



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not Reportable

Case no: 532/2024

In the application between:

HOPOLANG ISHMAEL LEBUSA

APPLICANT

and

METSIMAHOLO LOCAL MUNICIPALITY

FIRST RESPONDENT

**THE SPEAKER OF THE COUNCIL OF METSIMAHOLO
LOCAL MUNICIPALITY**

SECOND RESPONDENT

**THE ACTING MUNICIPAL MANAGER OF
METSIMAHOLO LOCAL MUNICIPALITY**

THIRD RESPONDENT

**THE MUNICIPAL COUNCIL OF METSIMAHOLO
LOCAL MUNICIPALITY**

FOURTH RESPONDENT

MATOME MASHAO

FIFTH RESPONDENT

Neutral citation: *Lebusa v Metsimaholo Local Municipality and Others* (532/2024
[2025] ZAFSHC 377 (27 November 2025))

Coram: MHLAMBI ADJP et GREYLING-COETZER AJ

Heard: 17 September 2025

Delivered: 27 November 2025

Summary: Leave to appeal - judicial review – unlawfulness of decision by Municipal Council – contrary to principles of natural justice – contravention of Local Government: Disciplinary Regulations for Senior Managers 2010 – breach of employment contract.

ORDER

1 The application for leave to appeal is dismissed, with costs.

JUDGMENT

Greyling-Coetzer AJ (Mhlambi J concurring)

[1] This is an application for leave to appeal brought by the first to fourth respondents, being Metsimaholo Local Municipality, The Speaker of The Council of Metsimaholo Local Municipality, The Acting Municipal Manager of Metsimaholo Local Municipality and The Municipal Council of Metsimaholo Local Municipality (hereinafter collectively referred to as the municipal respondents).

[2] The application for leave to appeal is made against this Court's order and judgment dated 29 April 2025, in terms of which the court ordered as follows:

'1. The decision by the Fourth Respondent to approve and/or note and/or condone or ratify the ruling of the Fifth Respondent dated 8 December 2023, terminating the pending disciplinary hearing that was postponed on 28 November 2023, is hereby declared unlawful and invalid and set aside;

2. The decision by the Fourth Respondent taken on 8 December 2023 to immediately terminate the Applicant's employment contract is declared unlawful and invalid and set aside;

3. The termination of the Applicant's employment on 11 December 2023 is declared unlawful and invalid and set aside;

4. The First- to Fourth Respondents are ordered to restore the status quo ante that existed prior to the unlawful termination of the applicants' employment;

5. The First to Fourth Respondents are ordered to pay the costs of this application, jointly and severally, the one to pay the other to be absolved, which costs to include the costs of counsel on Scale B.’

[3] The application for leave to appeal is sought in terms of the provisions of s 16(1)(a)(i) read with s 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013. In terms of the aforesaid provisions, leave to appeal may only be given where a judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[4] In summation the application for leave to appeal is essentially based thereupon that the court erred in the following respects: (i) in finding and ordering that the decision of the fifth respondent dated 8 December 2023, terminating the disciplinary hearing that was postponed on 28 November 2023, is unlawful and invalid and should be set aside; (ii) in considering a defective notice of motion which did not comply with the prescribed rules of court for an application (non-urgent) when it was enrolled irregularly; (iii) in finding that the court had jurisdiction to entertain the matter; (iv) in refusing to grant part A when the interim relief was sought by the applicant and thereafter granting a declaration of unlawfulness and invalidity when part B was heard; and (v) the court erred in not dealing with the veracity of the applicant’s purported referral in terms of s 188A(11) of the Labour Relations Act 66 of 1995 (LRA) and not attempting to determine whether the applicant was indeed a whistleblower, which he was/is not, in light of the facts stated in the application for leave to appeal.

[5] As to the applicable test in an application for leave to appeal, both parties relied on *Ramakatsa v African National Congress and Another*.¹ This Court is thus to test the grounds on which leave to appeal is sought against the facts of the case and the applicable legal principles to ascertain whether the party seeking leave has shown that there are reasonable prospects on appeal, which prospects of success must not be remote, but founded on a sound rational basis, that a reasonable chance of succeeding exists.

¹ *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31; 2021 JOL 49933 (SCA) para 10.

[6] Before dealing with the grounds in support of the application for leave to appeal as summarised above, it is necessary to briefly set out the findings and or issues which the municipal respondents do not take issue with or seek to challenge. The municipal respondents do not contend that the Court erred:

(i) in its consideration and interpretation of the relevant facts regarding the circumstances within which the municipal council resolved to terminate the applicant's employment contract;²

(ii) in its consideration and interpretation of the relevant provisions of the applicant's employment contract and the requirements incorporated in the employment contract for the termination of the employment contract by the municipal council;³

(iii) in finding that the intended dismissal of the applicant, as envisaged in the notice of intention to terminate which was issued by the acting municipal manager on 7 December 2023, was no longer founded upon the allegation of serious misconduct, as was the case in the disciplinary proceedings, but relying on the ruling of the presiding officer in the disciplinary proceedings;

(iv) in finding that it was required of the municipal respondents to seek representation by the applicant and afford him a hearing before making a decision to terminate his employment on such basis;⁴

(v) in finding that notwithstanding the call for representation in compliance with the principle of natural justice and the *audi alteram partem* principle, the municipal council convened on 8 December 2023 at 12h00, and resolved to invoke the termination clause, and thereby terminating the applicant's employment without considering the applicant's representations, and therefore without first hearing the applicant;⁵

(vi) in finding that the record revealed that the decision to terminate was made by the municipal council as outlined in the resolution under item 27, which is objectively supported by the content of the notice of termination dated 11 December 2023, and the

² Judgment par 41 to 56.

³ Judgment par 35 to 39.

⁴ Judgment par 41.

⁵ Judgment par 42 and 43.

fact that the municipal council resolved under item 28 to declare the position of the Chief Financial Officer, occupied by the applicant, vacant, and approved the advertisement and filling of the position;⁶

(vii) in finding that the municipal council therefore took the decision to terminate the employment contract, and did not delegate it to the municipal manager, as argued by the municipal respondents;

(viii) in finding that the termination of the applicant's employment contract was a *fait accompli* at the time that the representations were received and purportedly considered by the acting municipal manager;⁷

(ix) in finding that the municipal council was not entitled to summary dismiss the applicant on 8 December 2023 before hearing the applicant;

(x) in finding that the decision to note the reported ruling of the presiding officer and to terminate the applicant's employment, which decision was taken by the municipal council, and the resultant termination of the employment contract in the said circumstances, was made in violation of the municipal respondents' own directives as outlined in the notice of intention to terminate, in contravention of the principles of natural justice.⁸

[7] In addition, the municipal respondents do not contend that the alleged failure by the court to deal with the applicant's referral in terms of s 188A(11) of the LRA or the question whether the applicant was indeed a whistleblower or not, would have any effect on the court's aforesaid findings or the court's conclusion that because of the aforesaid violation of the applicant's rights, the decision is deemed to be unlawful, lacking legal validity and stands to be set aside.

[8] Therefore, the court's aforementioned findings, particularly the finding that the municipal council's decision to terminate the applicant's employment contract was in contravention of the provisions of the employment contract and the principle of natural justice, stand unchallenged.

⁶ Judgment par 46 to 51.

⁷ Judgment par 52 to 54.

⁸ Judgment par 55 to 56.

[9] Against aforesaid, the grounds relied on in support of the application for leave to appeal are dealt with in turn.

The first ground

[10] The municipal respondents contend that the court erred in finding and ordering that the decision of the fifth respondent dated 8 December 2023, terminating the disciplinary hearing that was postponed on 8 November 2023, is unlawful and invalid, and should be set aside, as the fifth respondent did not take any decision on 8 December 2023, but took a decision on 7 December 2023. Further that no case was made out in the applicant's papers for any decision taken on 8 December 2023 and well knowing that no decision was taken on 8 December 2023, the applicant failed to amend its notice of motion in prosecuting Part B. In the result the decision of the fifth respondent dated 7 December 2023 still stands, which renders the order of this Court unenforceable.

[11] An appropriate threshold consideration is that the court, in its judgment and order, made no finding nor issued any order declaring the fifth respondent's decision unlawful, invalid, or set aside. As is evident from paragraph 1 of the order, quoted above, the decision declared unlawful and invalid and consequently set aside was the fourth respondent's decision to approve, note, condone, or ratify the ruling of the fifth respondent.

[12] It was common cause between the parties and during the hearing that the ruling, and therefore decision of the fifth respondent, was taken on 7 December 2023. This was also evident from the record and the courts judgment.⁹

[13] The ruling made was sufficiently identified throughout the hearing as well as in the judgment, and the inclusion of the date of 8 December 2023 as opposed to 7 December 2023, so was the decision of the fourth respondent which was set aside per paragraph 1 of the order. The error in describing the ruling of the fifth respondent to have been on the 8th of December 2023 as oppose to the 7th of December 2023 does not detract from the identification of the ruling by the fifth respondent and the decision

⁹ Judgment par 7, 41 and 56.

by the fourth respondent. Nor does it have the result contended for by the municipal respondents that paragraph 1 of the order, for this reason, is unenforceable.

[14] The inclusion of '8' as opposed to '7' is in any event a patent error, *mero motu* correctable under rule 42 by this Court.

The second ground

[15] Ancillary to aforementioned ground, the municipal respondents contend that the notice of motion was defective, as it did not comply with the prescribed rules of court for non-urgent applications when it was enrolled. Therefore, it is contended that the enrollment of the application was irregular and stands to be set aside.

[16] This issue was listed as one of the issues to be determined by this Court in terms of the municipal respondents' heads of argument during the application, but no substantive argument was made in respect of this issue in the remainder of the heads of argument, nor further pursued in argument.

[17] In the answering affidavit, the municipal respondents contended that prayer 1.1 of Part B refers to the ruling of the fifth respondent dated 8 December 2023, while the ruling was dated 7 December 2023. And further that in terms of prayer 5 of Part B, the applicant asked costs of the application, including those in Part A to be paid by the respondents, whilst the costs in Part A has already been decided upon.

[18] Prayer 1 of Part B refers to the decision taken by the fourth respondent, being the municipal council, on 8 December 2023, to *inter alia* approve, note, condone or ratify the ruling of the fifth respondent as presiding officer. As set out herein above, although the reference was made to 8 December 2023 in prayer 1.1, the specific ruling was properly identified and common cause between the parties to have taken place on 7 December 2023.

[19] The applicant did not seek the ruling or any decision of the fifth respondent to be declared unlawful, invalid and set aside. Nor did the court order such.

The third ground

[20] The municipal respondents contend that the court did not have jurisdiction. In substantiation the municipal respondents contend that the employment contract under clause 9 stipulates that in the event of a dispute arising out of the contract, the Commission for Conciliation Mediation and Arbitration (CCMA) would have jurisdiction. Further that, the termination itself had resulted from an internal disciplinary hearing which was initiated in terms of the LRA.

[21] As fully dealt with in the court's judgment, jurisdiction is determined by the pleaded case. The fact that a cause of action is limited to a certain forum must not be interpreted as obliging an applicant only to pursue that particular cause of action. The applicant's case as pleaded was premised on the unlawful termination of the employment contract, and not on any pure labour related issue. Its cause was one of unlawfulness as opposed to unfairness.

[22] Clause 19 of the employment contract does not assist the municipal respondents. The said clause inter alia provides that the parties consent to the jurisdiction of the CCMA and if the CCMA is not able to adjudicate the dispute, the Courts of the Republic of South African with regards to any claim resulting or arising from this contract.

[23] It was further accepted in the municipal respondents' answering affidavit that the Labour Court does not have jurisdiction over unlawful terminations, the effect thereof being that the CCMA would equally not have jurisdiction over unlawful terminations.¹⁰

[24] In *Safeguard Chemicals t/a Maris Polimar South Africa v Frydas*,¹¹ the court held that s 115(1)(b)(ii) of the LRA which gives the CCMA jurisdiction if the parties consent to such jurisdiction, cannot be invoked where the CCMA has no jurisdiction to entertain the dispute from the outset. The LRA does not provide that the CCMA has jurisdiction to arbitrate a dispute in respect of the unlawful termination of an employment contract, or to issue an award declaring any conduct of an employer regarding an

¹⁰ *Makhanya v University of Zululand* [2009] ZASCA 69; 2010 (1) SA 62 (SCA) [2009] 8 BLLR 721 (SCA); [2009] 4 All SA 146 (SCA); (2009) 30 ILJ 1539 (SCA) paras 58-59.

¹¹ *Safegaurd Chemicals t/a Maris Polymers South Africa v Frydas and Others* [2022] ZALCJHB 359 para 54.

employment contract to be unlawful and invalid, or to be set aside based on the principle of legality.

[25] Consequentially, the court's jurisdiction was not ousted by the provision of clause 19 of the employment contract.

[26] In respect of the municipal respondents' reliance on the applicant's referral under s 188A(11) of the LRA, the referral was made in respect of the disciplinary proceedings that were pending at the time. When the disciplinary proceedings were terminated, those proceedings were also not persisted with by the applicant. It therefore related to the disciplinary proceedings which were terminated, and not in respect of any dispute regarding the unlawful termination of the applicant's employment contract.

The fourth ground

[27] The municipal respondents contend that the court erred in refusing to grant Part A when the interim relief was sought by the applicant, and in granting a declaration of unlawfulness and invalidity when Part B was heard.

[28] It was submitted that the granting of the interim relief would have ensured that the respondents do not implement the natural consequence of the dismissal, *vis-à-vis* the filling up of the vacancy. It was further contended that the court in exercising its discretion whether or not to grant Part A ought to have earnestly evaluated the prospects of success of Part B, and therefore the order and judgment are erroneous in that they unscrambled the egg, as it is impossible to implement the order without terminating the contract of the incumbent. Therefore, the order is not just and equitable under the circumstances.

[29] The municipal respondents opposed Part A of the application, which was heard by Opperman J. Part A was disposed of on the basis that the urgency was self-created. The municipal respondents cannot now complain about the outcome of those proceedings, as it was in accordance with their opposition to said application. It was open to the municipal respondents to persuade Opperman J to deal with the merits in respect of Part A, as oppose to only determine the matter on urgency. Part A did not serve before this Court, and it is common cause that this Court was limited to the relief sought in Part B.

[30] If this ground of appeal is understood correctly, it suggests that where an interim interdict is not granted in the circumstances of a case as the present, the court ought to, alternatively is precluded from, considering and determining the unlawfulness and invalidity of the impugned decision at a later stage.

[31] The municipal respondents did not contend in its answering papers nor during the hearing of Part B that a declaration of invalidity and unlawfulness would not be just and equitable under the circumstances, or did it challenge the constitutionality of the common law regime, as it now in this leave to appeal proceedings purports to do. The factual foundation upon which such issues ought to be considered and ventilated did not appear from the papers which served before the court.

[32] Other than the resolution taken under item 28 per the record, the only reference which was made to the filling of the position of Chief Financial Officer and its lawfulness is set out in paragraph 55 of the answering affidavit, and in paragraphs 61 to 63 of the replying affidavit. However, same was not raised by the municipal respondents in the context that it would be impossible to implement an order by court declaring the termination of the employment contract unlawful and setting aside, nor on the basis now advanced by the municipal respondents.

[33] There is simply no case made out for the grounds on which the municipal respondents now wish to challenge the just and fairness and/or the constitutionality of the common law regime.

[34] The Constitutional Court in *Steenkamp v Edcon Ltd*,¹² confirmed that where there is no valid decision, there could not have been a valid termination of employment.¹³ The Court further recognised the distinction in law between an invalid dismissal and an unfair dismissal, as well as the distinction in law between lawfulness and fairness.¹⁴ Those distinctions remain applicable and are applicable in the present matter. The applicant's case was premised on unlawfulness.

¹² *Steenkamp and Others v Edcon Limited* [2016] ZACC 1; (2016) 37 ILJ 564 (CC); 2016 (3) BCLR 311 (CC); [2016] 4 BLLR 335 (CC); 2016 (3) SA 251 (CC) paras 118, 119 and 192.

¹³ *Maswanganyi v Minister of Defence and Military Veterans and Others* [2020] ZACC 4; (2020) 41 ILJ 1287 (CC); 2020 (6) BCLR 657 (CC); 2020 (4) SA 1 (CC); [2020] 9 BLLR 851 (CC) para 46.

¹⁴ *Ibid Steenkamp* para 191.

The fifth ground

[35] The municipal respondents contend that the referral in terms of s 188A(11) of the LRA triggered the termination of the employment contract, as it was determined by the fifth respondent that the referral had been employed as a delaying tactic and was not *bona fide*. Further that the applicant was not a whistleblower.

[36] The referral in terms of s 188A(11) was already dealt with herein above. A finding on the lawfulness of the referral in the context that it took place, the disciplinary proceedings having been terminated and the referral not being persisted with, have no effect on the findings of the court regarding the invalidity of the decisions of the fourth respondent, and are immaterial having regard to the fourth respondent's failure to consider the representations made by the applicant before the termination of the employment contract.

[37] For the reasons set out above, the municipal respondents have not demonstrated that there exists a reasonable prospect of success on appeal and that another court would come to a different conclusion. Equally, they have failed to demonstrate that there are some other compelling reasons why the appeal should be heard. The application should thus fail.

[38] There is no reason that the general principle, that cost should follow the event, should not find application. As to the scale, scale B is appropriate in the circumstances of the matter.

[39] Consequentially, the following order is proposed: -

1 The application for leave to appeal is dismissed with costs, with costs to include counsel's fee on scale B.

D GREYLING-COETZER

ACTING JUDGE OF THE HIGH COURT

I agree, and it is so ordered

J.J MHLAMBI

ACTING DEPUTY JUDGE- PRESIDENT OF THE HIGH COURT

Appearances:

For the applicant:

C D Pienaar

Instructed by:

Matlho Attorneys,
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For the respondents:

C Muza with M Nduli

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