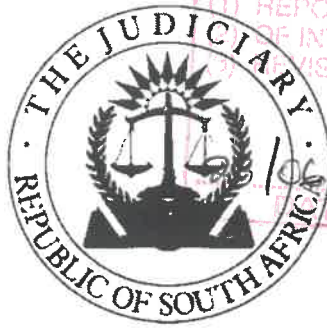




DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO. ☒ NO.

(2) OF INTEREST TO OTHER JUDGES: YES/NO. ☒ NO.

(3) REUSED.

DATE: 10/06/2020

SIGNATURE: *[Signature]*

IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

JUDGMENT

Not reportable

CASE NO: J 421/2020

In the matter between:

MOJALEFA JOSEPH MATLOLE

Applicant

and

MAFUBE LOCAL MUNICIPALITY

First Respondent

JABULANI ELLIOT SIGASA

Second Respondent

MOSES TEKOTSILE MOFOKENG

Third Respondent

MARIA MATSATSI MOFOKENG

Fourth Respondent

THEMBENI NXANGISA

Fifth Respondent

Enrolled: 6 May 2020 (Decided in Chambers on the papers)

Judgment delivered: This judgment is delivered by email, addressed to the parties' representatives on 24 June 2020 at 12:00, which is the deemed date and time of delivery.

RULING: APPLICATION FOR LEAVE TO APPEAL

VAN NIEKERK J

- [1] The applicant applies for leave to appeal against the whole of the judgment delivered by this court on 6 May 2020, when the applicant's claim for payment of his salary was dismissed, with costs.
- [2] The relevant facts are recorded in the judgment in respect of which leave to appeal is sought, and I do not intend to repeat them here. It is sufficient for present purposes to record that the dispute between the parties was whether the applicant had resigned from the respondent's employ. The court found that he had, and was thus not entitled to the salary that he sought.
- [3] The applicant seeks leave to appeal on three main grounds. First, he contends that the court found that he withdrew his resignation on 28 February 2020, being the last date of the notice period, and that the withdrawal of the notice was effected on 25 February 2020 during the subsistence of the contract. Relying on the principle that a fixed term contract cannot be terminated during its currency, the applicant appears to submit that he was entitled in those circumstances to withdraw his notice. There is no merit in this submission, if only because the terms of the contract entitled the applicant to terminate the contract on one months' notice after he had been employed for 12 months (which he had been). He did no more than exercise his right to terminate his contract by giving one calendar months' notice. Having given notice as he did on 30 January 2020, he acted unilaterally to terminate the contract, clearly and unambiguously. The applicant's resignation was communicated to the first respondent. Although it is not a

necessary prerequisite to a valid resignation, the first respondent's council accepted the applicant's resignation on 30 January 2020. The fact that the applicant maintains that his resignation was withdrawn on 25 February (as opposed to 28 February 2020, the date on which he avers the court found that the notice was withdrawn) is neither here nor there. By 25 February 2020, the applicant had unilaterally terminated his contract of employment in circumstances where it was not open to him to revoke that termination.

- [4] In so far as the applicant relies on the submission that he was instructed by the fifth respondent (the MEC) to resign, the answering affidavit makes clear that the administrator of the first respondent had spoken to the MEC who admitted meeting the respondent but denied offering the applicant a position in a different capacity. A signed confirmatory affidavit deposed to by the MEC was annexed to the answering affidavit. What the MEC did say is that the auditor general had raised queries regarding the overpayment of the applicant's salary, a matter that had been escalated to parliament. The MEC had also raised the issue of the applicant's irregular appointment by the first respondent. These are all factual averments that the court was obliged to accept, given that they were not seriously disputed in reply, with the applicant saying only that the confirmatory affidavit 'was not enough'.
- [5] Finally, the authorities on which the applicant now relies are misplaced. They concern employees who act on impulse and resign in the heat of the moment. In the present instance, that was never the applicant's case (his case was that the first respondent and the MEC had acted in cahoots to remove him from office) and in any event, neither case contradicts the well-established principle that notice once given cannot be withdrawn except by agreement.
- [6] In so far as the applicant appeals against the order for costs, the LRA confers a broad discretion on this court to make orders for costs according to the requirements of the law and fairness. The application was obviously misguided, and lacked merit from the outset. The order for costs was further intended to discourage applicant from abusing the urgent roll by filing applications manifestly

without merit, especially where the claim is one sounding in money. An appeal court will ordinarily not interfere in the exercise of a discretion, unless the circumstances are exceptional. Finally, there is no reason why the applicant ought not be ordered to pay the costs of these proceedings.

I make the following Order:

1. Leave to appeal is refused with costs.



André van Niekerk

Judge of the Labour Court