

SOUTH AFRICA / JUDGMENT

Retlaobaka v Lekwa Municipality and Another (J 20/13) [2013] ZALCJHB 179 (5 August 2013)

[2013] ZALCJHB 179

COURT

Labour Court Johannesburg

BEFORE

R Lagrange

CASE / FILE NUMBER

J 20/13

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

Not reportable

REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA,

IN JOHANNESBURG

JUDGMENT

Case no: J 20/13

In the matter between:

DIPONE ORAPELENG TSIETSI RETLAOBAKA Applicant and LEKWA LOCAL MUNICIPALITY First
Respondent TSHABALALA LINDA BERNARD(N.O.) Second Respondent

Delivered: 05 August 2013

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

LAGRANGE, J

[1] The applicant in this leave to appeal application was the main applicant in the urgent
application in which judgement was handed

down on 7 February 2013.

[2] The order made in that matter which also addressed a counter-application by the first
respondent was that:

2.1. the application to lift the applicant's suspension by the respondents was dismissed, and

2.2. it was declared that at the date of the judgment the applicant had not been validly appointed as Chief Financial Officer in terms of the Local Government: Municipal Systems Act 32 of 2000 ('the Systems Act').

Grounds of Appeal

The applicant appeals against both parts of the order which was the outcome of the counter-application. He contends that: the

conclusion

of a performance agreement was not a pre-requisite for a valid appointment as a senior Administrative Officer; that such an agreement was concluded; that there was consensus on the terms of his contract, and that the period of his contract was not dependent on the intention of the respondent local authority. He further argues that, as he was validly appointed, he was therefore subject to the Local Government: Disciplinary Regulations for Senior Managers and ought not to have been suspended contrary to those. These grounds largely repeat arguments made in the original application.

The applicant contends that it was not necessary for the parties to have signed a contract for a valid contract to have existed in terms of the Systems Act. He appears to have overlooked that I also found that the conclusion of the contract was also subject to him and the Administrator both signing the contract and subject to the conclusion of a performance agreement. No performance agreement had been concluded within a reasonable time, or by the date stipulated in his letter of appointment. Further, there was no evidence establishing that any performance agreement was ever concluded, yet this was a pre-requisite for a valid appointment both before and after the amendment of the Systems Act in April 2010.

The applicant's contention that the period of his fixed term appointment was not dependent on the council's intention as expressed in its resolution of 3 June 2010 authorising the conclusion of a three year contract with a possibility of a two year extension is, with respect, absurd. The contract containing a five year term was clearly contrary to the authorising resolution. For this reason also, I am satisfied that I did not err in finding there was insufficient consensus on the conclusion of the contract given that such a vital term was at odds with the council's clear intention that the initial appointment should only be for three years.

As there is no merit in the claim that the applicant was validly appointed in terms of s 57 of the Systems Act, it follows that the disciplinary regulations did not regulate the terms of his suspension and he could not rely on them. Accordingly, I am

satisfied that I did not err in dismissing his application to challenge his suspension which was premised on the applicability of these regulations.

Order

In the circumstances, I am satisfied that it is unlikely another court would come to a different conclusion and the application for leave to appeal is dismissed with costs.

R LAGRANGE, J (In chambers)

Judge of the Labour Court of South Africa

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/ZALCJHB/2013/179.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/retlaobaka-v-lekwa-municipality-and-others-unknown-topic-alcjhb-2013>

Prepared on 11 October 2026 · Esheria