

SOUTH AFRICA / JUDGMENT

Legodi v Capricorn District Municipality and Another (2974/2018) [2023] ZALMPPHC 94 (9 October 2023) [2023] ZALMPPHC 94

COURT

Limpopo High Court, Polokwane

BEFORE

Bresler

CASE / FILE NUMBER

2974/2018

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Policy

REPUBLIC OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO

DIVISION, POLOKWANE)

CASE

NO: 2974/2018

REPORTABLE: YES/NO

OF

INTEREST TO OTHER JUDGES: YES/NO

REVISED

Date:

9 October 2023

In

the matter between:

MAKGOPA
ETHEN LEGODI
Applicant
And
CAPRICORN
DISTRICT MUNICIPALITY
First
Respondent
LEDILE
EUNICCA MANABELA
Second
Respondent
IDENTITY
NUMBER: 7[...]

JUDGMENT

BRESLER AJ

Introduction

[1] In the Review application, the Applicant applies for the following relief in terms of the Amended Notice of Motion:

1.1 Reviewing and setting aside the unlawful decision by the First Respondent to appoint the Second Respondent as The Disability and Elderly Coordinator (X1) of the First Respondent.

1.2 Reviewing and setting aside the unlawful decision of First Respondent to the effect that the Second Respondent is appointable to the position of Disability and Elderly Coordinator (X1) by the First Respondent.

1.3 Declaring as unlawful the decision of the First Respondent to appoint the Second Respondent to the position of Disability and Elderly Coordinator (X1) to the extent that such decision was made on the basis that being appointable to a position is tantamount or equal to being recommended for appointment to the position.

1.4 In terms of Section 21(1)(c) of the Superior Courts Act, 10 of 2013, declaring that:

1.4.1 The appointment of the Second Respondent to the position of Disability and Elderly Coordinator (X1) by the First Respondent is unlawful and null and void ab initio and of no legal force and effect.

1.4.2 Failure by the First Respondent to appoint the Applicant in the position of Disability and Elderly Coordinator (X1) is unlawful.

1.5 Substituting the unlawful decision of the First Respondent to appoint the Second Respondent to the position of Disability and Elderly Coordinator (X1) with the decision to appoint the Applicant as the Disability and Elderly Coordinator (X1) of the First Respondent.

1.6 That the Respondents be ordered to pay the costs of this application on the scale as between attorney and client in the case of opposition.

[2] The application for review is premised essentially on the common cause fact that the Applicant achieved an average score of 84.3% by the interview panel compared to the Second Respondent who only achieved a score of 74,3%. The Applicant was therefore the preferred candidate recommended by the interview panel.

Two other managers, being Ms. Priscilla Shilubane (Acting Human Resource Manager) and Ms. Pauline Tibane (Acting Executive Manager Corporate Services) also approved the recommendation of the interview panel.

[3] The Applicant stated that the Second Respondent failed to meet the minimum criteria for appointment in that she is underqualified as she has secretarial experience only.

[4] Notwithstanding the aforesaid, the Second Respondent was appointed.

[5] The Applicant submits that the decision is reviewable as the recommended candidate should be appointed without fail, unless the appointment is declined, or exceptional circumstances exists to deviate from the recommendation. The decision to appoint the Second Respondent was unfair, unreasonable, unjustifiable and arbitrary.

[6] The First and Second Respondents oppose the application for review. The First and Second Respondent essentially state that a municipal manager has a discretion to appoint personnel. The Second Respondent was also found to be suitable for appointment. The municipal manager of the First Respondent was therefore lawfully exercising her authority to appoint the Second Respondent.

[7] Having regard to the record of the decision, the municipal manager of the First Respondent elected to appoint the Second Respondent on the basis that she is an 'internal candidate'. She was thus already appointed by the First Respondent to another position. Appointing the Second Respondent promotes the values of 'development, retainment and motivation' in line with the Recruitment Policy.

[8] The First and Second Respondents furthermore object against raising the issue of the Second Respondent's lack of qualifications. Their objection is twofold:

8.1. First and foremost, they submit that the Applicant cannot belatedly raise the issue of the recruitment process as being invalid. The review was aimed against the appointment process only.

8.2. In the second instance, they submit that the Second Respondent was suitably qualified and shortlisted by the interview panel. As she was declared to be a suitable candidate for appointment, the decision to appoint her as opposed to the Applicant, was not irregular, unlawful or unfair.

[9] In a separate application, the Applicant applies for:

9.1 Condonation for non-compliance with Rule 53(4) of the Uniform Rules of Court for failure to deliver the amended notice of motion and supplementary affidavit to amend, add or vary the terms of the Applicant's Notice of Motion and supplement the Applicant's supporting affidavit within the prescribed period of 10 (ten) days.

9.2 Condonation for non-compliance with Rule 6(5)(e) of the Uniform Rules of Court for failure to deliver a replying affidavit within 10 (ten) days of receiving service of the First Respondent's answering affidavit.

[10] During argument, counsel for the First and Second Respondent placed on record that they have no objection in condoning the late filing of the amended Notice of Motion and Supplementary Affidavit. Their opposition is only aimed at the late filing of the Replying affidavit. The Applicant recorded in the Founding affidavit to the Application for Condonation that the Replying affidavit was delivered 4 years and 89 (eighty-nine) days out of time.

[11] The Court is therefore called upon to decide the following issues:

11.1 If condonation should be granted for the late filing of the Applicant's Replying affidavit; and

11.2 If the decision to appoint the Second Respondent is reviewable on the basis as set out in the Notice of Motion and Amended Notice of Motion.

[12] As to the declaratory relief applied for by the Applicant, this court is of the view that a determination of the unlawfulness of the decision lies at the heart of the question if the said decision should be reviewed and set aside.

Analysis

of applicable law

[13] The court finds it apposite to address the issue of condonation first. At the hearing of the matter, both counsels conceded that a determination of the merits of the matter forms part of the requirement of good cause for the granting of condonation. To curtail the proceedings, it was agreed that the issue of condonation will be argued and determined simultaneously with the hearing of the merits to provide the Honourable Court with a holistic view of the matter. Since the condonation only related to the late filing of the Replying affidavit and a refusal thereof would thus result in disregarding the said Replying affidavit.

Condonation:

[14] Uniform Rule 27 provides:

- (1) In the absence of agreement between the parties, the court may upon application on notice and on good cause shown, make an order extending or abridging any time prescribed by these rules or by an order of court or fixed by an order extending or abridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever upon such terms as to it seems meet.
- (2) Any such extension may be ordered although the application therefor is not made until after expiry of the time prescribed or fixed, and the court ordering any such extension may make such order as to it seems meet as to the recalling, varying or cancelling of the results of the expiry of any time so prescribed or fixed, whether such results flow from the terms of any order or from these rules.

[15] Good cause is a requirement for any extension or abridging of time and for the condonation of non-compliance with the rules.[1]

[16] The courts have consistently refrained from attempting to formulate an exhaustive definition of what constitutes 'good cause', because to do so would unnecessarily hamper the exercise of the discretion. Two principal requirements for the favourable exercise of the court's discretion have been crystallized out. The first is that the Applicant should file an affidavit satisfactorily explaining the delay.

In this regard it has been held that the defendant must at least furnish an explanation of his default sufficiently full to enable the court to understand how it really came about, and to assess his conduct and motives.[2]

The second requirement is that the Applicant should satisfy the court on oath that he has a bona fide defence or that his action is clearly not ill-founded. Regarding this requirement it has been held that, at the very least, the applicant

must show that his defence is not patently unfounded and that it is based upon facts (which must be set out as outlined above) which, if proved, would constitute a defence.[3]

[17] In *Bertie van Zyl (Pty) Ltd and Another v Minister for Safety and Security and Others* 2010 (2) SA 181 (CC), the Constitutional Court held that, in determining whether condonation may be granted, lateness is not the only consideration. The test for condonation is whether it is in the interest of justice to grant condonation.

[18] In *Ferris v Firststrand Bank* 2014 (3) SA 39 (CC), the court again confirmed that lateness is not the only consideration and that the test for condonation is whether it is in the interest of justice to grant it.

- [19] During the hearing of the matter, counsel for the Respondents was asked what prejudice will be suffered by his client should condonation be granted. It is, after all, only the Replying affidavit that was delivered out of time. The First and Second Respondent had ample opportunity to apply for leave for the filing of a further affidavit should the contents of the Replying affidavit address new issues not canvassed in their opposing affidavit.
- [20] No pertinent prejudice was alleged in the opposing affidavit to the application for condonation save for the objection raised in respect of the delay in filing the Replying affidavit. It must be borne in mind that the condonation only relates to the late filing of the Replying affidavit. The potential prejudice in pursuing the review, as raised in paragraph 38 of the opposing affidavit thereto, is not relevant to the fundamental question if the Replying affidavit should be allowed into the record.
- [21] This court recognises that the review relates to an allegation that a constitutional right has potentially been infringed. It is, after all, aimed at determining if the administrative decision of the First Respondent was lawful, reasonable and procedurally fair as contemplated in Section 33 of the Constitution[4].
- [22] But the court also recognises that the delay of the Applicant in delivering her Replying affidavit is quite extensive (4 years and 89 days). As stated before, the test is not only the degree of lateness, but also if granting condonation is in the interest of justice.
- [23] Having regard to the applicable authorities, this court is of the view that it would be in the interests of justice if condonation is granted for the late filing of the Replying affidavit.
- [24] Although the Applicant's explanation for the delay is inadequate, justice demands that the Applicant be heard in this matter so that finality can be achieved.
- [25] As to the cost implication, I see no reason to deviate from the normal principles applicable to applications of this nature. The Applicant requires an indulgence – quite a considerable indulgence having regard to the substantial delay in filing the Replying affidavit. The Applicant should therefore be responsible for the costs occasioned by the said indulgence.

Review:

- [26] Section 33(1) of the Constitution provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- [27] The Promotion of Administrative Justice Act[5] ('PAJA'), was promulgated to give effect to this constitutional right.
- [28] The Applicant's review is premised on the provisions of Section 6 of PAJA. In the Founding affidavit to the Notice of Motion, the Applicant specifically states that the review is premised on the following provisions:

“(2) A court or tribunal has the power to judicially review an administrative action if:

(e) the action was taken –

(iii) because irrelevant consideration were taken into account or relevant considerations were not considered;

(f) the action itself

(ii) is not rationally connected to

(cc) the information before the administrator;

(h) the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function.”

[29] Essentially, the grounds listed in the Notice of Motion is in relation to the reasonableness, rationality and fairness of the decision.

[30] Uniform Rule 53(4) entitles the Applicant, within 10 (ten) days from receipt of the record, to amend, add to or vary the terms of the Notice of Motion and supplement the supporting affidavit.

[31] The Applicant has amended its Notice of Motion accordingly and this court must therefore determine if the Applicant is entitled to the relief set out in the Amended Notice of Motion.

[32] Having regard to the trite wording of the Amended Notice of Motion, the Applicant now relies on the lawfulness of the decision as well. In amplification of her amended Notice of Motion, the Applicant states that the Second Respondent did not possess the required qualifications as advertised. The Applicant also submits that the First Respondent is only able to consider the Second Respondent in the event that the First Respondent declines the appointment.

[33] Although the constitutional values that are set out in Section 33 of the Constitution is paramount, it must be borne in mind that the aim of PAJA is to codify these constitutional principles. Hoexter[6] opines that it is constitutionally correct to have regard to the specific, detailed and constitutionally mandated statute, such as PAJA, before relying on a broad and far more general constitutional principle – and for that reason courts should refer to specific grounds as listed in PAJA.

Lawfulness:

[34] The first principle of administrative law in terms of PAJA is that the exercise of power must be authorised by law. This principle is also underlined in the provisions of Section 6 of PAJA.

[35] In the case of *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council*[7], the Constitutional Court explained that it is ‘central to the conception of our constitutional order that the Legislature and Executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law’.

[36] It is trite law that Administrators have no inherent power. Actions performed outside of the legislative authority is unlawful or ultra vires and therefore reviewable.

[37] In casu, it must be determined if the municipal manager had the authority to take the decision to appoint the Second Respondent as opposed to the Applicant.

[38] Section 55(1)(e) to (h) of the Local Government: Municipal Systems Act[8] (the ‘MSA’) provides as follows:

“(1) As heads of administration the municipal manager of a municipality is, subject to the policy directors of the municipal council, responsible and accountable for –

...

- (e) the appointment of staff other than those referred to in section 56(a), subject to the Employment Equity Act, 1998 (Act 55 of 1998);
- (f) the management, effective utilisation and training of staff;
- (g) the maintenance of discipline of staff;
- (h) the promotion of sound labour relations and compliance by the Municipality with applicable labour relations.”

[39] Section 66 (1) of the MSA provides as follows:

“

- (1) A municipal manager, within the policy framework determined by the municipal council and subject to any legislation, must –
 - (a) develop a staff establishment for the municipality, and submit the staff establishment to the municipal council for approval;
 - (b) provide a job description for each post on the staff establishment;
 - (c) attach to those posts the remuneration and other conditions of service as may be determined in accordance with any applicable legislation; and
 - (d) establish a process or mechanism to regularly evaluate the staff establishment and, if necessary, review the staff establishment and the remuneration and conditions of service.”

[40] The municipal manager must exercise his powers subject to the policy directions of the council. The fact that the MSA assigns these duties directly to the municipal manager is important: the MSA envisages the municipal manager to manage day-to-day staff matters. The role of the council is to provide the policy framework and give political direction.

This policy direction should come from the executive mayor or executive committee, which must 'monitor the management of the

municipality's administration'[9] and review its performance[10].

Importantly, the MSA makes the municipal manager responsible for the appointment of staff. The Act specifically circumscribes the municipal manager's discretion by subjecting it to the policy directions of the municipal council.

[41] The executive committee or the executive mayor determines the policy direction on staff appointments, but the MSA vests the responsibility for individual appointments in the municipal manager. He or she has the discretion to take these decisions, provided that it takes place within the policy provided by the executive committee/mayor.

[42] In *Dihlabeng Local Municipality v Nthute*[11] the court stated that:

"Section 55 gives the Municipal Manager the power to make appointments (subject to policy directions of the council). Council cannot nullify that right by taking a resolution (...) which effectively negates this right of the Municipal Manager."

[43] In *Manana v King Sebata Dalindyabo Municipality*[12] the court enunciated the following:

"... section 55(1) is no more than a statutory means of conferring such power upon municipal manager to attend to the affairs of the municipality on behalf of the municipal council. There is no basis for construing the section as simultaneously divesting the municipal council of any of its executive power ... the Constitution vests all executive authority – which includes the authority to appoint staff – in the municipal council and legislation is not capable of lawfully divesting it of that power. To the extent that there might be ambiguity in the statute in that respect it must be construed to avoid that result."

(own underlining)

[44] In no stretch of imagination can the Policy document be construed to limit or divest the municipal manager of his or her discretion to appoint staff members and render it subject to the majority decision of an interview panel.

[45] Section 55 is clearly aimed at regulating the executive functions of the municipal manager by entrusting him or her with the day-to-day implementation of the policy determined by the municipal council.

[46] The First Respondent's staff establishment policy forms part of the record (the 'Policy Document').[13]

[47] Paragraph 7 of the Policy Document stipulates the following:

“Points allocated in the shortlisting and selection processes are not absolute cut-off points, but are indicative of a candidate’s

relative suitability for a post and should be considered with due regard to the Employment Equity targets of a department or and (sic) municipality to identify the most suitable candidate”.

[48] Of pivotal importance are the contents of paragraph 9 of the Policy Document which provides as follows:

“Candidates who have received the highest score, taking into consideration, the results of any other test that was conducted as well as the employment equity issues, such candidate shall be recommended for appointment”.

[49] The policy document does not define the term ‘recommended’. The document is furthermore quiet as to the municipal manager’s obligation to appoint the person so recommended.

[50] By means of comparison: The Local Government: Municipal Staff Regulations[14] that came into effect on 20 September 2021, now specifically regulates the process of staff recruitment and appointment.

Regulation 18(7) states:

“After considering all relevant information, the selection panel must recommend candidates in order of preference. If a recommended

candidate declines an offer of employment, the next suitable candidate, where applicable, may be considered for appointment”.

[51] Notwithstanding the aforesaid, the regulations still allow for the municipal manager to exercise his discretion. Regulation 20(4) and (5) provides:

“(4) If a decision of the municipal or the delegate does not accord with the recommendations of the selection panel, the reasons for such decision must be recorded in writing”.

(5) An appointment may only take effect after the municipal manager or his or her delegate has approved the appointment in writing.

[52] It is evident that even the current legislation retains the discretionary power of a municipal manager when it comes to staff establishment.

[53] So what is the meaning of the word: ‘recommend’? The Longman Dictionary of Contemporary English[15] defines ‘recommend’ as follows:

“1. To praise as being good for a purpose; provide information about (someone or something good); 2. To advise or suggest as a correct or suitable course of action; 3. To make (someone or something) attractive.”

- [54] ‘Recommendation’ is likewise defined as ‘the act of recommending or something (esp. a course of action) that is recommended; advice or suggestion. 2. A Letter or statement that recommends, esp. someone for a job.’[16]
- [55] In *Volschenk v Volschenk*[17] it was held that the most important rule of interpretation was to give words their ordinary, literal meaning.
- [56] In *Sigcau v Sigcau*[18] the court argued that ‘ordinary meaning’ includes the ordinary grammatical meaning. The language aspect (words in the document) as the starting point of the process of interpretation was correctly explained in *Natal Joint Municipal Pension Fund v Endumendi Municipality*[19] as follows:
- “The inevitable point of departure is the language of the provision itself, read in context and having regard to the provision and the background to the preparation and production of the document”.*
- [57] It is furthermore a basic rule of interpretation that there may be no additions to, or subtractions from the words used in the legislation. This is premised on the principle of separation of powers. It is not the prerogative of the court to create legislation – the court must interpret and apply the law. In my view, this will also apply to a document like the Policy Document. One cannot read provisions into the said document if they do not exist.
- [58] Having considered the aforesaid, this court is of the view that the decision of the municipal manager was lawful.
- [59] It follows that the declaratory relief can also not succeed.
- Irrelevant considerations were taken into account or relevant considerations were not considered:
- [60] The Second principle enunciated in PAJA relevant for purposes hereof, is that an Administrator must apply its mind to the matter. This includes the provisions of Section 6(2) (e) of PAJA in terms whereof administrative action is reviewable if the decision was taken because irrelevant considerations were taken into account or relevant considerations were not considered.
- [61] The Applicant submits, in essence, that the First Respondent failed to take the outcome of the interview panel into consideration, alternatively gave undue gravity to the fact that the Second Respondent was an internal candidate. Do these actions qualify as administrative reviewable conduct?
- [62] Public decision-makers are expected to develop and to apply policies, precedents and guidelines in line with the empowering legislation. If these policies inevitably determine the outcome of decision, the benefit of individualised decision-making is lost. Rigid adherence to policies or guidelines leads to unacceptable results as it may ‘preclude the person exercising the discretion from bringing his mind to bear in a real sense on the particular circumstances of each and every individual case coming up for decision.’[20]

- [63] As stated before, a municipal manager has a discretion to appoint staff. This discretion is only subject to the Employment Equity Act[21]. If his or her discretion is fettered or pre-determined by the outcome of an interview panel, this will be contrary to explicit statutory authority of municipal managers.
- [64] Having regard to the current legislation, a municipal manager retains a discretion to appoint a staff member contrary to the recommendation of the interview committee / panel. It is insurmountable that this discretion did not exist prior to the coming into operation of the regulations.
- [65] Having regard to the aforesaid, this court is therefore of the view that the decision of the municipal manager did not take irrelevant considerations into account and / or fail to consider relevant considerations.
- [66] The municipal manager duly exercised her discretion in favour of the Second Respondent by valuing development, retainment and recruitment.

Rationality:

- [67] This raises the question if the decision was rationally connected to the information before the administrator as contemplated in Section 6(2)(f)(ii)(cc) of PAJA.
- [68] Hoexter states that rationality means ‘in essence that a decision must be supported by the evidence and information before the administrator as well as the reasons given for it. It must also be objectively capable of furthering the purpose for which the power was given and for which the decision was purportedly taken’.[22]
- [69] The Supreme Court of Appeal in the case of Trinity Broadcasting (Ciskei) v Independent Communications Authority of South Africa[23] approved and applied the following formulation of the question as stated in Carephone (Pty) Ltd v Marcus NO:[24]

“Is there a rational objective basis justifying the conclusion made by the administrative decision-maker between the material properly

available to him and the conclusion he or she eventually arrived at?”.

- [70] The First Respondent clearly enunciated that her decision was premised largely on the fact that the Second Respondent was an internal candidate. She was also found to be ‘appointable’ and the decision was therefore not irrational.

Reasonableness:

- [71] The Applicant also raised the issue that the decision to appoint the Second Respondent is unreasonable that no reasonable person could have exercised the power or performed the function as contemplated in Section 6(2)(h) of PAJA.
- [72] Hoexter[25] indicated the following as to what an unreasonable decision entails:

“My own view is that qualifications such as ‘gross’ are unnecessary even in contexts demanding a measure of judicial

deference. As I have argued elsewhere, the ordinary dictionary meaning of ‘reasonable’ – in accordance with reason or within the limits of reason – suggests an area of ‘legitimate diversity’, a space within which various reasonable choices may be made. It does not suggest that a decision is reasonable only when correct or perfect in the court’s eyes. On the ordinary dictionary meaning of ‘reasonable’, in fact, s 33 captures exactly the right standard. To require less than reasonableness so defined would be to allow capricious decision-making. To require more – to require correctness or perfection – would be to allow the courts to substitute their own views for that of the administrator”.

- [73] I am of the view that it cannot be contemplated or said that the decision to appoint the Second Respondent was unreasonable. It is apparent that the Municipal Manager carefully considered the candidates that were ‘appointable’. She gave preference to an internal candidate after having struck a reasonable balance between the competing considerations.
- [74] Even if I am mistaken in my view that the decision was reasonable, I am guided in my view by the principle of judicial deference. Judges are, after all, not supposed to decide whether administrative decisions are correct or not. This is the cornerstone of the difference between an appeal and a review.[26]
- [75] The following was stated in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others*:[27]

“[48] In treating the decisions of administrative agencies with the appropriate respect, a Court is recognising the proper role of the Executive within the Constitution. In doing so a Court should be careful not to attribute to itself superior wisdom in relation to matters entrusted to other branches of government. A Court should thus give due weight to findings of fact and policy decisions made by those with special expertise and experience in the field. The extent to which a Court should give weight to these considerations will depend upon the character of the decision itself, as well as on the identity of the decision-maker. A decision that requires an equilibrium to be struck between a range of competing interests or considerations and which is to be taken by a person or institution

with specific expertise in that area must be shown respect by the Courts. Often a power will identify a goal to be achieved, but will not dictate which route should be followed to achieve that goal. In such circumstances a Court should pay due respect to the route selected by the decision-maker. This does not mean, however, that where the decision is one which will not reasonably result in the achievement of the goal, or which is not reasonably supported on the facts or not reasonable in the light of the reasons given for it, a Court may not review that decision. A Court should not rubber-stamp an unreasonable decision simply because of the complexity of the decision or the identity of the decision-maker”.

[76] In Minister of Environmental Affairs and Tourism v Phambili Fisheries (Pty) Ltd; Minister of Environmental Affairs and Tourism and Others v Bato Star Fishing (Pty) Ltd,[28] Schutz JA stated that:

“[50] Judicial deference does not imply judicial timidity or an unreadiness to perform the judicial function. It simply manifests the recognition that the law itself places certain administrative actions in the hands of the Executive, not the Judiciary”.

[77] This court is neither a human resource manager, nor is the court privy to precisely what the duties the appointee will be expected to perform or if the higher qualifications of the Applicant would have made a noticeable difference in performing the said duties. This court cannot determine if the appointment was correct or not based on the qualifications and experience of the parties. This court can only evaluate the lawfulness, reasonableness and procedural fairness of the appointment process.

[78] Neither the Applicant nor the First Respondent elaborated on this issue save in as far as they focused their response to academic qualifications and experience. For the sake of clarity, the Applicant stated that she is higher qualified and thus better suited whilst the Second Respondent is ‘un-qualified’. The First Respondent acknowledged the qualifications of the Applicant but submitted that the Second Respondent was adequately qualified and deemed appointable.

[79] This court cannot perform the duty of a human resource manager in determining which candidate will be most suitable to perform the duties. This court must show the appropriate respect to the findings of fact and policy decisions made by the municipal manager.

[80] On this basis, this court concludes that the decision was reasonable and thus not reviewable on this basis.

Conclusion:

[81] The decision of the First Respondent to appoint the Second Respondent did not contravene the provisions of Section 6 of PAJA. As a consequence, the Applicant cannot succeed with the review application.

[82] There is no reason why the cost order should not follow the result.

Order

[83] In the result the following order is made:

83.1. Condonation is granted for the late filing of the Applicant’s Replying affidavit.

83.2 The Applicant is ordered to pay the costs thereof.

83.3 The application for review is dismissed.

83.4 The Applicant is ordered to pay the costs thereof.

M BRESLER

ACTING JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION, POLOKWANE

APPEARANCES Heard on : 26 July 2023

Judgment

delivered on : 09 October 2023 For the Applicants : Adv NE Mphahlele Instructed by : Hope Chuene Attorneys justice@hopechueneattorneys.co.za For the Respondents : Adv L Nkoana Instructed by : NJ Morero Inc Attorneys moreronj@gmail.com info@njmoreroinc.co.za

- [1] Van Loggerenberg, Erasmus Superior Court Practice Volume 2, Juta, Page D1-321.
- [2] Van Loggerenberg, Erasmus Superior Court Practice Volume 2, Juta, Page D1-324.
- [3] Van Loggerenberg, Erasmus Superior Court Practice Volume 2, Juta, Page D1-324.
- [4] Constitution of the Republic of South Africa, 1996.
- [5] Act 3 of 2000.
- [6] C Hoexter, Administrative Law in South Africa, Second Edition, Juta on page 255.
- [7] 1999 (1) SA 374 (CC)
- [8] Act 32 of 2000
- [9] Sections 44(3)(d) and 56(3)(d) of the MSA.
- [10] Sections 44(3)(c) and 56(3)(c) of the MSA.
- [11] 2007 JDR 0778 (O) at [113].
- [12]
- [2010] JOL 26481 (SCA) at para 17
- [13] The Policy document is contained on paginated pages 430 – 439
- [14] Government Notice Nr. 890 contained in Government Gazette 45181 on 20 September 2021.
- [15] New Edition, Longman Dictionaries on page 868 – contextual examples were excluded from the quoted text.
- [16] On page 868 – contextual examples were excluded from the quoted text.
- [17] 1946 TPD 486.
- [18] 1941 CPD 334.
- [19] 2012 (SA) 593 (SCA) at para 18.

- [20] See *Richardson and Others v Administrator, Transvaal* 1957 (1) SA 521 (T) at 530.
- [21] Act 55 of 1998.
- [22] C Hoexter, *Administrative Law in South Africa*, Second Edition, Juta on page 255.
- [23] 2003 (3) SA 346 (SCA) at para 21.
- [24] 1999 (3) SA 304 (LAC) at para 32.
- [25] C Hoexter, *Administrative Law in South Africa*, Second Edition, Juta on page 347
- [26] G Quinot (ed), *Administrative Justice in South Africa*, Oxford, p 169.
- [27] 2004 (4) SA 490 (CC)
- [28] 2003 (6) SA 407 (SCA) at para [50].
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