

SOUTH AFRICA / JUDGMENT

Ratlou Local Municipality v Sejake (M290/2021) [2023] ZANWHC 110 (20 July 2023)

[2023] ZANWHC 110

COURT

North West High Court, Mafikeng

BEFORE

FMM Reid

CASE / FILE NUMBER

M290/2021

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT OF
SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG
CASE NUMBER: M290/2021

REPORTABLE:

NO
Circulate
to Judges: NO
Circulate
to Magistrates: NO
Circulate
to Regional Magistrates: NO
In the matter between:-
RATLOU
LOCAL MUNICIPALITY
Applicant
and
SEBATANA
CASSUIS SEJAKE
Respondent

JUDGMENT

FMM REID, J:

Introduction:

- [1] This is an application by the Ratlou Local Municipality (Municipality) for a so-called “self-review” of the appointment of the respondent (Sejake) as Senior Manager: Planning and Development on the basis that the appointment was done unlawful, invalid, unconstitutional and of no force and effect. The appointment was done per the Resolution of Council on 14 June 2019 and was communicated to Sejake on 13 August 2020.
- [2] This is a legality review and not a review in terms of Rule 53 of the Uniform Rules of Court or a review in terms of the Promotion of Administrative Justice Act 3 of 2000. The respondent answered by raising points in limine and the respondent (safe for the points in limine) elected to not place any case before Court on the merits of his appointment as Senior Manager: Planning and Development.
- [3] For ease of reference I will refer to the applicant / Ratlou Municipality / the Municipality interchangeably, and to the respondent / Sejake interchangeably.
- [4] The Municipality is represented by Adv Mokhare SC and Adv Ntingane and Sejake is represented by Adv Muza.

Material

background

- [5] The disputes between the Municipality and Sejake have been the subject of ample matters, flooding this Court and other courts such as the Labour Court and the High Court of South Gauteng Johannesburg. The disputes range from interdicts preventing council meetings, reviewing and setting aside certain decisions / resolutions taken by the municipal council, declaring decisions / resolutions of the council to be unlawful, etc. The resolutions taken, or purportedly taken by the Municipality, becomes cumbersome to such an extent that it is difficult to distinguish valid resolutions from fraudulent resolutions.
- [6] To provide an example of the administrative incoherence from the Municipality, Resolution 34 of 2022 dated 20 July 2022 was filed under a filing notice by Sejake’s attorneys. This resolution reads as follows:

“Council of Ratlou has for the past four (4) financial years incurred an amount of R210 million on Unauthorised, Irregular, Fruitless and Wasteful Expenditure. Most of the funds were misappropriated as a result of litigations which were unnecessary and self-created

...

About R3 million was used in litigations in the case involving Mr Cassius Sejake (- the applicant in casu -) and Ratlou Local Municipality. At the centre of the litigation as an attempt by the Municipal Manager to rescind the appointment of Mr Sejake as the Senior Manager: Planning & Development Case No M290/2021. The other matter was the staying of the court order under case number UM 137/2021 which granted Mr Sejake a sum of money for arrears in salaries for failure by the Municipality to pay him as Senior Manager: Planning & Development in the matter under case number 255/2021. The Municipality's matter under case number UM137/2021 was struck from the roll for lack of urgency with costs and was later withdrawn by the Municipality.

Resolved:

(a)...

(b)...

(c) That the matters under case numbers M290/21 and 255/2021 in the matter between Ratlou Local Municipality and Mr Cassius Sejake had been withdrawn with immediate effect.

..."

- [7] In answer to the above quoted resolution, the Speaker of the Municipal Council, Gloria Kehlwe Leepo, filed an explanatory affidavit setting out that she did not issue any notice to the councillors inviting them to a council meeting to be held on 20 July 2022. In terms of section 37 of the Municipal Systems Act 32 of 2000 only the Speaker has the authority to call such a meeting. She states that "10. ... The resolution adopted by the group is fraudulent and has no binding on the applicant or its officials."
- [8] I must emphasise unequivocally that the purported resolution filed under a filing notice, has no evidentiary value in an application, as it is not placed before Court by means of an affidavit. As such, no heed is paid to it. I only refer to this resolution to illustrate the level of internal conflict in the Municipality.

Previous court cases

- [9] I will provide a summary of the plethora of matters that were referred to in this matter.
- [10] On 11 April 2019 under case number M165/2019 the Member of the Executive Council (MEC) for Local Government and Human Settlement in the North West Province launched an application against inter alia the Municipality and Sejake, in which application it was ordered by Moagi AJ that the appointment of Sejake as Acting Municipal Manager for the Municipality on 29 December 2018 under council resolution no 73/2018 adopted on 13 December 2018 for the period of 13 December 2018 to 14 March 2019, and from 15 March 2019 to 14 June 2019 is declared to be void ab initio.
- [11] On 9 August 2019 the Administrator of the Municipality, similarly terminated the tenure of Sejake as Acting Municipal Manager.

- [12] Under case number UM122/2020 on 8 July 2020 an order was made by Hendricks DJP (as he then was) to the effect that the Municipality is ordered to not proceed with the disciplinary hearing against Sejake that was set down for 9 and 10 July 2020 pending an application for review of the decision to have Tebogo Chanda preside as chairperson of the disciplinary hearing. I pause to mention that Tebogo Chanda is the deponent on behalf of the Municipality in this application.
- [13] Under case number UM289/2020 on 18 February 2021 an order was made by Mtembu AJ that the notice calling a special council meeting of 14 January 2021 is declared unlawful, invalid and of no force and effect and the subsequent resolutions taken at the special council meeting are declared unlawful, invalid and of no force and effect. Mtembu AJ further found that the Administrator should continue to perform the duties assigned to her in terms of section 139(1)(b) of the Constitution.
- [14] On 19 March 2021 under case number 13/2021 an order was granted by Gura J that, pending the adjudication of the application for leave to appeal against the judgment and orders, or the appeal, granted in the matter under the same case numbers by Mtembu AJ on 18 February 2021 the Court ordered that the orders granted by Mtembu AJ be put into operation in accordance with the provisions of section 18(1) of the Superior Courts Act 10 of 2013.
- [15] On 14 April 2021 under case number UM50/2021 an order was granted by Nonyane AJ that the Provincial Intervention in the Municipality in terms of section 139(1)(b) of the Constitution is declared to have ended by virtue of section 139(2)(b)(i) of the Constitution and that the bank accounts held by First National Bank is to be released to the Municipality.
- [16] It cannot be said with any amount of certainty that there are no other matters between the parties.

Points in limine

- [17] In defence to the application the respondent raises points in limine on the following grounds:

17.1. That the Municipality was placed under administration in terms of section 139(1)(b) of the Constitution of the Republic of South Africa 108 of 1996 by the North West Provincial Executive Committee on 11 January 2021 and the Administrator Ms Neo Motsatsi-Kalil was appointed on 13 January 2021. The argument of the respondent is that the application should have been instituted by the Administrator.

17.2. The Municipal Manager Tebogo Chanda was placed under precautionary suspension on 15 February 2021 by the Administrator. The application is signed by Chanda on 17 May 2021.

17.3. The Municipality did not authorise Chanda to institute the proceedings.

17.4. The authority of the attorneys of the applicant, Messrs Phambane Mokone Attorneys were challenged in terms of a Rule 7(1) notice.

[18] I will deal with each of the points individually.

Institution of application by Administrator

[19] At the time of the drafting of the application in May 2021, the Administration of the Municipality has ended in April 2021 as confirmed in the court order of Nonyane AJ referred to in paragraph

[15] above.

[20] The point in limine that the Administrator has to launch the proceedings can therefore not be successful.

Municipal Manager under suspension

[21] It is stated by the applicant in reply that the suspension of Chanda has been uplifted when the founding papers were drafted.

[22] In the replying affidavit, the Municipality attaches Resolution 41/2021 dated 30 April 2021 which resolved that “3. That council uplifts the suspension of the Municipal Manager and reinstate him with immediate effect.” This was done prior to the institution of these proceedings.

[23] In ANC Umvoti Council Caucus and Others v Umvoti Municipality 2010

(3) SA 31 (KZP) at para 8 Gorven J held as follows:

“[8] It is clear that, where authority is challenged in the answering affidavit, it is permissible to make out a case in reply. It is further clear that, even if the authority was not in place when the litigation commenced, actions taken can be ratified subsequently. This was fully dealt with in Smith v KwaNonqubela Town Council 1999 (4) SA 947 (SCA) where the following was stated:

“It was further argued that, after an objection has been taken to the authority of a person to act on behalf of another, reliance may not be placed upon a ratification that did not exist when the objection was taken... Lest there be any future doubt about the matter, this judgment holds that the point is bad...”

[24] This point in limine can therefore not be upheld.

Lack of authority of Chanda

[25] In the replying affidavit it is stated that Chanda, as the Municipal Manager, is authorised to institute the application in terms of section 55(2)(c) of the Municipal Systems Act 32 of 2000, read with section 60(a) of the Municipal Finance Management Act 56 of 2003.

[26] The authority of Chanda to depose to the affidavit, and institute the proceedings, are thus found in the delegated authority of the position of Municipal Manager in terms of the legislation referred to.

[27] This point in limine is subsequently dismissed.

Lack of authority of attorneys

[28] The applicant challenges the attorneys of the Municipality's mandate to act on behalf of the Municipality.

[29] In *PM v MM and Another* 2022 (3) SA 403 (SCA) the Supreme Court of Appeal distinguished between: (a) the legal standing of the party seeking rescission of judgment; (b) the basis for deposing to an affidavit; and (c) the authority to represent a party.

[30] In casu the authority of the attorneys to represent a party is questioned. The power of attorney is attached to the replying affidavit.

[31] The power of attorney is sufficient to satisfy the Court that the attorneys have the necessary authority to represent the Municipality.

[32] This point in limine also stands to be dismissed.

[33] In summation, all the points in limine as raised by Sejake is dismissed. I now deal with the merits of the application.

Appointment of Sejake as Senior Manager: Planning and Development

[34] It is stated by the Municipality that the appointment to the aforementioned position is a section 56 appointment of a Managerial position which would be directly accountable to the Municipal Manager.

[35] In evaluating the candidates for appointment, the selection panel must consist of at least three (3) and not more than five (5) members and the panel must be constituted as follows: the Municipal Manager, who is the chairperson, a member of the mayoral committee or councillor who is the portfolio head of the relevant portfolio and at least one (1) other person, who is not a councillor or a staff member of the Municipality and who has expertise or experience in the area

of the advertised post.

[36] In this instance, the interview panel was constituted without a Municipal Manager serving as a chairperson of the panel. However, Sejake himself was the Acting Municipal Manager and an independent investigation commissioned by the Administrator of the Municipality, as appointed in terms of section 139 of the Constitution and undertaken by the Department of Cooperative Governance and Traditional Affairs ("COGTA") of North West Provincial Government reported in its report dated 15 November 2020 that Sejake was both a candidate for the position of Senior Manager: Planning and Development and in charge of the selection panel as Acting Municipal Manager.

- [37] This in itself is a clear conflict of interest and in no uncertain terms a gross irregularity which can be sufficient ground to review and set aside the appointment of Sejake Senior Manager: Planning and Development.
- [38] The abovementioned conflict of interest is a breach of Chapter 3 of the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers issued in terms of the Municipal Systems Act 32 of 2000 and renders the process illegal.
- [39] Regulation 9(2) states that a person appointed as a Senior Manager in terms of the Regulations must comply with the minimum requirements for higher education qualification, work experience and knowledge as set out in Annexure B of the Systems Act Regulations. The Regulations provide that a Senior Manager: Planning and Development must possess a higher education qualification Bachelor of Science degree in Building Sciences / Architect / Bachelor Degree in Town and Regional Planning or Development Studies, or the equivalent thereto.
- [40] Sejake holds a BA Degree and a Bachelor of Arts in Land Reform and Rural Development and a Certificate of Competence in Management Development (Municipal Finance). It is argued on behalf of the Municipality that the other two (2) shortlisted candidates who were interviewed, both possessed the required higher education qualifications. Mr Mohlabane has a Master of Science Degree in Development Planning as well as a Bachelor of Science Degree in Urban planning and Geography. Mr Okeke holds a Master of Science Degree in Urban and Regional Planning and a Bachelor's Degree in Urban and Regional Planning.
- [41] In comparing Sejake's qualifications with that of the other two
- (2) shortlisted candidates, I find that Sejake did not meet the academic requirements for the position.
- [42] On the basis that the selection panel was constituted irregularly and not in terms of the governing legislation, and that Sejake did not have the necessary academic qualification for the position, I find that the process followed to appoint Sejake as Senior Manager: Planning and Development was unlawful.
- [43] Following the termination of Sejake's tenure as Acting Municipal Manager, he purported to assume the position of Senior Manager: Planning and Development. He does not, to date, have an appointment letter. It is argued on behalf of the applicant that the predicament arose that Sejake, as Acting Municipal Manager, would have been the nominated person who should sign the appointment letter of the Senior Manager: Planning and Development. This would have the effect that Sejake should sign his own employment letter. It is argued on behalf of the Municipality that this is indicative thereof that Sejake "arranged" a promotion for himself, whilst Acting as Municipal Manager.

- [44] In addition to the above, the Systems Act determines that the appointment of a section 56 Manager, such as the Senior Manager: Planning and Development, must be done in consultation with the Municipal Manager. This, akin to the predicament with the appointment letter, would result in Sejake as Acting Municipal Manger having a consultation with himself for his appointment as Senior Manager: Planning and Development.

Legal position

- [45] In *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004

- (6) SA 222 (SCA) the Supreme Court of Appeal developed the principle that an unlawful act may produce legally recognisable consequences and will remain in force until it has been set aside by a competent Court. This has become known as the Oudekraal principle.

The principle also cemented the movement where a State Organ, or public entity, has made an error and approaches the court on the

basis of a so-called “self review” to correct the error that it has made.

- [46] In *Department of Transport and Others v Tasima (Pty) Ltd* 2017

- (2) SA 622 (CC) the Department of Transport sought, by means of a collateral challenge, to impugn a decision of its official to extend an agreement with Tasima on the ground that the extension was in contravention of section 217 of the Constitution, section 38 of the Public Finance Management Act 1 of 1999 and the Treasury Regulations. The High Court concluded that the extension was illegal and declared it void ab initio. On appeal to the SCA, the SCA found that the Department of Transport could not bring a collateral challenge as it was an Organ of State. It treated the application as a review under the Promotion of Administrative Justice Act 3 of 2000 and concluded that since it was brought out of time, the unlawful extension of the contract was validated by the delay. On appeal to the Constitutional Court, the minority stressed that “no amount of delay can turn an unlawful act into a valid administrative action.”

- [47] In *Merafong City v AngloGold Ashanti Ltd* 2017 (2) SA 211 (CC) the Constitutional Court affirmed at paragraph [61] that:

“.. as a fundamental principle that the State should be exemplary in its compliance with the fundamental constitutional principle that prescribes self-help. What is more, in Khumalo, this court held that state functionaries are enjoined to uphold and protect the rule of law by, inter alia, seeking the redress of their department’s unlawful decisions. Generally, it is the duty of a state functionary to rectify unlawfulness. The courts have a duty to insist that the State, in all its dealings, operates within the confines of the law and, in so doing, remains accountable to those on whose behalf it exercises power. Public functionaries must, where faced with an irregularity in the public administration, in the context of employment or otherwise, seek to redress it.”

[48] The legal position is thus clearly established that any public office or functionary has the legal duty to approach the Courts in setting aside, and correcting, irregular steps taken by the public functionary.

Conclusion

[49] In the absence of any case placed before court on the merits in opposing the application to set aside Sejake's appointment as Senior Manager: Planning and Development, the Court accepts the factual statements made by the applicant.

[50] In the matter of Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd CC91/17 the Constitutional Court held:

"Where the unlawfulness of the impugned decision is clear and not disputed, then this court must declare it as unlawful."

[51] I agree with the argument advanced on behalf of the Municipality that the appointment of Sejake as Senior Manager: Planning and Development, should be set aside on the basis that:

51.1. The selection panel in terms of which he was recommended for the appointment was not duly constituted with him being the chairperson presiding over his appointment to a promotion level. This is a clear conflict of interest.

51.2. The qualifications of Sejake do not match those of the other two (2) candidates and Sejake is not academically qualified for the position of Senior Manager: Planning and Development.

51.3. No consultation with the Municipal Manager has taken place, as he was Acting Municipal Manager at that time.

51.4. Sejake has no letter of appointment to the position of Senior Manager: Planning and Development.

[52] The process that was followed in appointing Sejake to the position of Senior Manager: Planning and Development was fraught with irregularities and gross procedural defects and was executed unlawfully.

[53] As such, it stands to be reviewed and set aside.

Costs

[54] The normal rule is that the successful party is entitled to its costs. I find no reason to deviate from this normal rule.

[55] The applicant requests the costs of two (2) counsel. Having regard to the litigious history between the party, the sheer amount of detail and the complexity of the matter, I hold the view that the cost of two (2) counsel is justified.

[56] The respondent should therefore be ordered to pay the cost of the applicant which cost is to include the cost of two (2) counsel where so employed.

Order:

[57] In the premises I make the following order:

- i) It is declared that the appointment of the respondent as Senior Manager: Planning and Development per the Resolution of Council on 14 June 2019 communicated to the Respondent on 13 August 2020 is unlawful, invalid, unconstitutional and of no force and effect.
- ii) It is declared that the Resolution of Council dated 14 June 2019 appointing the respondent as Senior Manager: Planning and Development is unlawful, invalid, unconstitutional and of no force and effect.
- iii) The Resolution of Council dated 14 June 2019 appointing the Respondent as Senior Manager: Planning and Development is reviewed and set aside.
- iv) The respondent is ordered to pay the cost of the application, including the costs of two (2) counsel where so employed.

FMM REID

JUDGE OF THE HIGH COURT

NORTH WEST DIVISION MAHIKENG

DATE OF HEARING:

9 FEBRUARY 2023

DATE OF JUDGMENT: 20 JULY 2023

APPEARANCES:

FOR APPELLANT: ADV W MOKHARE SC WITH ADV N NTINGANE INSTRUCTED BY:
PHAMBANEMOKONE ATTORNEYS RANDBURG TEL: 010 446 0864 EMAIL:
simon@phambaneattorney.co.za REF: MS PHAMBANE/RLM/SCS/001 C/O MOTSHABI AND
ASSOCIATES HAVENGA STREET 12 GOLF VIEW MAHIKENG TEL: 018 381 8187 EMAIL:
secretary@motshabiinc.com REF: MR MUDABELA/R1357/CIV FOR RESPONDENT: ADV CZ MUZA
INSTRUCTED BY: NKULU INC ATTORNEYS 217 PRETORIA STREET PRETORIA EMAIL:
info@nkuluinc.co.za REF: MR JOHN NKULU C/O ZISIWE ATTORNEYS OFFICE 5, SHASONS
CENTRE MAHIKENG TEL: 018 381 1141 REF: MR ZISIWE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2023/110.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/ratlou-local-municipality-v-sejake-unknown-topic-anwhc-2023>

Prepared on 12 October 2026 · Esheria