
SOUTH AFRICA / JUDGMENT

IMATU and Another v City of Matlosana Local Municipality and Another (J620/2014) [2014] ZALCJHB 394 (2 October 2014) [2014] ZALCJHB 394

COURT

Labour Court Johannesburg

BEFORE

Ngcukaitobi

CASE / FILE NUMBER

J620/2014

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IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

Case No: J620/2014

In the matter between

IMATU

First Applicant

ABRAHAM GERHARDUS STRYDOM

Second applicant

and

THE CITY OF MATLOSANA LOCAL MUNICIPALITY

First respondent

E H LOUW

Second respondent

Delivered: 02 October 2014

JUDGMENT:

APPLICATION FOR LEAVE TO APPEAL

1. The first respondent (the applicant in the leave to appeal) seeks leave to appeal against my judgment in which I concluded that its decision to institute disciplinary charges against the second applicant was unconstitutional, unlawful and invalid and consequently I issued an interdict preventing the disciplinary proceedings.
2. Several grounds in support of the application have been raised. They are: the application should not have been treated as an urgent application; the Municipality's plea of *lis pendens* should have been upheld; that I should not have pronounced on "appealability" of the judgment of La Grange J; the application should not have been regarded as a fresh application because it did not contain material facts which were not before Lagrange J; a further opportunity should have been given to the Municipality to supplement its pleadings; and that I should not have dealt with this issue as is or granted final relief without permitting the Municipality to supplement its pleadings.
3. None of these grounds are sufficiently cogent to persuade me to allow leave to appeal. It will be recalled that the main areas of dispute between the parties were the following. The first was whether or not the Municipality had acted constitutionally and lawfully in instituting the disciplinary charges against the second respondent. The basis for the challenge was that the municipal council which passed the resolution to charge the second applicant was not quorate. The second was whether the charges against the second applicant constituted protected disclosures as contemplated by the Protected Disclosures Act 26 of 2000.
4. I resolved the first issue against the Municipality and the second issue in favour of the Municipality. Consequently, I issued a declaratory order and an interdict preventing the Municipality from pursuing disciplinary charges against the second applicant, unless a properly quorate meeting of council passes a resolution to that effect.
5. There is no challenge to either of these findings in the application for leave to appeal. The result is that the appeal which is being pursued is of academic value only. It will have no practical effect on the main issue which I had to decide, namely the constitutionality of the disciplinary proceedings against the second applicant.
6. A few days ago the Supreme Court of Appeal delivered a ruling in which it reminded all and sundry of the trite principle that appeals which are of academic value only should not be countenanced. The case was *Legal Aid South Africa v Mzoxolo Magidiwana* (Case No: 1055/13, delivered on 26 September 2014, as yet unreported). The relevant passage deserves full recitation:

"Courts should and ought not to decide issues of academic interest only. That much is trite. In Radio Pretoria v Chairman, Independent Communications Authority of South Africa & Another 2005

- (1) SA 47 (SCA), this Court expressed its concern about the proliferation of appeals that have no prospects of being heard on the merits as the order sought would have no practical effect. It referred to *Randwater Board v Rotek Industries (Pty) Ltd 2003*

(4) SA 58 SCA para 26 where the following was said:

‘The present case is a good example of this Court’s experience in the past, including unreported cases, that there is a growing

misconception that there has been a relaxation or dilution of the fundamental principle...that courts will not make determinations

that will have no practical effect.’” [1]

7. This passage is equally applicable herein. Since there is no challenge on the core issue I had to decide, any successful appeal on the reasoning process which I employed on the way to the result is of no high moment. If, for argument sake, the Municipality succeeded in all of its grounds of challenge, that would still not disturb the finding that the disciplinary enquiry was unconstitutional because of the lack of quorum.
8. On this basis, the application for leave to appeal must be refused. I, however, deem it necessary to consider the grounds for leave to appeal raised, even though they are of no practical importance.
9. To start with the issue of urgency, it is trite that a ruling as to urgency is procedural in nature. In other words, a decision as to urgency does not finally dispose of the merits of the dispute between the parties. It simply sets the procedural scene for the final decision on the merits of the matter. The provisions of the Labour Relations Act dealing with appeals make it clear that appeals are only permissible against a final judgment or final order of the Labour Court. Section 166(1) of the Labour Relations Act, 66 of 1995 (“the LRA”) makes it clear that a party to proceedings before the Labour court “may apply to the Labour Court for leave to appeal the Labour Appeal Court against any final judgment or final order of the Labour Court.” (my underlining)
10. This makes it clear that an order as to urgency, not being final in nature, is not appealable. The fact that I subsequently delivered a final judgment on the merits does not on its own mean that my finding on urgency is appealable. The application for leave to appeal insofar as it relates to the issue of urgency is accordingly refused.
11. To the extent that I have any discretion to allow leave to appeal on the question of urgency, despite the clear provision of the LRA, my view is that it is not in the interests of justice to grant leave to appeal on the finding of urgency. The argument advanced by the applicant for leave to appeal is not sufficiently cogent as they seem to attack the substantive merits of my findings. There is no factual substantiation of the claim made by the Municipality that the relief I grant was “much wider” or “had far reaching implications for the first respondent”.
12. In regard to the issue of the relief, it is worth noting that both parties were given an opportunity to make submissions on whether final relief should be granted or not, which opportunity was utilised by both parties and no request was directed that any party wished to make any additional factual submissions. A ruling on urgency can have no practical

implications, other than to regulate the process by which a case is to be heard and disposed of. For these additional reasons, the leave to appeal, insofar as it relates to urgency, is refused.

13. The argument based on *lis pendens* is also without merit. It is clear that the judgment of Lagrange J did not dispose of the matter on the merits. It dismissed it, specifically, for lack of urgency. The jurisprudence of the Labour Appeal Court and the Supreme Court of Appeal is clear on the subject that a dismissal of an application for urgency does not amount to a final disposal of the merits of the matter. Accordingly, it remains open to any party to approach the court to determine the matter on the merits. In effect, this is what transpired in this instance. Lagrange J simply wanted the question of the chairperson's views on the matter to be solicited, which had happened in this case. Nothing, therefore, prevented this Court from deciding the matter on the merits as it transpired herein. Leave to appeal on the issue of *lis pendens* is refused. The question whether the matter should have been regarded as a "fresh application" is interlinked to the issue of *lis pendens*. There were new facts introduced by the parties which were not considered by Lagrange J because they were not before him. These related to the ruling by the chairperson of the disciplinary proceedings. There is no basis for the suggestion that I should have ignored the findings of the chairperson which were submitted by the attorneys for the applicants, bearing in mind that there was no dispute that those were the findings of the chairperson.
14. The Municipality also complains of prejudice because the matter was decided on the merits and final relief was granted. However, the nature of this prejudice has not been demonstrated. This is because I asked both parties to hand in submissions on whether I should grant final relief. The Municipality made its submissions. It did not request an opportunity to make any additional factual averments. Even at this stage, there is no suggestion that the Municipality had wanted to make factual averments, which opportunity was denied. In sum: If the first respondent wanted to adduce additional evidence it would have said so in response to my direction or alternatively in support of its application for leave to appeal. Accordingly, leave to appeal on this score should be refused.
15. In the result, the application for leave to appeal is refused with costs.

NGCUKAITOB I AJ

Acting Judge of the Labour Court of South Africa

- [1] Legal Aid South Africa v Mzoxolo Magidiwana (Case No: 1055/13, delivered on 26 September 2014, as yet unreported) at para 2.

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