



THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

NOT REPORTABLE

Case no: C632/2023

In the matter between:

MALUTI – A PHOFUNG MUNICIPALITY

Applicant

and

SOUTH AFRICAN MUNICIPAL WORKERS UNION

First Respondent

SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION

Second Respondent

INDEPENDENT MUNICIPAL AND ALLIED WORKERS UNION

Third Respondent

**SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL**

Fourth Respondent

SAM MAKHUBU

Fifth Respondent

Heard: 29 October 2025

Delivered: Judgment was handed down on 19 January 2026, by email to the parties' legal representatives.

Summary: Application to review and set aside decisions of the fifth respondent, former municipal manager of the applicant. Application dismissed, no costs.

JUDGMENT

DANIELS J

Introduction

- [1] The applicant (the “municipality”) brought this matter to review and set aside certain actions by its former acting municipal manager, the fifth respondent, on the grounds that such conduct was unlawful as contemplated by section 158(1)(h)¹ of the Labour Relations Act No. 66 of 1995 as amended (the “LRA”).
- [2] The first respondent had earlier brought an application, under case number J438/2023, to enforce the decisions taken (to which this dispute relates) by the fifth respondent. In that application, on 23 October 2023, my brother Lagrange J handed down his judgment in which he made an order *inter alia* directing that the present application be brought.

Material facts

- [3] During the month of August 2023, the former acting municipal manager, Mr Sam Makhubo (“Makhubo”) instructed payroll and human resources to adjust the post levels and salaries of some 183 employees.
- [4] Makhubo alleges² that he was implementing an earlier collective agreement between the applicant and the first and third respondents, concluded at the Local Labour Forum (“LLF”) on 14 June 2022. Between June 2022 and August

¹ Section 158(h) states that the Labour Court may “review any decision taken or act performed by the State in its capacity as employer, on such grounds as are permissible in law”. Section 158(h) confers jurisdiction on this court to review any conduct of the State, in its capacity as an employer, on the grounds of legality and rationality. See *Merafong City Local Municipality v SAMWU and another* (2016) 37 ILJ 1857 (LAC) at para 38

² Supplementary affidavit of S Makhubo, pleadings pp 318 – 325

2023, the LLF agreement had not been fully implemented because of the high turnover of municipal managers.

[5] The LLF agreement of 14 June 2022 provided *inter alia* follows:

“(3) Security officers will be moved from post level fifteen to post level thirteen from 1 July 2022,

(11) Team leaders who appointed (sic) in 2017 and were issued with appointment letters but not remunerated till date (sic) should be compensated as of 1 July 2022, also those who have been performing duties of team leader without appointment letters,

(12) Twelve traffic officers will be moved from post 7 level to post level 6 as senior traffic officers and one current senior traffic officer will be moved from level six to level five as assistant superintendent with effect from 1 July 2022,

(13) Firefighters will be move (sic) by one leg (notch) effective from 1 July 2022.”

[6] The LLF agreement was negotiated with the recognized unions *inter alia* by councillors of the municipality. In this matter, the applicant does not allege that the LLF agreement was unauthorised, nor does it seek that the LLF agreement be set aside.

[7] On 24 August 2023, a new acting municipal manager, Mr Halcon Goliath (“Goliath”) was appointed. Following an investigation, Goliath issued an instruction to reverse the salary and post level adjustments, which was earlier authorised by Makhubo. This prompted the first respondent to bring an urgent application in this court, as explained in paragraph 2 above.

[8] The applicant alleges that the conduct of Makhubo was unlawful *inter alia* because it was in breach of:

- 8.1 the Local Government Municipal Systems Act 32 of 2000 (the “Systems Act”),³
- 8.2 the Local Government: Municipal Finance Management Act 56 of 2003,
- 8.3 the TASK Job Evaluation Policy⁴ as adopted by the applicant through a resolution of Council,⁵
- 8.4 the Collective Agreement for the Free State Division of the South African Local Government Bargaining Council (“SALGBC”),⁶
- 8.5 the Main Collective Agreement of the SALGBC,⁷
- 8.6 the Salary and Wages Collective Agreement of the SALGBC,⁸

LEGAL ISSUES AND ANALYSIS

Local Government Municipal Systems Act No. 32 of 2000 (the “Systems Act”)

- [9] Section 55(1)(l) of the Systems Act provides that a municipal manager is, subject to the policy direction of the council, responsible and accountable for the administration and implementation of the municipality’s by-laws and other legislation.

³ The applicant references only sections 55(1)(m), (55)(q), 66(3), and 66(4)

⁴ Founding affidavit, annexure FA11, pp252 - 267

⁵ Founding affidavit, annexure FA12, p268

⁶ Founding affidavit, annexure FA10, pp195 - 251

⁷ Founding affidavit, annexure FA7, pp73 - 188

⁸ Founding affidavit, annexure FA13, pp269 - 287

- [10] Section 55(1)(q) of the Systems Act provides that a municipal manager is, subject to the policy direction of the council, responsible and accountable for the performance of any other function that may be assigned by the council.
- [11] The applicant asserts that the conduct of the former acting municipal is in breach of his duties under section 55(1)(l) and (q) but, apart from what is discussed below, provides no substance to the allegations.
- [12] The applicant submits that the conduct of the fifth respondent was contrary to the staff establishment, and therefore in breach of sections 66(3) and 66(4) of the Systems Act. Unfortunately, the applicant has not attached the staff establishment. In any event, the contention is disputed by the first respondent. The submission must fail.
- [13] Section 67(1) of the Systems Act provides that a municipality must, subject to any applicable law and collective agreement, adopt systems to ensure that personnel administration is fair, efficient, effective and transparent. Such systems relate *inter alia* to the recruitment, selection or appointment of persons as staff, the service conditions of staff, and the promotion or demotion of staff. However, apart from what is set out in clause 18 of the Collective Agreement for the Free State Division of the SALGBC (as discussed later) the applicant has not attached any promotion or recruitment policy, against which the conduct of the fifth respondent can be evaluated. The applicant contends that the movement of the affected staff to higher salary levels was contrary to fair, efficient, effective and transparent personnel practices. However no content is given to this contention, which is in any event disputed.

Local Government: Municipal Finance Management Act 56 of 2003 ("MFMA")

- [14] The applicant submits that the expenditure authorised by the fifth respondent was irregular or fruitless and wasteful expenditure, as defined in section 1 of the MFMA. The applicant gave no content to this submission.

- [15] The applicant alleges, the expenditure was not contemplated by the approved annual budget of the municipality. Unfortunately, the approved annual budget of the municipality was not before the court.
- [16] The first respondent replied *inter alia* that the expenditure was authorised through the LLF agreement. The applicant did not argue that the LLF agreement did not contemplate such expenditure and instead suggested that the LLF agreement was invalid. That argument fails for reasons explored later.

TASK Job Evaluation Policy ("TASK Policy")

- [17] The applicant alleges that the fifth respondent acted in breach of the TASK Policy by adjusting the post levels of certain categories of employees, thereby adjusting their salaries.
- [18] The TASK Policy provides that any post that has undergone a permanent change in content must be re-evaluated (presumably with a view to regrading). The TASK Policy envisages that the process unfolds through a designated Job Evaluation Manager and the Job Evaluation Unit. In addition, the TASK Policy provides that a job incumbent, or his manager, may make an application through the departmental head that his job be re-evaluated where (additional) functions are performed for more than six months.
- [19] The first respondent denies that the TASK Policy was applicable and instead says that the affected staff were promoted to higher salary levels - already was already provided for by the staff establishment. The first respondent further contends that the grading of employees is a function and power of the municipal manager.
- [20] I accept that the movement of certain staff from one salary level to another need not necessarily result from a reassessment of the post as contemplated by the TASK Policy. Movement to a higher salary level could result solely from

a promotion. The applicant has not demonstrated that different salary levels or notches are impermissible in respect of the same position, within the same grade. In these circumstances, the applicant ought to have explained its salary structure in detail and provide the court with a document setting out the salary structure.

Collective Agreement for the Free State Division of the SALGBC

- [21] Clause 18 of the Collective Agreement for the Free State Division of the SALGBC deals with appointment and promotion of staff. In my view, the very existence of this agreement suggests that the process relating to the promotion of staff is different to the processes envisaged by the TASK Policy.
- [22] Clause 18 states that all promotions are subject to 'due formal process' which must be transparent and fair. There is no further clarity on what the 'due formal process' entails. The clause also provides that promotions must be informed by the 'approved recruitment policy' of the municipality. Unfortunately, no approved recruitment policy was placed before the court.
- [23] Clause 18.2.4 states that, where the municipality has no recruitment policy, the process of promotion must be the subject of consultation in the LLF. This suggests that wage increases arising from promotions are distinguishable from increases negotiated through wage negotiations at the SALGBC.
- [24] Importantly, clause 21.1 states that the Free State Division of the SALGBC must monitor and enforce compliance with the collective agreement in terms of section 33A of the LRA. In the circumstances, the jurisdiction of this court to enforce the collective agreement is ousted. Section 157(2) of the LRA reads: "*Except as provided for in section 158(2), the Labour Court does not have jurisdiction to adjudicate an unresolved dispute if this Act ... requires the dispute to be resolved through arbitration*". The applicant did argue that section 158(2) was applicable. Accordingly, any dispute about the

enforcement of the collective agreement must be referred to arbitration, in accordance with clause 21.1, read with section 33A.

Main Collective Agreement of the SALGBC ("Main Agreement")

[25] The applicant contends that the LLF agreement is in violation of clause 10.2 of the Main Agreement which provides that wages and salaries are the subject of collective bargaining at the national level of the SALGBC. Clause 11.8.2 of the Main Agreement provides that the LLF has the role and function of negotiation or consulting on matters of mutual interest that are not the domain of negotiations at the SALGBC or any of its divisions. Accordingly, so the contention goes, the LLF did not have the power to conclude the LLF agreement of 14 June 2022.

[26] There are several difficulties with this contention. As previously indicated the LLF agreement appears to relate to the promotion of individuals, and not the negotiation of salaries or wages for categories of employees. Second, even if one assumes this is possible, the applicant has not asked this court to review and set aside the LLF agreement. Finally, all disputes about the enforcement of the Main Agreement must be referred to arbitration in accordance with clause 19.3 of the Main Agreement, read with section 33A of the LRA.

Salary and Wages Collective Agreement of the SALGBC

[27] The applicant contends that the conduct of the fifth respondent was in breach of the Salary and Wages Collective Agreement. The same difficulties arise as discussed previously. The first is that increases arising from promotions cannot be equated to wage increases negotiated through the SALGBC. Even if this is incorrect, any dispute about the interpretation, application, or enforcement of the collective agreement must be arbitrated in accordance with clauses 16 and 17 of the Salary and Wages Collective Agreement, read with section 33A of the LRA.

Conclusion

[28] In the circumstances, the applicant failed to make out a case for the relief that it seeks and the application falls to be dismissed. Costs were not actively pursued by the parties and there are no unusual circumstances justifying a costs order. Accordingly, the application is dismissed with no order as to costs.

RN Daniels

Judge of the Labour Court of South Africa

Appearances

For the Applicant:

Adv E Van As

Instructed by Niemann Grobbelaar Attorneys

For the First Respondent:

Adv T Du Preez

Instructed by Kramer Weihmann Inc