

SOUTH AFRICA / JUDGMENT

Phahlane and Another v Emfuleni Local Municipality (J2024/17) [2017] ZALCJHB 326 (12 September 2017) [2017] ZALCJHB 326

COURT

Labour Court Johannesburg

BEFORE

B Witcher

CASE / FILE NUMBER

J2024/17

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case no: J 2024/17

In

the matter between:

LEHLOHONOLO

VINCENT PHAHLANE

First

Applicant

ERIC

MICHAEL MOLOTO

Second

Applicant

and

EMFULENI

LOCAL MUNICIPALITY

Respondent

Heard:

12 September 2017

Delivered:

12 September 2017

EX TEMPORE

JUDGMENT

WHITCHER J

- [1] This urgent application is dismissed for the reasons that follow.
- [2] The applicants did not address why this matter is urgent.
- [3] Although the applicant's use words such as unlawful, invalid and void, they have failed to plead a specific provision of a collective agreement and attach same which gives rise to a case based on unlawfulness. They only attempted to do so at the hearing, which is not permitted. In any event, the applicability of the collective agreement they referred to is in doubt considering the decision of the Labour Court in the *City of Cape Town v Independent Municipal and Allied Workers Union and Others*.^[1]
- [4] Moreover where they say the suspension is invalid because it is for invalid reasons, they simply motivate why in their view their suspension is unfair and refer the court to the LRA, the Code of Good Practice and legal principles relevant to the fairness or otherwise of a suspension. The application, read as a whole demonstrate that they complain that the suspension is procedurally and substantively unfair.
- [5] In this regard they have an alternative recourse (alternative remedy), namely a referral of an unfair labour practice to the relevant bargaining council. This court is not a court of first instance regarding the fairness of a suspension and has no jurisdiction over unfair labour practices.
- [6] The applicants do not state why they would not be afforded appropriate redress in filing an unfair labour practice with the relevant bargaining council.
- [7] The application also does not address whether the applicant's will suffer irreparable harm and if so what harm they will suffer if this application is not granted. This is relevant considering the precautionary suspension is on full pay and by its nature is of a limited duration.

Order:

- [8] The application is dismissed with no order as to costs

B Whitcher

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicants:

M Petlane and M Mokgatle

Instructed by:

Sihunu Attorneys

For the Respondent:

W Mokhari SC

Instructed by:

Werkmans Attorneys

[1]

[2015] ZALCCT 58;

[2015] 12 BLLR 1197 (LC); (2016) 37 ILJ 147 (LC), dated 17 September 2015.

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