

SOUTH AFRICA / JUDGMENT

Ndoyana v Nelson Mandela Bay Municipality (CA581/2019) [2019] ZAECPEHC 74 (12 November 2019) [2019] ZAECPEHC 74

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

Rugunanan

CASE / FILE NUMBER

CA581/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE LOCAL DIVISION, PORT ELIZABETH)

CASE

NO. CA 581/2019

Date heard: 15 August

2019

Date

Delivered: 12 November 2019

In

the matter between:

MZWANELE

LENMOD NDOYANA

Applicant

and

NELSON

MANDELA BAY MUNICIPALITY

Respondent

JUDGMENT

RUGUNANAN, AJ:

- [1] A written contract of employment concluded on 28 February 2014 between the applicant and the Nelson Mandela Bay Municipality (the respondent) incorporated the following clause:

“15.2 The Employer will be entitled to terminate the Employee’s contract of employment for any sufficient reasons recognised by law, provided that the Employer must comply with the disciplinary code and procedures...”

- [2] The contract defines “the Employer” as “the Nelson Mandela Bay Municipality established in terms of the Local Government: Municipal Structures Act ... herein represented by Mpilo Mbambisa in his capacity as City Manager on behalf of the Municipality”.^[1]

- [3] The applicant was appointed and employed as the respondent’s Executive Director: Corporate Services. The term of his appointment

was effective from 1 January 2014 terminating on 31 December 2019.^[2] The applicant was appointed by the Municipal Council of the respondent in accordance with section 56 of the Local Government: Municipal Systems Act ^[3] (“the Systems Act”). He was at all times a senior manager and was therefore subject to the Local Government: Disciplinary Regulations for Senior Managers (“the Regulations”).^[4] It is common cause that the disciplinary code mentioned in the abovementioned clause is embodied in the Regulations.

- [4] On 30 July 2015 the Council of the respondent, acting in terms of clause 6 of the Regulations, suspended the applicant on full pay because it was alleged that he committed acts of misconduct and that some or all of the circumstances falling under clauses 6(a) and (b) of the Regulations were present.^[5]

- [5] Following several charges of misconduct that were subsequently preferred against the applicant, and on 12 December 2016 after a disciplinary hearing, the presiding officer found the applicant guilty on six charges. This was followed by a sanction of summary dismissal once aggravating and mitigating circumstances were considered.

- [6] On 13 December 2016 the respondent’s then Acting City Manager^[6] Ms Zitumane furnished the applicant with a letter informing him of the termination of his services following the sanction which took immediate effect on 12 December 2016. On the respondent’s version the sanction was imposed by the presiding officer and was implemented (or given effect) by the Acting City Manager. The applicant’s version is that the sanction was recommended by the presiding officer and it was solely the respondent’s Council that could dismiss him by terminating his contract of

employment. Arising from these divergent views, the issues for determination in these proceedings concern (i) the authority to

dismiss the applicant, and (ii) the competence of the Acting City Manager to have implemented the sanction.

[7] The applicant contends that the action of the Acting City Manager constituted a breach of clause 15.2 of his fixed term employment

contract. His case is that it is only the respondent's Council which has the power to dismiss him. This application relates only to the latter challenge and is not directed at the findings and sanction imposed by the presiding officer.[7] These issues are pending before the South African Local Government Bargaining Council ("the Bargaining Council"). The

applicant's claim for breach of his contract of employment is set out in his Notice of Motion and in a cause of action borne by factual averments in his founding papers.[8]

[8] Although this Court has been approached for a raft of declaratory orders, the main relief which the applicant seeks is "A declaratory to the effect that the termination of the Applicant's fixed term contract of employment by the acting City Manager on 13 December 2016 was unlawful and in breach thereof and is accordingly reviewed and set aside". In addition, he seeks an order that he be reinstated in his employment position as Executive Director: Corporate Services with

back-pay on the same terms and conditions stipulated in his contract (this relief is an amalgamation of the orders sought in paragraphs

(iii) and (iv) of the Notice of Motion[9]. The applicant's entitlement, if any, to the remaining relief is dealt with later in this judgment).

THE AUTHORITY TO DISMISS

[9] The legislative framework for the appointment by the Municipal Council of a senior manager such as the applicant is set out in section 56 of the Systems Act and the regulatory framework under which senior managers are disciplined is charted in the Regulations. Before

dealing with the latter and its relevance to clause 15.2 of the employment contract, it is perhaps useful to identify the principle

of interpretation applicable to the clauses mentioned hereunder. In *Natal Joint Municipal Pension Fund v Endumeni Municipality* [10] the Supreme Court of Appeal expressed the current state of the law with regard to the interpretation of written instruments as follows:

"Interpretation is the process of attributing meaning to the words used in a document be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the language of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be

weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one that they in fact made. The ‘inevitable point of departure is the language of the provision itself’, read in the context of having regard to the purpose of the provision in the background to the preparation and production of the document.” (my underlining)

[10] The relevant provisions of the Regulations state that:

“Policy

4. (1) If a senior manager is alleged to have committed misconduct, the municipal council must institute disciplinary proceedings in accordance with this Disciplinary Code.

...

Disciplinary Procedures

5. (1) Any allegation of misconduct against a senior manager must be brought to the attention of the municipal council.

Conducting disciplinary hearing

10. (2) The hearing must be conducted by the presiding officer who may determine the procedures to be followed, ...

Sanctions

12. (1) The presiding officer may impose any, or a combination of the following sanctions, with or without conditions:
 - (f) dismissal.
12. (2) The presiding officer must –
 - (a) impose a sanction within ten [10] days of the completion of the hearing;
 - (b) advise the municipal council and the senior manager in writing of the finding and sanction;
 - (c) ...;
 - (d) ...;
 - (e) submit a record of the proceedings to the municipal council within ten [10] days after imposing the sanction.
12. (3) “The municipality must –

(a) implement the sanction imposed by the presiding officer;”

[11] When applying the interpretative standard in the Endumeni case it becomes plain that the authority to impose a dismissal sanction against a senior manager resides with the presiding officer

to the exclusion of the municipal council or even the city manager (acting or otherwise). The power of dismissal which is vested in the presiding officer was also confirmed in the matter of Thozama Jako-Wutu v Ntabankulu Local Municipality and Others.

[11] The applicant in that matter was a senior manager formerly in the employ of the respondent municipality and was dismissed after the respondent adopted the dismissal recommendation by the presiding officer of her disciplinary proceedings. Although the court found that the disciplinary proceedings against the applicant had not been validly initiated for non-compliance with the Regulations, it remarked as follows regarding the fact that the presiding officer had only recommended a sanction instead of imposing it:

“In any event, it is not the council that is empowered in terms of Regulation 12 to impose a sanction. Thus even if the enquiry had not been invalidly initiated, it was the chairperson of the enquiry who was empowered to impose the sanction, which he only recommended.”

[12] In addition, the Regulations draw a clear distinction between instances where the respective involvement of the “municipality” or the “municipal council” is required. The Regulations evince further examples of such instances where specifically the involvement of the municipal council is required, such as with the appointment of an independent investigator to investigate allegations of misconduct against a senior manager,[12] the duty to consider representations by a senior manager regarding his or her intended suspension,[13] the suspension of a senior manager,[14] the duty to inform the senior manager in writing of the reasons for his or her suspension,[15] and the institution of disciplinary proceedings against such manager upon receipt of a report from an investigator.[16]

[13] In the context of the Regulations the differentiation in functions assigned to the municipal council and to the municipality is central to the conception that these entities may exercise no power and perform no function beyond that conferred upon them by law. Equally relevant, but with specific reference to a municipal manager, is the document known as “Nelson Mandela Bay Metropolitan Municipality: Systems of Delegations of Powers[17] (“the delegations”) discussed below.

THE IMPLEMENTATION OF THE SANCTION

[14] In contrast to the above, Regulation clause 12(3)(a) which deals with the implementation of the sanction imposed by the presiding officer, does not refer to the “municipal council” but only to the “municipality”.

- [15] The Regulations do not define these terms. Referring to section 151(2) of the Constitution read with section 2 of the Systems Act, the applicant adopts the stance that the reference to “municipality” in clause 12(3)(a) is axiomatically a reference to “municipal council”. Section 151(2) of the Constitution states that the executive and legislative authority of a municipality is vested in its municipal council. Section 2 of the Systems Act defines (in part) a municipality as an organ of state within the local sphere of government exercising executive and legislative authority. The applicant’s deduction is that in a municipal environment there is no differentiation between a municipal council and a municipality; hence the same reasoning applies to the Regulations. He maintains therefore that the principle applicable to his appointment and dismissal is the same (i.e. he is appointed by the municipal council and therefore must be dismissed by it). Taken further, the argument is that the disciplinary process did not end with the sanction of the presiding officer notwithstanding the latter’s competence to have imposed it. The applicant’s complaint is that clauses 12(2)(b) and (e) of the Regulations were not complied with because the presiding officer did not advise the municipal council in writing of the finding and sanction, nor was a record of the disciplinary proceedings submitted to the council. The effect of such non-compliance, on the applicant’s argument, is that the municipal council qua employer that appointed him in terms of section 56 of the Systems Act, was precluded from implementing the presiding officer’s sanction for the purpose of terminating applicant’s services in accordance with clause 15.2 of the employment contract. In short, the applicable Regulations were not complied with and the purported termination by the Acting City Manager constituted a breach of his employment contract.
- [16] I am unable to agree with the applicant’s reasoning that within the context of the Regulations there is no differentiation between a municipal council and a municipality. The Systems Act (in terms of which the Regulations are promulgated) incorporates two distinct definitions; one for a municipality and another for a municipal council. [18]
- [17] The Act defines a municipal council with reference to section 157(1) of the Constitution (the section deals with the “composition and election” of the members of a municipal council). Nowhere in the Act is any reference made to section 151(2) of the Constitution which section declares that a municipal council is vested with legislative and executive authority. It follows that the definition of a municipal council in the Systems Act, where reference is pertinently made to section 157(1) of the Constitution, is narrowly circumscribed.
- [18] On the other hand, the Act defines a municipality as “an organ of state” consisting inter alia of political and administrative structures. Self-evidently, this definition is far broader than that ascribed to a municipal council.
- [19] Plainly, the definitions in the Systems Act intended that conflation between a municipal council and a municipality be avoided. In my view the same holds good for the Regulations. The applicant’s axiomatic reasoning side-steps the distinguishing features of these concepts and is at odds with the approach to interpretation articulated in the Ndumeni case.

- [20] To sum up, the disciplinary process ended once the sanction of summary dismissal was imposed by the presiding officer; no further involvement by the municipal council was required, whether for terminating the applicant's contract of employment and dismissing him as an employee, or for implementing the sanction.
- [21] I turn to deal with the applicant's argument regarding non-compliance with Regulation clauses 12(2)(b) and (e). The factual backdrop is that on 31 January 2017, and at a special meeting of the Council of the respondent, an item styled "Report by City Manager 26 January 2017 (Special)" was presented and noted. The report incorporated a summary of the outcome of the disciplinary proceedings and made reference to the findings on each charge and the sanction ultimately imposed against the applicant.
- [22] The applicant's complaints are that the report was factually incorrect and misleading (an aspect I need not be troubled with in this judgment since clause 12(2)(b) merely requires that the municipal council be advised of the finding and sanction) and that it was tabled in lieu of the documentation required by the aforementioned regulation clauses, particularly sub-clause (e) which makes reference to a record of the proceedings.
- [23] A starting point is that the word "record" is not defined in the Regulations. Apart from asserting that the record was not placed before the respondent's Council, the applicant makes no attempt in clarifying what he believes constituted the record, nor does he demonstrate how its alleged absence prejudiced him or that the summary tabled in the report was inaccurate or misleading in material respects. In raising the issue, the applicant seems to suggest that respondent's Council had a discretion whether or not to implement the sanction to terminate his contract of employment. Counsel for the respondent, Mr Ford SC assisted by Ms Gagiano, submitted correctly in my view, that the regulation does not make any provision for the respondent's Council to second-guess the presiding officer or to overrule, vary or otherwise interfere with his sanction since that would be contrary to the prescript that the municipality must implement the sanction. The alleged failure to submit a record did not in any manner whatsoever impact on the presiding officer's sanction nor on the manner in which it was implemented by the Acting City Manager on 13 December 2016.
- [24] At the abovementioned special meeting of the respondent's Council on 31 January 2017 the report on the outcome of the disciplinary proceedings was noted including that the " ... City Manager had implemented the sanction of dismissal imposed by the Presiding Officer on behalf of the Municipality and issued a letter of dismissal to Mr Ndoyana on 13 December 2016".[19] Significantly, the Council recognised that the responsibility for implementing the sanction rested entirely with the municipality. Any indication that the Council thought otherwise is not borne from the papers before me nor could the applicant establish this.

[25] Section 59 of the Systems Act obliges a municipal council to develop a system of delegation that will inter alia maximise administrative and operational efficiency. The Act recognises a municipal manager (otherwise also known as a city manager) as head of the administration of a municipality.[20] The respondent's approved system of delegations (entitled "Nelson Mandela Bay Metropolitan Municipality: Systems of

Delegations of Powers [21]) confers inter alia upon the city manager the power "to dismiss employees".[22] The applicant's interpretation of the specified delegation is that it is not applicable to the dismissal of senior managers (such as himself) appointed in terms of section 56 of the Systems Act. The contention by Mr Ford is that the delegated power "to dismiss employees" ensures the effective implementation of the sanction imposed by the presiding officer. I am attracted to this line of reasoning; it is pragmatic because it accords with the prescript of maximising administrative and operational efficiency. On the contrary, the applicant's interpretation is based on a misunderstanding of where or in whom the power to implement the sanction resided and is informed by a reading of abstract textual material which seeks to exclude the applicable delegation from applying to senior managers. His interpretation thereof is improbable and speculative in the extreme.

[26] Regulation 12(3) read with the delegations unmistakably placed the responsibility for implementing the presiding officer's

dismissal sanction with the respondent municipality as opposed to its Council. Once the dismissal sanction had been imposed, all that was left for the respondent to do was to implement the sanction which occurred when the Acting Municipal Manager Ms Zitumane, in the letter dated 12 December 2016 [23] informed the applicant of the sanction and that he has "the right to declare a dispute at the South African Local Government Bargaining Council."

[27] This brings me to a series of pertinent remarks in the respondent's answering affidavit. The applicant recognised the power of the presiding officer to make the findings which he did on each of the charges for which the applicant was convicted and to have imposed the summary dismissal sanction. On 15 December 2016 the applicant had recourse to the Bargaining Council with a complaint of unfair dismissal. This occurred well before the special meeting of the respondent's Council on 31 January 2017 at which meeting the Report by the City Manager on the outcome of the disciplinary proceedings was noted. When the attempt at conciliation before the Bargaining Council proved unsuccessful the applicant referred the matter for arbitration in terms of the Labour Relations Act. [24] This referral also occurred prior to 31 January 2017. This sequence of events has led the deponent to the opposing affidavit to opine "that the point taken by the applicant viz., that the power to dismiss resorts only in the Council, was an afterthought as the applicant at the time clearly recognised the finality of the findings and his dismissal unless overturned firstly through conciliation and then, failing that, arbitration before the Bargaining Council." There is certainly no indication in the founding affidavit nor in reply why the applicant did not wait for the Council of the respondent to dismiss him (if, on his version that is what should have been done) and only then have recourse to the Bargaining Council. Considering

that none of the arguments put forward by the applicant has found favour with this Court, the assertion of his strategy being an

afterthought is not anything farfetched.

THE COMPETENCE OR OTHERWISE OF THE REMAINING RELIEF CLAIMED BY THE APPLICANT

[28] In the light of the foregoing sentiments the applicant is not entitled to the relief in paragraphs (i); (iii) and (iv) of his Notice of Motion. It is however evident from his heads of argument that he purports to pursue with the remaining relief in prayers (ii); (v); (vi) and (vii), namely:

“(i) ... ;

(ii) A declaratory to the effect that a municipal council resolution of 28 February 2019 be declared null and void and be set aside;

(iii) ... ;

(iv) ... ;

(v) A declaratory to the effect that all councillors and officials responsible for this fruitless and wasteful expenditure incurred as a result of the Applicant’s re-instatement be held individually liable for it in accordance with the Municipal Finance Management Act, 2003 and Public Audit Amendment Act 2018;

(vi) A declaratory to the effect that the applicant be compensated for all the legal costs incurred throughout the duration of this dispute; and

(vii) Any other appropriate relief.”

[29] It is a well-known principle that a court will only grant relief that is capable of enforcement, and where relief cannot be enforced, that is good reason for refusing it.[25] The relief in prayer (ii) is plainly incompetent. Nowhere in his founding affidavit nor in his heads of argument does the applicant

identify the impugned resolution nor is anything said about the purport of the Council meeting that would throw light on the nature

of the resolution. As for prayer (v) it is extraordinary that such relief is sought without citing or even identifying the persons

against whom the applicant wishes the order to be made. In respect of prayer (vi), the applicant has not formulated the extent of such costs nor has he proffered an explanation relevant to how and when such costs were incurred and on what scale. Lastly, as for prayer (vii) neither in his papers nor during argument did the applicant make any attempt by way of indication or address on what factual considerations may properly support such relief. Mr Ford correctly concluded that the relief sought in these prayers is fanciful.

COSTS

[30] On 30 July 2019 the applicant delivered a notice of motion (dated 29 July 2019) together with an affidavit and annexures. This application (“the second application”) comprised of some 59 pages and raised a series of issues in limine, in which the applicant sought the setting aside of resolutions of the respondent’s Council taken on 27 September 2018, 4 December 2018 and 4 April 2019 and further relief declaring unlawful the respondent’s opposition to these proceedings (“the main application”). To a certain extent the notice of motion mirrors a previous one delivered by the applicant on 30 April 2019 also with an affidavit comprising of 14 pages (“the first application”). Both notices of motion and the applications they purported to have launched were not of an interlocutory nature. They appear to be substantive applications in their own right since the essence of the relief sought was in the nature of reviews unrelated to the main application.[26]

[31] In response to both applications the respondent delivered notices under rule 30. Following delivery of the respondent’s rule 30 notice in response to the first application, the applicant delivered a notice of removal dated 17 May 2019 which read: “... the point in limine raised by the Applicant on 30 April 2019 is hereby removed and an application to re-introduce it will be filed with the Registrar ... in due course to allow the Respondent sufficient time to prepare and respond to it.” Simultaneously with the delivery of the notice of removal was a request for particulars in which were requested inter alia the agenda and minutes of the respondent’s council meetings of 27 September 2018, 4 December 2018 and 4 April 2019. The request for such documentation leaves one wondering whether proper consideration and forethought was given to the preparation of the first

application.

[32] At the hearing of this, the main application on 15 August 2019, the applicant withdrew the second application when confronted by the respondent’s insistence that it wished to pursue with a rule 30 application to set it aside. It seems to me that the whole process regarding the launching of the first and second applications was infected with an air of impropriety. I think Mr Ford was correct in his submission that this amounted to an abuse of the process of court. He contended for a punitive costs order against the applicant. In reply, the applicant laconically stated that this court should “please do something around that”. I am of the view that a punitive costs order is not warranted but that the usual order as to costs should follow.

- [33] Relevant to the founding affidavit in the main application, apart from incorporating hearsay matter, it is manifest of a sheer lack of restraint and civility by the applicant's choice of indignant language where he refers to officialdom within the respondent and to those from whom the respondent has procured legal advice on certain matters. It is not surprising that the respondent was induced to have such material struck out. I do not intend burdening this judgment with a repetition of the material with which the respondent has taken issue since I was urged by Mr Ford to disregard the offending material to enable the main application to proceed. The applicant chose not to address me on the material raised in the application to strike out and acceded to the suggestion by Mr Ford. Having satisfied myself that the material raised by the respondent would be prejudicial, I have accordingly disabused my mind from same in the preparation of this judgment. The respondent is entitled to its costs in respect of the application to strike out.
- [34] The respondent employed two counsel since the inception of these proceedings. The reasons therefor and the circumstances are set out in the respondent's opposing affidavit and it is unnecessary to traverse the explanation proffered by the deponent in its entirety. The matter has a history which dates back to 2014 commencing with an investigation of the applicant's conduct followed by his suspension in July 2015. The applicant in his papers, which comprised of some 112 pages and 19 annexures, relied heavily upon various statutes, regulations and his contract of employment, all of which required careful consideration and analysis. The respondent's legal representatives were required to consider the applicant's papers, conduct research, source additional documentation and prepare the answering papers of which the answering affidavit without annexures exceeded some 40 pages. Moreover, at various intervals consideration had to be given to the "interlocutory" applications referred to above and the drafting of various notices under rule 30. The costs of two or more counsel will be allowed only if a court specifically orders this to be the case failing which the costs of only one advocate is awarded. Despite the abovementioned material contained in the opposing affidavit, I was not specifically addressed on the issue relating to the costs of two counsel. However, I have dealt with what I believe are the relevant considerations in giving effect to the basic principle that a court may in its discretion direct that costs follow the event in the sense that the successful party is entitled to its costs.
- [35] In the result I make the following order:
- (i) The application is dismissed with costs, such costs shall include those attendant on the withdrawal of the applicant's application launched under Notice of Motion dated 29 July 2019 and shall further include the costs attendant on the respondent's application to strike out.
- (ii) The costs in paragraph (i) shall be limited to the employment of Senior Counsel only.

S. RUGUNANAN

ACTING JUDGE OF THE HIGH COURT

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[1] clause 1

[2] In actual fact the term was for 5 years and would have terminated on 31 December 2018

[3] Act 32 of 2000, as amended

[4] See clause 2(i)(a)(ii) of the regulations published in GN 344 in GG 34213 of 21 April 2011 in terms of section 120 of the Local

Government: Municipal Systems Act supra

[5] Clause 6 is headed "Precautionary Suspension" and contains the following applicable sub-clauses: "(1) the municipal Council may suspend a senior manager on full pay if it is alleged that the senior manager has committed an act of misconduct, where the municipal Council has reason to believe that – (a) the presence of the senior manager at the workplace may – (i) jeopardise any investigation into the alleged misconduct; (ii) endanger the well-being or safety of any person or municipal property; or (iii) be detrimental to stability in the municipality; or (b) the senior manager may – (i) interfere with potential witnesses; or (ii) commit further acts of misconduct."

- [5] Clause 6 is headed “Precautionary Suspension” and contains the following applicable sub-clauses: “(1) the municipal Council may suspend a senior manager on full pay if it is alleged that the senior manager has committed an act of misconduct, where the municipal Council has reason to believe that –
- (a) the presence of the senior manager at the workplace may –
 - (i) jeopardise any investigation into the alleged misconduct;
 - (ii) endanger the well-being or safety of any person or municipal property; or
 - (iii) be detrimental to stability in the municipality; or
 - (b) the senior manager may –
 - (i) interfere with potential witnesses; or
 - (ii) commit further acts of misconduct.”
- [6] Also referred to as Acting Municipal Manager
- [7] Founding affidavit, page 9, paragraph 13
- [8] See *Dennis v Kouga Municipality* (644/2011) [2011] ZAECPHC 30 September 2011
- [9] The relief claimed in the Notice of Motion encompasses: “(i) A declaratory to the effect that the termination of the applicant's fixed term contract of employment by the Acting City Manager on 13 December 2016 was unlawful and in breach thereof and is accordingly reviewed and set aside; (ii) A declaratory to the effect that a Municipal Council resolution of 28 February 2019 be declared null and void and be set aside; (iii) A declaratory to the effect that the applicant be re-instated in his original position of Executive Director: Corporate Services as of 13 December 2016 with full retrospective effect; (iv) A declaratory to the effect that the applicant be paid retrospectively his monthly salary since December 2016 including the costs of living adjustments; (v) A declaratory to the effect that all councillors and officials responsible for this fruitless and wasteful expenditure incurred as a result of the applicant's re-instatement be held individually liable for it in accordance with the Municipal Finance Management Act, 2003 and Public Audit Amendment Act, 2018; (vi) A declaratory to the effect that the applicant be compensated for all the legal costs incurred throughout the duration of this dispute; and (vii) Any other appropriate relief.”
- [9] The relief claimed in the Notice of Motion encompasses:
- “(i) A declaratory to the effect that the termination of the applicant's fixed term contract of employment by the Acting City Manager on 13 December 2016 was unlawful and in breach thereof and is accordingly reviewed and set aside; (ii) A declaratory to the effect that a Municipal Council resolution of 28 February 2019 be declared null and void and be set aside; (iii) A declaratory to the effect that the applicant be re-instated in his original position of Executive Director: Corporate Services as of 13 December 2016 with full retrospective effect; (iv) A declaratory to the effect that the applicant be paid retrospectively his monthly salary since December 2016 including the costs of living adjustments; (v) A*

declaratory to the effect that all councillors and officials responsible for this fruitless and wasteful expenditure incurred as a result of the applicant's re-instatement be held individually liable for it in accordance with the Municipal Finance Management Act, 2003 and Public Audit Amendment Act, 2018; (vi) A declaratory to the effect that the applicant be compensated for all the legal costs incurred throughout the duration of this dispute; and (vii) Any other appropriate relief."

[10] 2012 (4) SA 593 (SCA) at paragraph [18]

[11] (P332/14) [2016] ZALCPE 1 (16 February 2016) at paragraph [27]

[12] Clause 5(3)

[13] Clause 6(3)

[14] Clause 6(1)

[15] Clause 6(5)

[16] Clause 5(6)

[17] See Bundle "A"

[18] Section 1

[19] Answering affidavit, page 13 (originally numbered)

[20] Section 55

[21] See Bundle "A"

[22] Bundle "A" - Delegations, clause 6.1.6(b)

[23] Founding affidavit, Annexure MMN 4

[24] i.e. section 136 of Act No. 66 of 1995 as amended

[25] *Mansell v Mansell* 1953 (3) SA 716 NPD at 721 E; and *Weiner N.O. v Broekhuizen* 2001 (2) SA 716 (CPD) at 722 J

[26] And purported to raise collateral challenges

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Prepared on 13 October 2026 · Esheria