



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: 2025-085510

In the matter between:

NHLANHLA GOBS CEBEKHULU

Applicant

and

**CITY OF EKURHULENI METROPOLITAN
MUNICIPALITY**

First Respondent

**COUNCIL OF THE CITY OF EKURHULENI
METROPOLITAN MUNICIPALITY**

Second Respondent

**MUNICIPAL MANAGER: CITY OF EKURHULENI
METROPOLITAN MUNICIPALITY**

Third Respondent

PHAKAMILE MBENGASE

Fourth Respondent

**MEC: GAUTENG CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS**

Fifth Respondent

**MINISTER: GAUTENG CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS**

Sixth Respondent

Heard: 24 June 2025

Delivered: 30 June 2025

JUDGMENT

PHEHANE, J

Introduction

[1] In this opposed urgent application, the applicant seeks interim interdictory relief in essence, restraining the first, second and third respondents from concluding the recruitment process related to the filling of the position of Head of Department: Communications Marketing and Tourism (the position), and in the event that an appointment has been made in that position, restraining that incumbent from performing the function of the position pending relief in Part B.

[2] The relief sought in Part B is premised on section 157(2) of the Labour Relations Act¹ and is for an order that the advertisement of the position, the appointment of the selection panel related to the filling of the position and any decisions of that panel be declared unlawful, and any decisions of the panel be reviewed and set aside.

[3] The applicant's case in a nutshell, as encapsulated in paragraphs 24 and 25 of its founding affidavit, is as follows:²

'24. I pray for the above Honourable Court to interdict and restrain the First to Third Respondents from proceeding with the unlawful recruitment process to select [sic] and the appointment of a person for the vacant position of the

¹ Act 66 of 1995, as amended.

² At p 001-17 of CaseLines.

Head of Department: Communications, Marketing and Tourism at the Municipality pending the review and setting aside of the Council's decision and resolution dated 31 March 2025 to approve the appointment of the recommended candidate based on the recommendations of the selection panel of the Municipality.

25. For the reasons which appear below, it has emerged that the entire recruitment process of the candidate to fill the position of the Head of Department: Communications, Marketing and Tourism from (i) the advertisement; (ii) the selection; (iii) the interview; (iv) the recommendation of candidates and (v) the appointment of the candidate for the filling of the above post, is tainted with illegality.'

[4] It is not disputed that, by the time this application was heard, the fourth respondent was appointed in the position following a council resolution of 31 March 2025, and the fourth respondent has been performing the functions of the position since early April 2025, when he concluded a written contract of employment with the first respondent. In the premises, the respondents contend that not only is this application devoid of urgency, but that the relief sought is moot and therefore, this application ought to be dismissed.

[5] In an attempt to cure the problem that the interdictory relief sought is moot, in his practice note, the applicant appears to distance himself from the interdictory relief sought and now seeks this Court to determine whether the decision to appoint the fourth respondent to the position is lawful. In oral submissions, the applicant's counsel confirmed that the relief in Part B is now persisted with, as the applicant only became aware during these proceedings that the fourth respondent was appointed in the role. The problem with this belated approach, firstly, is that the case the respondent is to meet is the case as pleaded by the applicant. Second, the fourth respondent is cited in these proceedings; thus, it is not convincing on the applicant's own version before this Court that he did not know that the fourth respondent was mooted to be the successful candidate for the position.

Background

[6] In a resolution of November 2024, the second respondent resolved to advertise the position.

[7] The position was advertised on 11 December 2024, following a council resolution by the second respondent. The advertisement recorded that if applicants do not receive feedback within six weeks of the closure of the advertisement, they should regard their application as unsuccessful. For the purposes of the argument on urgency, the six-week period expired on 21 February 2025.

[8] The applicant applied for this position. He was not shortlisted for the position. In e-mail correspondence dated 3 March 2025, the applicant complained to the Executive Mayor that his exclusion from the shortlist and interviews, which he discovered were held in February 2025, was unfair, irrational and unlawful as his experience and qualifications were superior to the candidates interviewed - and he directed the council to correct this state of affairs.

[9] In a letter dated 4 March 2025, the applicant's attorney of record dispatched a letter to the City Manager, recording *inter alia*, that the applicant's exclusion from the recruitment process contravened the provisions of section 56 of the Local Government: Municipal Systems Act³ (MSA) and the Regulations thereto relating to the appointment of senior managers and demanded in essence, that the recruitment process be set aside, and failing such undertaking, the applicant would seek reasons for his exclusion and would approach the Court to interdict the appointment of the successful candidate.

[10] The second respondent held a meeting on 27 March 2025, which meeting dealt with the recruitment process. The applicant was aware that the council would table the appointment in the position at a meeting on 27 March 2025, as in email correspondence dated 25 March 2025 at 09h30, the applicant's attorney states that they are aware of this and that it was practically difficult for the applicant to approach the Court on an urgent basis. This practical difficulty is unexplained. Oddly, although

³ Act 32 of 2000.

legally represented at the time, the applicant avers that he had no funds to instruct his attorney to approach this Court for urgent interdictory relief.

[11] A council resolution of 31 March 2025 resolved to adopt the recommendation of the selection panel, including that the fourth respondent be appointed to the position. The fourth respondent signed a contract of employment on 1 or 3 April 2025⁴ and has been performing the functions of the position since then.

[12] On a proper construction of the applicant's case, he seeks to interdict actions that have already taken place. To place this dispute in context is not disputed: the council is empowered to advertise senior positions, to appoint a selection committee, to approve the recommendations of the selection committee and to approve the appointment of the recommended candidate. The applicant asks this Court, therefore, to interdict actions that have already happened in March 2025 and April 2025. This renders the application not only devoid of urgency but also moot.

[13] The applicant engaged in attempts to have the fifth respondent (MEC) and Executive Mayor intervene in setting aside the recruitment process, including launching an application in terms of the Promotion of Access to Information Act⁵ (PAIA). He did not approach this Court for relief when he did not obtain a satisfactory response following his PAIA application.

[14] It was only when political parties such as the Democratic Alliance and the Independent Citizens Movements challenged the MEC regarding the council resolution relating to the filling of vacancies, including the position which is the subject matter of this present application, that the applicant jumped on the bandwagon as it were, and now asserts that this Court is enjoined to urgently and promptly come to his assistance to put a stop to unlawful conduct in the first respondent in its recruitment processes. He belatedly asserts that the respondents' conduct is unlawful for an additional reason, and that is, a manager employed on a permanent basis in terms of section 56 of the MSA; however, the position was advertised for a duration of five years.

⁴ Answering affidavit, at para 17.3 on p 003-18 on CaseLines.

⁵ Act 2 of 2000.

Urgency

[15] Rule 38⁶ provides that an affidavit in support of an urgent application must contain averments setting out the reasons for urgency and why urgent relief is necessary.

[16] In *East Rock Trading 7 (Pty) Ltd and Another v Valley Granite (Pty) Ltd and Others*⁷, the Court stated that an applicant in urgent proceedings must set out explicitly in his or her affidavit the circumstances she or he avers render the matter urgent. A delay in instituting proceedings on his own is automatically grounds to refuse to hear the matter as urgent. An applicant must persuade the court that he or she will not be afforded substantial redress at the hearing in due course.

[17] In the present application, the applicant complains that the entire recruitment process is tainted for failure to comply with the MSA and its Regulations. The first step in the recruitment process was the advertisement in December 2024. The applicant intimated in correspondence on 4 March 2025 that he would approach this court for urgent relief if the recruitment process was not set aside. He did not. He also did not approach this court on 25 March 2025 when he knew that the second respondent would table the appointment in the post on 27 March 2024. The applicant was legally represented at that stage but elected not to approach this court for urgent relief. His reasons for not approaching this Court earlier are unconvincing. It was only on 28 and 29 May 2025, when the applicant learned that political parties were challenging the first respondent's recruitment processes, that he saw this as a reason to approach this Court on an urgent basis, and avers that Court is enjoined to act promptly and, as I understand the submission, hear applications on an urgent basis where there is an abuse of power by organs of state.

[18] However, the applicant is complicit in the conduct that he complains of. He applied for the position that was advertised in December 2024, in a process he terms

⁶ Rule 38 of the Rules Regulating the Conduct of the Proceedings of the Labour Court published in GN 477a in GG 50608 of 3 May 2024.

⁷ 2011 JDR 1832 (GSJ) at para [9].

as 'tainted' on the basis that the MSA and its Regulations were flouted, and he is better experienced and qualified than the fourth respondent. An inescapable question that must be asked is the following: if the applicant had been shortlisted, interviewed and appointed in the position, would he have launched this application? The answer is no.

[19] In *Gugu Malaza v City of Ekurhuleni Metropolitan Municipality and Others*⁸ (*Malaza*), this Court was faced with facts that are on all fours with the present application. In *Malaza*, this Court per Tlhotlhemaje J, stated as follows:

[18] If I understood the applicant's case, her case is that the resolution leading to the advertisement was unlawful and not constitutionally compliant. The significance of this proposition is that since the first step by Council in initiating the recruitment process is in itself unlawful, it follows in my view that anything else that flowed from that resolution, including the advertisement, appointment of the selection panel, short-listing, interviews, and ultimate appointment into the post, is effectively a nullity to the extent that any such unlawfulness may be established.

[19] Thus since anything to do with the recruitment process is alleged to be unlawful, this implies that the applicant cannot as a starting point, be a party to that unlawfulness by participating in that process, and then complain about the same unlawfulness at a later stage. Thus, it would be inconsistent with her posture and allegations of unlawfulness, to complain about not being shortlisted in accordance with the very tainted process. This stance in my view demonstrates a classic case of approbating and reprobating. The applicant cannot blow hot and cold at the same time by seeking to impugn the legality of the entire recruitment process, whilst at the same time subjecting herself to the very same process and claiming a '*legitimate expectation*' that she would be one of the candidates selected since she met the minimum requirements of the post; or that she met the very same minimum requirements set through an illegal process. To repeat, once the applicant

⁸ Unreported judgment under case no: J729/2024, delivered 13 July 2024 at paras [18] to [20].

voluntarily subjected herself to an unlawful process, she cannot be heard to complain at a later stage when she failed to get the desired outcome out of that same process. Equally odd was for the applicant on 17 June 2024, to have to enquired about the stage at which the supposedly illegal recruitment process was, or to even complain about the terms of the tenure as stated in the advertisement.

[20] Other than the inconsistencies in the applicant's approach, it is further my view that she cannot claim to have satisfied the requirements of urgency when the very basis of the allegations of illegality in the recruitment process commenced from April 2024 when the post was advertised, and when she submitted her application.'

[20] Therefore, with the afore-going in mind, not only is Part A of this application devoid of urgency, it is also moot.⁹

[21] Insofar as the averment by the applicant that this Court should not turn a blind eye to alleged illegalities in recruitment processes in the first respondent, on his own version, the MEC is dealing with such allegations as he is empowered to do in terms of the provisions of the MSA.

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

⁹ In *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* [2012] JOL 29422 (CC), the Constitutional Court stated as follows at para [50]:

'The prima facie right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a *prima facie* right that is threatened by an impending or imminent irreparable harm'.

See also: *Solidariteit Helpende Hand NPC and Others v Minister of Co-operative Governance and Traditional Affairs* 2023 JDR 0964 (SCA), where the SCA held at para [12]:

'The general principle is that a matter is moot when a court's judgment will have no practical effect on the parties. This usually occurs where there is no longer an existing or live controversy between the parties. A court should refrain from making rulings on such matters, as the court's decision will merely amount to an advisory opinion on the identified legal questions, which are abstract, academic or hypothetical and have no direct effect; one of the reasons for that rule being that a court's purpose is to adjudicate existing legal disputes and its scarce resources should not be wasted away on abstract questions of law. In *President of the Republic of South Africa v Democratic Alliance*, the Constitutional Court cautioned that "courts should be loath to fulfil an advisory role, particularly for the benefit of those who have dependable advice abundantly available to them and in circumstances where no actual purpose would be served by that decision, now"'.

Order

1. The application is struck off the roll for lack of urgency.
2. There is no order as to costs.

M. T. M. Phehane
Judge of the Labour Court of South Africa

Appearances:

For the applicants: Ms Letoaba
Instructed by: Lesley Sedibe INC

For the respondents: Mr Sithole
Instructed by: M Matshiyane