



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

CASE NO. 2212/2024

In the matter between:

LUTHER TEMBINKOSI KOKOSE

Applicant

and

KING SABADA DALINDYEBO MUNICIPAL COUNCIL

First Respondent

THE MUNICIPAL MANAGER FOR KING SABADA

DALINDYEBO MUNICIPAL COUNCIL

Second Respondent

MR F GULENI

Third Respondent

JUDGMENT

Molony AJ:

Introduction

- [1] The applicant, who averred that he was a former Director of Community Services for the first respondent (from 2005 to 2008), decided in 2022 to apply for the position of Director of Community Services with the first respondent.
- [2] His application was pursuant to a public advertisement, with the deadline for applications being 28 July 2022.
- [3] The applicant received a written invitation to attend interviews on 23 August 2022.
- [4] Then, on 22 August 2022, the applicant was notified that the interviews would be postponed.
- [5] On 8 October 2022 the first respondent sent an email providing reasons for the postponement, and informing the applicant that the post would be re-advertised due to a lapse of time.
- [6] The post was duly re-advertised in October 2022.
- [7] The applicant was dissatisfied with the reasons provided for the postponement of the interviews and was of the view that the re-advertisement was in breach of,

inter alia, section 56(4) of the Local Government: Municipal Systems Act 32 of 2000, read with the Local Government Regulations on Appointment and Conditions of Employment of Senior Managers.¹

[8] Despite the above the applicant applied for the post, pursuant to the re-advertisement.

[9] The applicant, according to the founding affidavit, was again called to attend an interview, this time on 22 November 2022. The applicant also averred in the founding affidavit that he was interviewed together with about 6 other candidates (including the third respondent) on 27 October 2022. Nothing turns on this discrepancy though.

[10] The applicant, additionally, submitted himself for background screening and attended competency assessments in East London, which he believed he had passed.

[11] The applicant then received a letter, dated 19 January 2023, informing him that his application for the post had been unsuccessful.

[12] The third respondent was then appointed to the position of Director of Community Services for the first respondent.

¹ Published under GN 21 in GG 37245 of 17 January 2014.

- [13] The applicant's view was that the third respondent was not qualified for the post, did not originally apply for the post, failed the competency assessment and the interview, and was permitted to bypass the background screening.
- [14] The applicant, dissatisfied with the above-mentioned outcome, wrote to the second respondent on 29 October 2023, seeking reasons for his non-appointment (the letter itself carries the date of 29 January 2023).
- [15] He also, on 29 October 2023, requested documentation such as performance score sheets, short lists, minutes of interviews, audio recordings and competency reports.
- [16] According to the applicant he received no response and was advised to declare a dispute and refer the matter to the Commission for Conciliation, Mediation and Arbitration ('the CCMA') in regard to unfair discrimination in terms of section 6(1)² of the Employment Equity Act 55 of 1998.

² See Chapter II, sections 5 to 11 of the Employment Equity Act, which allow approaching the CCMA and/or the Labour Court in regard to disputes relating to unfair discrimination. Section 9 states that, in the context of chapter II, and specifically sections 6, 7 and 8, an 'employee' includes an applicant for employment.

[17] The matter was referred to conciliation on 13 November 2023, but was not resolved and was referred to the Labour Court by way of a Certificate of Outcome of Dispute Referred to Conciliation, dated 6 December 2023.

[18] On 6 February 2024 the applicant applied for a case number with the Labour Court. He had, at the time of launching this application, not received a response from the Labour Court.

[19] The applicant then launched this application in May 2024. The relief sought is final in nature and requests that it be ordered that:

(a) The decision of the first respondent to appoint the third respondent be reviewed and set aside.

(b) That the decision of the first respondent not to appoint the applicant, be reviewed and set aside.

(c) Substituting the first respondent's original decision with an order that the applicant be appointed to the relevant post, with effect from 1 February 2023, with full salary and benefits.

(d) Costs were sought against the first respondent (and against the second and third respondents only in the event of opposition).

[20] The applicant also sought condonation for the late filing of the review.

[21] The application was opposed by the respondents, with the second respondent deposing to the answering affidavit.

[22] The respondent's opposition to the application amounted to the following:

(a) The applicant's explanation in regard to his condonation application was inadequate.

(b) The applicant was in the wrong court, as the Labour Court has exclusive jurisdiction in regard to matters involving discrimination, as contemplated in section 6 of the Employment Equity Act 55 of 1998.

(c) The applicant was forum shopping and thus abusing the process of this court.

(d) The appointment process of the third respondent was conducted appropriately and was fair.

(e) The applicant had not demonstrated that he had an existing, future or contingent right to the relief sought.

[23] Costs were requested by the respondents on a punitive scale.

[24] In reply, the applicant disavowed reliance (in this application) upon unfair discrimination in terms of the Employment Equity Act, submitting that he was placing reliance, in this review, on Rule 53 of the Uniform Rules of Court.

[25] A reading of the founding affidavit in the applicant's condonation application reveals that the applicant, contrary to the above, expressly relied upon section 6(1) of the Employment Equity Act.³

[26] When the matter was called in the opposed motion court on 5 February 2026, it appeared that only the representative for the applicant was present. He placed on record that he had tried to contact the respondents' legal representatives to no avail.

[27] The applicant wished to proceed, and so submissions were heard (which reiterated that the application was made in terms of Rule 53 of the Uniform Rules). Judgment was reserved.

The Law & Analysis

[28] It is trite that an applicant, whether or not the matter is opposed, must make out an appropriate case for the relief sought.

[29] Rule 53 of the Uniform Rules, *inter alia*, requires that time be granted to a respondent in a review application to file the record of proceedings. The

³ See para 5 at pp. 7 – 8 of the paginated papers.

applicant's notice of motion did not cater for the usual requirements in this regard.

[30] The applicant also did not mention Rule 53 in his founding affidavit at all. It was only when the respondent raised a point regarding jurisdiction that the applicant raised this aspect in reply.

[31] The applicant, according to his founding affidavit, is still awaiting communication from the Labour Court. Despite averring in paragraph 25⁴ of his founding affidavit that he has launched these review proceedings and accordingly withdraws the matter from the Labour Court, no formal documentation was annexed to demonstrate that the matter had in fact been withdrawn from the Labour Court.

[32] The applicant furthermore did not provide any information in regard to what steps he had taken to follow up in regard to the Labour Court process, or what formal legal steps (such as, for example, an application in terms of the Promotion of Access to Information Act 2 of 2000) had been taken in order to retrieve the necessary information.

[33] The applicant also chose his forum when he declared a dispute with the CCMA and was referred to the Labour Court.

⁴ See p. 31 of the paginated papers.

[34] His averments that he launched this application in terms of Rule 53 takes the matter no further, as launching his review on this basis did not automatically provide this court with jurisdiction to hear the matter.⁵

[35] In this regard the matter of *Gcaba v Minister of Safety and Security and Others*⁶ is instructive:

[56] However, another principle or policy consideration is that the Constitution recognises the need for specificity and specialisation in a modern and complex society under the rule of law. Therefore, a wide range of rights and the respective areas of law in which they apply are explicitly recognised in the Constitution. Different kinds of relationships between citizens and the State and citizens amongst each other are dealt with in different provisions. The legislature is sometimes specifically mandated to create detailed legislation for a particular area, like equality, just administrative action (PAJA) and labour relations (LRA). Once a set of carefully crafted rules and structures has been created for the effective and speedy resolution of disputes and protection of rights in a particular area of law, it is preferable to use that particular system. This was emphasised in *Chirwa* by both Skweyiya J and Ngcobo J. If litigants are at liberty to relegate the finely tuned dispute-resolution structures created by the LRA, a dual system of law could fester in cases of dismissal of employees.

[57] Following from the previous points, forum-shopping by litigants is not desirable. Once a litigant has chosen a particular cause of action and system of remedies (for example, the structures provided for by the LRA) she or he should not be allowed to abandon that cause as soon as a negative decision or event is encountered. One may especially not want litigants to 'relegate' the LRA dispensation because they do not 'trust' its structures to do justice as much as the High Court could be trusted. After all, the LRA

⁵ See *Chirwa v Transnet Ltd and Others* 2008 (4) SA 367 (CC) at paras 41, 54 and 63.

⁶ 2010 (1) SA 238 (CC) at paras 56 and 57.

structures were created for the very purpose of dealing with labour matters, as stated in the relevant parts of the two majority judgments in *Chirwa*, referred to above.'

[36] I am therefore satisfied that the applicant has not chosen the correct forum in this regard, and that this court does not have the necessary jurisdiction to decide the matter.

[37] Even if I am incorrect in regard to the issue of jurisdiction, and even if I were to grant the requested condonation, the applicant's papers fall woefully short in regard to the necessary factual information required to underpin an application of this nature. The applicant has, for example:

(a) Failed to address the competency of the remaining candidates who were interviewed at all.

(b) Not provided any supporting documentation to demonstrate that he should have been appointed above all other applicants.

(c) Not provided any supporting documentation to demonstrate the alleged incompetence of the third respondent.

[38] The applicant's *ipse dixit* that he was the best candidate for the post, whilst the third respondent was not qualified for the post, without any objective evidence being provided to support his assertions, is insufficient under the circumstances.

[39] The applicant has thus, aside from being in the wrong forum, also not made out an appropriate case for the relief sought.

Conclusion

[40] The application accordingly falls to be dismissed.

Costs

[41] Since no representative arrived for the respondents when the matter was heard, I do not view it as appropriate that the costs follow the result.

Order

[42] The following order is hereby issued:

- (a) The application is dismissed.**
- (b) There shall be no order as to costs.**

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N MOLONY
ACTING JUDGE OF THE HIGH COURT

Appearances:

For the Applicant:	Adv Mfeya
Instructed by:	Adv Y.S. Mfeya (Fidelity Fund)

MTHATHA

For the Respondents: No Appearance

Heard on: 5 February 2026

Judgment delivered: 30 June 2026