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THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable
Case no: C303/2023

In the matter between:

F[...] G[...] M[...]

Applicant

and

**THE SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL**

First Respondent

COMMISSIONER G EDWARDS N.O.

Second Respondent

THE THEEWATERSKLOOF LOCAL MUNICIPALITY

Third Respondent

Heard: 26 August 2026

Delivered: 27 August 2026

JUDGMENT

JACOBS AJ

Introduction

- [1] This is an opposed review application.
- [2] The Applicant seeks an order:
- 2.1 Reviewing and setting aside the arbitration award handed down by the Second Respondent under the First Respondent's case number WCP012306 dated 4 May 2023 and substituting same with an award that the Applicant was dismissed, that the dismissal was both procedurally and substantively unfair and that the Applicant be reinstated indefinitely;
 - 2.2 Alternatively, remitting the matter to the First Respondent for a hearing *de novo* before an arbitrator other than the Second Respondent;
 - 2.3 Ordering any of the Respondents who oppose the application to pay the cost incurred in such opposition, jointly and severally, the one paying the other to be absolved; and
 - 2.4 Granting the Applicant further and/or alternative relief.
- [3] Some delays occasioned this matter, and required consideration. The record was filed on 14 July 2023, and although the transcript was completed on 12 October 2023, Rule 7A(6) was only complied with on 8 December 2023. Compliance with Rule 37(20)(b) only followed a further 8 months later, on 16 August 2024.
- [4] The Third Respondent's answering affidavit was only filed on 20 October 2025. A condonation application was included with the answering affidavit. By virtue of the provisions of Rule 36(2), condonation was not required in the absence of an objection by the Applicant.
- [5] The Third Respondent was willing to give belated consent for the late compliance with Rule 7A(6) and Rule 7A(8) to allow for the disposal of the matter on the merits.

- [6] Further delays will not be in the interest of justice and the lateness referred to above is condoned to allow for the finalisation of the matter without the need to expend further time and costs.
- [7] Both the Applicant and Third Respondent agreed that this review deals with a jurisdictional issue and that the correctness-test, and not the reasonable-test postulated in *Sidumo*¹ will be applicable.

Historical context

- [8] The history of the matter is mostly common cause.
- [9] On 28 June 2022 a meeting took place between the Applicant, Mr De Wee, an official of the Society Development Trade Union (SDTU), and four officials of the Third Respondent. These included the Applicant's husband (a councillor of the Third Respondent), Councillor John Micheals (the Deputy Mayor), Mr Solomons-Johannes (Director: Community Services) and Mr Alfred Mhlotona (Community Liaison Officer for the Third Respondent). All of the attendees were members of the GOOD political party.
- [10] At this meeting Mr Solomons-Johannes apparently advised that he would appoint the Applicant as his office manager. The appointment would first be for a fixed term starting on 4 July 2022, and would then be made permanent. At the Arbitration hearing Mr Solomon-Johannes denied that he had made any such promise to the Applicant.
- [11] Upon the Applicant reporting for duty on 5 July 2022, some objections were raised by other counsellors and officials, and on 6 July 2022 the Applicant was requested to vacate the post. She was required to first apply for a position and to attend the requisite interview.
- [12] A post was then caused to be advertised, and the Applicant applied for the advertised post of Temporary Administrator. After attending an interview on 14 July 2022, she was appointed on 18 July 2022.

¹ *Sidumo & Another v Rustenburg Platinum Mines Ltd & Others* (2007) 28 ILJ 2405 (CC)

- [13] The position the Applicant was appointed to, was a level T9-position and the appointment purported to be an emergency appointment in terms of an Expanded Public Works Programme (EPWP) project.
- [14] Although the Applicant had signed the employment contract in which her remuneration was indicated as R19 031.00/month, she apparently only later realised that the remuneration linked to the Temporary Administrator position was less than the R38 757 she had apparently expected.² She declared an unfair labour practice dispute concerning the title and remuneration. The dispute was settled on 1 September 2022 when it was agreed that she would be appointed as Office Manager at the higher rate of pay, backdated to 18 July 2022.
- [15] The settlement agreement of 1 September 2022 expressly indicated that the Applicant's fixed term appointment would terminate on 31 December 2022.
- [16] During August 2022 the Applicant levelled allegations of sexual harassment against the deputy mayor. During the same period some dirty laundry was being aired within the GOOD party with insulting and accusing messages being exchanged between party members. The Applicant was suspended for misconduct, and she lodged a further complaint of discrimination and victimisation in response to her suspension.
- [17] A notice of a disciplinary hearing was issued and then withdrawn, and on 6 December 2022, the Applicant was reminded that her fixed term contract would terminate on 31 December 2022 and that it would not be renewed.
- [18] The Applicant referred an unfair dismissal dispute which was conciliated on 17 February 2023. The matter later served before the Arbitrator on 4 April 2023 and an award was issued on 3 May 2023.

The award

- [19] The Arbitrator (and the parties) debated the matter with reference to sec 186(1)(b)(i) LRA. Amendments to the LRA in 2015 included sec 186(1)(b)(ii)

² See: settlement agreement dated 1 September 2022.

to deal with an expectation of permanent employment after expiry of a fixed term contract. The discussion and evaluation of the relevant principles and the application thereof to this matter are however still relevant.

[20] The Arbitrator's findings are briefly that:

- 20.1 All attendees of the meeting on 28 June 2022 were Good party members and that Applicant, and possibly also Mr De Wee, were not employed by the Third Respondent.
- 20.2 In ensuring the Applicant's appointment, the role-players had to treat the appointment as an emergency appointment, justified by special circumstances.
- 20.3 The Arbitrator states that the group of GOOD party members had "hatched a plan" to secure permanent employment for the Applicant.³
- 20.4 The Arbitrator concluded that the version of events on 28 June 2022, as testified to by Mr Solomons-Johannes was unlikely. The Arbitrator, correctly so, still properly evaluated the Applicant's version of events to determine if a legitimate expectation of permanent employment could have been created, as she claimed.
- 20.5 The conclusion reached by the Arbitrator was that Mr Solomons-Johannes did not have the authority to give the undertakings he had given on behalf of the municipality.
- 20.6 The Arbitrator rejected the Applicant's contention that the signing of a form by the Municipal Manager to approve an emergency appointment ratified the agreement regarding her appointment.
- 20.7 The Arbitrator found that, in the circumstances of the matter, no reasonable expectation could have vested in the employee because the party making the promise had no authority, and because the appointment was not made in accordance with applicable policy.
- 20.8 The Arbitrator found that, even if the Applicant had developed an expectation after the meeting of 28 June 2022, any expectations

³ Par 5.10 of the award.

should have been derailed in light of later events, such as the opposition from other counsellors and the fact that the settlement agreement of 1 September 2022 expressly limited the employment term and also did not make any reference to eventual permanent employment.

20.9 The Arbitrator found the contention of a reasonable expectation of permanent employment to be disingenuous.

20.10 The Applicant was found not to have been dismissed.

Grounds for review

[21] The Applicant contends that the Arbitrator erred and that he incorrectly assumed that Mr Solomons-Johannes did not have the authority to make the promise of eventual permanent employment.

[22] The Applicant argued that the Arbitrator found the Applicant version of what transpired at the meeting of 28 June 2022 preferable to that of Solomon-Johannes, and that this should have been sufficient to rule in her favour.

[23] The subjective component of the inquiry into the existence of a reasonable expectation of permanent employment is emphasised by the Applicant. It is suggested that this element strongly favours the Applicant's version.

[24] It was also argued by the Applicant, that the Arbitrator should have inquired whether the objective facts supported her subjective expectations. It is suggested that the Arbitrator failed to do so.

[25] In the papers, the Applicant submitted that sexual harassment and disciplinary steps showed sinister intent by the Third Respondent, and that the failure to appoint her in a permanent capacity can be ascribed to these incidents.

[26] In explaining the obvious failure to follow policy relating to appointments, the Applicant suggested that the GOOD party regularly makes appointments in this manner and that it was reasonable to expect an appointment despite non-compliance with policy.

[27] In the heads of argument submitted on behalf of the Applicant it is argued that the Arbitrator had failed to evaluate all of the surrounding circumstances.

Evaluation

[28] The Applicant's case was repeatedly confirmed to be that a reasonable expectation for permanent employment was created on 28 June 2022 when Mr Solomons-Johannes offered to facilitate this appointment by first employing her on a fixed term contract, and to then make her appointment permanent.

[29] Central to this enquiry is the question whether Mr Solomon-Johannes had the authority to make the promise of eventual permanent employment.

[30] The Applicant argued that the Arbitrator found the Applicant version of what transpired at the meeting of 28 June 2022 preferable to that of Solomon-Johannes, and that this should have been sufficient to rule in her favour. Evidence, supported by legislative provisions, however, shows that Mr Solomon-Johannes did not have the authority to make the offer or promise of employment to the Applicant. Despite accepting the Applicant's version of how the meeting of 28 June 2022 was conducted, Mr Solomon-Johannes simply did not have the authority to appoint the Applicant or to make promises to her in that regard.

[31] All of the attendees of the 28 June 2022 meeting were members of the GOOD political party. The Applicant and Mr De Wee, were not employees of the Third Respondent. This was not a formal municipal meeting clothed in authority to decide anything on behalf of the Third Respondent. As Mr De Wee conceded in his evidence, the meeting was merely a GOOD party caucus.

[32] Legislative provisions such as sections 56 and 57 of the Municipal Systems Act,⁴ legislation referred to during arbitration proceedings, militate against the possibility that Mr Solomons-Johannes or Mr Michels had the required

⁴ Act 32 of 2000

authority to offer or make an appointment. Appointments must be made by the municipal manager, or in some instances, the municipal council.

- [33] On behalf of the Applicant, it was submitted that the Municipal Manager had ratified the promised appointment by signing relevant documentation. A document headed “Feedback on interviews that were held on the 14th of July 2022”,⁵ bearing a signature purporting to be that of the municipal manager, was referred to in this regard. This document relates to the advertised post of Temporary Administrator, and not the post of Office Manager which the Applicant believes she was promised.
- [34] The absence of the required authority to appoint the Applicant was evident from the common evidence of objections raised by other councillors on 5 July 2022, and from policy and legislative considerations.
- [35] The settlement agreement concluded on 1 September 2023 may have allowed for a different title and significantly better remuneration, but it also emphasised the fixed term nature of the appointment.
- [36] The initial appointment was made possible by abusing the opportunities created by the EPWP.⁶ No evidence showed that any urgency capable of justifying an emergency appointment existed. There was clearly also no public job creation scheme involved as was indicated in the documentation accompanying the employment contract.
- [37] The express wording of the contract signed by the Applicant and the settlement agreement emphasised the fixed term nature of her appointment.
- [38] In explaining the obvious failure to follow policy relating to appointments, the Applicant suggested that the GOOD party regularly makes appointments in this manner and that it was reasonable to expect an appointment despite non-compliance with policy. This is a disturbing argument. If the GOOD party regularly makes appointments without following prescribed policy, it is not an excuse to be relied on, it is a serious indictment against the party.

⁵ P 006-33 of the record.

⁶ See bundle pages 003-30 & 006-34

[39] The Arbitrator correctly concluded that Mr Solomon-Johannes did not have the authority to make the promise relied on by the Applicant.

[40] The subjective component of the inquiry into the existence of a reasonable expectation of permanent employment, is of little aid to the Applicant. She could not reasonably have believed that she would be appointed permanently. She was aware of the objections from other councillors and officials against her appointment the first day she reported for duty. She would have known or would early on have realised, that Mr Solomon-Johannes did not have the authority to appoint her or to make promises of employment to her. She also negotiated and signed the settlement agreement which clearly emphasises the fixed term nature of her employment.

[41] The Applicant was appointed on a fixed term contract in dubious circumstances by individuals without the requisite authority. Her services terminated when the term for this contract expired. Considering the circumstances, there could not have been any reasonable expectation to be appointed permanently based on a promise made at the GOOD caucus of 28 June 2022.

[42] The sexual harassment, victimisation and discrimination allegation received very little focus during arbitration proceedings apart from the Applicant's submission that her contract was not made permanent because she had lodged these complaints.

[43] The Arbitrator's finding that the Applicant was not dismissed, was correct.

[44] In the result, the following order is made:

Order

1. The application is dismissed.
 2. There is no order of costs.
-

W Jacobs

Acting Judge of the Labour Court of South Africa

LABOUR COURT

Appearances:

For the Applicant: - Mr C.J. May

Instructed by: - BDP Attorneys

For the Third Respondent: - Adv R Potgieter

Instructed by: - Enderstein Malumbete Inc

LABOUR COURT