2019 as what exactly the misconduct is that the applicant was alleged to have committed. It is similarly unclear as to what the respondent's council sought to investigate, considering the particulars as contained in the applicant's report of 8 October 2019 and the fact that the contents of such report were 'noted' by the council. Despite this, the applicant nonetheless complied with the letter and submitted representations on 1 November 2019. In these representations, the applicant refers to the reports he had already submitted, and indicated his concerns that was it not even indicated by the respondent as to what content of these reports, which were simply noted, would indicate that the applicant committed impropriety. The applicant pointed out that the High Court case on the issue of the two tenders was in fact pending.

[17] The applicant's representations served before the council on 12 November 2019. In a resolution adopted on that date, it was resolved that:

- '(b) That Council believes that there are matters regarding Mulati Access Road and Codesa to Hani Street that need to be investigated.
- (c) That Council resolves to put the Municipal manager (Mr. BS Matlala) in a precautionary suspension with immediate effect ...' (sic)

It also resolved that the respondent's mayor be delegated to appoint an independent investigator to investigate the matter and submit a report to the council.

[18] The applicant was then issued with a notice of suspension on 12 November 2019. In this notice, it is stated that the allegations of misconduct against the applicant as contained in the notice of intention to suspend of 23 October 2019 were serious. It is further stated that the applicant would be placed on precautionary suspension until the investigations in this matter were

concluded. The applicant was instructed not to report for work during his suspension, and not to interfere with the investigation, witnesses and evidence during the 'subsistence' of the investigation.

- [19] Before resorting to litigation, the applicant, through his attorneys, first attempted to convince the respondent to withdraw his suspension, by way of a letter of demand sent on 14 November 2019. The respondent was given a deadline of 15 November 2019 to comply, and was threatened with urgent Labour Court proceedings if it did not comply. The respondent did not comply with this deadline. The current application then followed three days later, on 19 November 2019, in which the applicant challenged the lawfulness of this suspension.

Urgency and jurisdiction

- [20] It is trite that the Labour Court has jurisdiction to entertain an application for urgent intervention in the case of suspension of an employee, in terms of Section 158 of the LRA.⁸ But it must always be remembered that the Labour Court should only so intervene in exceptional circumstances. As the Court said in *Booyesen v Minister of Safety and Security and Others*⁹:

'.... such an intervention should be exercised in exceptional cases. It is not appropriate to set out the test. It should be left to the discretion of the Labour Court to exercise such powers having regard to the facts of each case. Among the factors to be considered would in my view be whether failure to intervene would lead to grave injustice or whether justice might be attained by other means. The list is not exhaustive.'

- [21] It follows that even though the Court has the jurisdiction to urgently intervene, it should only do so if the applicant is able to show compelling and extraordinary circumstances as to why this Court should now intervene, and not allow the disciplinary process against the applicant to run its course, in the

⁸ Section 158(1) reads: '(1) The Labour Court may (a) make any appropriate order, including (i) the grant of urgent interim relief (ii) an interdict; (iii) an order directing the performance of any particular act which order, when implemented, will remedy a wrong and give effect to the primary objects of this Act; (iv) a declaratory order'

⁹ (2011) 32 ILJ 112 (LAC) at para 54. See also *Member of the Executive Council for Education, North West Provincial Government v Gradwell* (2012) 33 ILJ 2033 (LAC) at para 46.

normal course.¹⁰ The short duration and purpose of suspension under Regulation 6 may well, in my view, constitute such compelling and extraordinary circumstances, especially where there is material non-compliance with the regulations.

[22] I need to first deal with urgency. I accept that this matter is urgent. In any event, and in the argument submitted by both parties before me, the issue of urgency was not really placed in contention. The applicant was suspended on 12 November 2015, first engaged the respondent through his attorneys on 14 November 2019 to demand the uplifting of his suspension, and brought this application on 19 November 2019 when no response was forthcoming from the respondent by the stipulated deadline of 15 November 2019. I am satisfied the applicant acted promptly and immediately upon being suspended, and it cannot be said that the applicant is perpetrator of self-created urgency.¹¹ Both parties have had the opportunity to fully state their respective cases in the pleadings and in argument, with a complete set of affidavits filed, and it is my view that it is in the interest of justice to finally determine this matter. I thus conclude there are proper grounds to finally determine this matter as one of urgency.

Analysis

[23] This is a case where Regulation 6 of the Municipal Regulations applies, being specifically incorporated by reference, into the applicant's contract of employment. In any event, clause 14.1 of the applicant's employment contract mirrors the essence of Regulation 6. If Regulation 6 and the actual terms of the applicant's contract of employment were not complied with by the respondent in effecting the suspension of the applicant, the applicant's suspension would be unlawful, and the applicant would succeed in demonstrating the existence of a clear right.¹² As held in *Biyase v Sisonke District Municipality and Another*¹³:

¹⁰ *Mere v Tswaing Local Municipality and Another* (2015) 36 ILJ 3094 (LC) at para 18.

¹¹ See *Jiba v Minister: Department of Justice and Constitutional Development and Others* (2010) 31 ILJ 112 (LC) at para 18; *National Union of Mineworkers v Black Mountain - A Division of Anglo Operations Ltd* (2007) 28 ILJ 2796 (LC) at para 12; *Continuous Oxygen Suppliers (Pty) Ltd t/a Vital Aire v Meintjes and Another* (2012) 33 ILJ 629 (LC) at para 21 – 24; *Mere (supra)* at para 19.

¹² *Mere (supra)* at paras 35 and 41.

¹³ (2012) 33 ILJ 598 (LC) at para 20.

'These provisions may well be unduly onerous. But it is common cause that the parties are bound by them. Failure to do so would make the suspension unlawful for want of compliance with the regulations.'

[24] Was there thus compliance in this case? In answering this question, regard must first be had as to when Regulation 6 can be relied upon. This can only competently happen if the employer has a reasonable belief of the existence of serious misconduct. This belief does not have to be capable of being proven at this point or set out in detailed specificity, and only has to be a reasonable belief on a *prima facie* basis.¹⁴ It is therefore important for the respondent in this instance to at least set out a *prima facie* basis for believing that the applicant committed serious misconduct, as part of any notice of intention to suspend under Regulation 6.

[25] Further, Regulation 6 contemplates the opportunity to make representations before the final decision is taken to suspend a senior manager, and it therefore follows that the senior manager concerned must at least be placed in a position where he or she is able to effectively make such representations.¹⁵ Because the senior manager must receive proper notice of intention to suspend, this notice has requirements attached to it, which was summarized in *Lebu v Maquassi Hills Local Municipality and Others (2)*¹⁶ as follows:

'The notice must contain at least a description of the misconduct that the manager is alleged to have committed, and the council's justification for its in-principle decision, and invite representations in relation to both. Both the nature of the misconduct alleged and the purpose of the proposed suspension must be set out in terms that are sufficiently particular so as to enable the senior manager to make meaningful representations in response to the proposed suspension.'

¹⁴ See *Mothogoane and Another v Lepelle-Nkumpi Local Municipality and Another* (2019) 40 ILJ 1072 (LC) at para 22.

¹⁵ *Mere (supra)* at para 37; *Mojaki v Ngaka Modiri Molema District Municipality and Others* (2015) 36 ILJ 1331 (LC) at para 29.

¹⁶ (2012) 33 ILJ 653 (LC) at para 16. See also *Tsietsi v City of Matlosana Local Municipality and Another* (2015) 36 ILJ 2158 (LC) at para 21; *Retlaobaka v Lekwa Local Municipality and Another* (2013) 34 ILJ 2320 (LC) at para 8

- [26] The Court in *Mere v Tswaing Local Municipality and Another*¹⁷ succinctly summed up the position as follows:

‘... Therefore, and for a senior manager to be lawfully suspended in terms of Regulation 6, the municipality must have reason to believe that at least one of the circumstances as contemplated by Regulation 6(1) exist. The municipality must then notify the senior manager of its intention to suspend him or her, and provide, at the very least, basic particulars as to what motivated this intention to suspend, so that the senior manager can provide informed answers as to why he or she should not be suspended. Detailed evidence or particulars need not be provided. The senior manager must then be given at least seven days to provide such a response. Once this response is given, it must be considered by the municipality, and if it decided to continue with the suspension, the senior manager must be informed in writing of the suspension and the reasons why he or she is being suspended, with reference to the grounds set out in Regulation 6(1).’

- [27] Unfortunately, and in this case, the respondent falls far short, where it comes to the essential requirements of Regulation 6 and the clear terms of the applicant’s employment contract. As touched on above, it is difficult to comprehend what exactly the serious misconduct is that the applicant is even on a prima facie basis believed to have committed. All that one knows in this case is that there exists irregularities with the two tenders relating to the Mulati Street project and the Codesa Street project. But there is absolutely no evidence or indication as to how the applicant was involved in the award of the tenders and may have failed or transgressed in this regard. In fact, and if anything, the evidence shows that it was due to the efforts of the applicant that these irregularities were ultimately identified.

- [28] The basis of the decision making of the respondent where it came to the suspension of the applicant must be gathered from the resolutions adopted by the respondent’s council and the notices furnished to the applicant. It is significant that the resolution of 22 October 2019 came about because the applicant gave a detailed report about the irregularities pertaining to the aforesaid two tenders. The resolution does not express any concerns about

¹⁷ (2015) 36 ILJ 3094 (LC) at para 40.

impropriety of the applicant as may emanate from the report. In fact, the report is merely noted. The resolution further records that the council is concerned about '*misleading information*' concerning the tenders. There is no indication that this misleading information emanated from the applicant or that he is in any way responsible for it. If the resolution is considered in conjunction with the applicant's report that featured before the respondent's council, the only misleading information that exists emanated from other parties and not the applicant at all.

- [29] The resolution of 22 October 2019 appears to simply recommend the contemplated suspension of the applicant without any reason for it, solely for the purpose that the council could investigate the issue relating to the tenders for the two road projects. This does not comply with what is required by Regulation 6. In my view, it should at least be apparent from the resolution adopted by the respondent's council on what basis it is believed that the applicant committed serious misconduct, and why it was required to suspend the applicant, with specific reference to the requirements in regulation 6(1)(a) and (b). But even if this did not feature in the resolution, it should at least have featured in the notice of intention to suspend of 23 October 2019. But yet again, the respondent failed where it came to this notice, as set out below.
- [30] In the notice of intention to suspend of 23 October 2019, it is stated that there are '*a lot of challenges*' highlighted in the applicant's report of 8 October 2019. There is however no indication as to how these 'challenges' constitute any *prima facie* reasonable belief of serious misconduct on the part of the applicant. The notice of suspension then identifies a number of 'problems' the councillors have seen, emanating from the two projects, and lists these problems. But yet again, there is no indication on how the applicant was involved in, or in any way responsible for these 'problems'. What is patently absent is any basic particulars as to what alleged serious misconduct on the part of the applicant motivated this intention to suspend, so that the applicant could provide informed answers as to why he or she should not be suspended as a result thereof.
- [31] In addition to the above, both the resolution of 22 October 2019 and the notice of intention to suspend of 23 October 2019 do not indicate why the suspension

of the applicant was necessary, other than a reference to the respondent's council wanting to conduct an investigation. There is no indication that the applicant may interfere with or jeopardize the investigation, endanger the well-being or safety of any person or municipal property, his continued presence may be detrimental to stability in the municipality, that he may interfere with potential witnesses, or commit further acts of misconduct. In short, the rationale for suspension is not indicated, so that the applicant can have an opportunity to make proper informed representations in this regard.

- [32] Giving the applicant seven days to make representations on why he should not be suspended is only part of what is required. It cannot legitimize the failure to properly inform the applicant of the basic tenets of what he is alleged to have done wrong, and why it was necessary to suspend him with reference to at least one of the grounds listed in Regulation 6(1)(a) and (b). The point is simply that how can it be said that the applicant had a proper opportunity to make representations if these basic requirements were not met? Even though the applicant ultimately did make representations as he was called on to do, this equally cannot remedy these failures. As held in *Lebu (2) supra*:¹⁸

'The terms of the regulation clearly contemplate an in-principle decision to suspend, taken on the basis of a reasonable belief that the senior manager has committed misconduct and that at least one of the requirements in paras (a) and (b) is present. The municipality is then required to consider the matters set out in subregulation (1) together with any representations received, and then and only then, may the municipality suspend the employee. I would add that in my view, it is not sufficient for a municipality merely simply to reproduce the justifications listed in paras (a) and (b). In the present instance, that is what the municipality has done, with the omission only of the factor listed in para (a)(i) on the basis, presumably, that the investigation initiated into the applicant's conduct has been completed. Suspension is a measure that has serious consequences for an employee, and is not a measure that should be resorted to lightly. There appears to be a tendency, especially in the public sector, where suspension is applied as a measure of first resort and almost automatically imposed where any form of misconduct is alleged. The purpose of removing an employee from the workplace, even temporarily and on full pay, must be rational and reasonable, and must be conveyed to the employee

¹⁸ Id at para 14.

concerned in sufficient detail to enable the employee to compile the representations that he or she is invited to make in a meaningful way. ...'

- [33] The reason given as to why the applicant was ultimately suspended compounds the difficulties. The notice of suspension of 12 November 2019 refers to the allegations of misconduct in the notice of 23 October 2019. However, the notice of 23 October 2019 does not set out any allegations of misconduct on the part of the applicant. So the unanswered question remains, what was the applicant suspended for? This is at odds with what is contemplated by Regulation 6.
- [34] In the answering affidavit, the respondent suggests that the misconduct of the applicant is based on his failure to take urgent steps to intervene in the irregular tenders awarded in respect of the two road projects, which, according to the respondent, should have done as far back as February / March 2019. The problem with this case is that it does not even remotely feature in any of the resolutions adopted by the respondent's council concerning the applicant's suspension, or in the notice of intention to suspend and actual suspension notice provided to him. Similarly, and in the answering affidavit, there is an attempt to justify his suspension as being that his continued presence at work was likely to cause instability in the workplace, also never raised before. There appears to be an *ex post facto* justification of the suspension, but considering the provisions of Regulation 6 and the purposes thereof, such an approach cannot be permitted.
- [35] For all these reasons, there has been a material failure by the respondent to comply with the prescripts of Regulation 6. As such, the applicant's suspension implemented on 12 November 2019 is unlawful. As comparably held in *Lebu (2) supra*:¹⁹

'In the present instance, the municipality notified the applicant of its justification for his suspension on the same day that he was suspended. The municipality also failed to articulate the purpose of the applicant's suspension. In my view, therefore, the applicant's suspension constituted a breach of regulation 6 and he is entitled to the relief that he seeks ...'

¹⁹ Id at para 17.

- [36] The applicant also has no alternative remedy available to him in this instance. He cannot approach the applicable bargaining council under the LRA, where it concerns his suspension being unlawful, as such a case has nothing to do with his rights under the LRA.²⁰ As touched on above, the applicant does not in any way rely on his rights under the LRA and any alleged unfairness or not of his suspension, which would have to have been referred to the bargaining council.
- [37] Lastly, the consideration of prejudice favours the applicant.²¹ He would be prejudiced in the conduct of his duties should he be excluded from the workplace without proper cause or reason. The longer this suspension endures, the more difficult it will be for a person fulfilling the kind of functions of the applicant to properly and effectively resume work. The situation is exacerbated by the fact that the respondent's council immediately appointed a new acting municipal manager. The simple reality also is, and as matters stand, there is no indication of what the applicant has even done wrong, and on a *prima facie* basis, at the very least, he appears to have been doing a proper job until the suspension landed. It is in the interest of the public and the statutory functions the applicant is meant to discharge under the Systems Act that the applicant's suspension be lifted.
- [38] However, this is not the end of the road for the respondent. Nothing stands in the way of it still being able to suspend the applicant going forward. It must just comply with Regulation 6. It must formulate the *prima facie* basis on which it alleged that the applicant had committed serious misconduct. It must then indicate what reasons as contemplated by regulation 6(1) would necessitate the applicant's suspension. And then the applicant must be called upon to make representations by way of a notice of intention to suspend reflecting this particularity. If it is true that the applicant committed serious misconduct, then this should not be hard to do.
- [39] In sum therefore, I am satisfied that the applicant has met the requirements necessary in order for him to obtain the relief he seeks. The applicant has a

²⁰ See *Gallocher v Social Housing Regulatory Authority and Another* (2019) 40 ILJ 2732 (LC) at para 81; *Biyase (supra)* 33 ILJ 598 (LC) at para 30.

²¹ Compare *Gallocher (supra)* at para 83.

clear right to the relief he seeks, has no alternative remedy available to him, and considerations of prejudice favour him. The applicant's application must thus succeed, his suspension be uplifted, and he be allowed to immediately resume his duties.

[40] I lastly turn to the issue of costs. In terms of section 162 of the LRA, I have a wide discretion where it comes to the issue of costs. Even though the respondent was not successful, I do consider that the case advanced by the respondents was at least arguable, and that the applicant had to establish exceptional circumstances to justify intervention. I also consider that there is still a proper process that can follow, and an ongoing employment relationship between the parties. I am mindful of the dictum of the Constitutional Court in *Zungu v Premier of the Province of KwaZulu-Natal and Others*²² where it comes to costs awards in employment disputes before this Court, and I do not consider there to be sufficient reason to depart from this. For all these reasons, I exercise my discretion as to costs in this matter by making no order as to costs.

[41] It is for all the reasons as set out above that I made the order I did, as set out in paragraph 4 of this judgment, *supra*.

S Snyman

Acting Judge of the Labour Court of South Africa

²² (2018) 39 *ILJ* 523 (CC) at para 25.

Appearances:

For the Applicant: Ramafalo M Attorneys

For the Respondent: Lebea & Associates Attorneys