

SOUTH AFRICA / JUDGMENT

Sejake v Ratlou Local Municipality and Another (UM161/2023) [2024] ZANWHC 12; - (18 January 2024) [2024] ZANWHC 12

COURT

North West High Court, Mafikeng

BEFORE

J.T. Djaje

CASE / FILE NUMBER

UM161/2023

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IN THE HIGH COURT OF SOUTH AFRICA

NORTHWEST DIVISION – MAHIKENG

CASE NO: UM161/2023

Reportable: YES

/ NO

Circulate to Judges: YES

/ NO

Circulate to Magistrates:

YES / NO

Circulate to Regional Magistrates: YES / NO

In the matter between:

SEBATANA CASSIUS SEJAKE

Applicant

And

RATLOU LOCAL MUNICIPALITY

1st Respondent

DR AJ MOTHUPI (MUNICIPAL MANAGER)

2nd Respondent

Heard: 25 AUGUST 2023

Reasons

requested: 6 NOVEMBER 2023

Delivered: The date for the hand-down is deemed to be on 18 JANUARY 2024

REASONS

FOR JUDGMENT

DJAJE AJP

- [1] This matter came before me as an urgent application on 25 August 2023 and thereafter a number of urgent applications followed resulting in various orders. On 6 November 2023 the respondents filed a request for reasons for the order of 25 August
2023. I was not able to attend to the reasons immediately as the file was with another Judge dealing with the same parties. I now furnish the reasons for the order of 25 August 2023.
- [2] The applicant approached court for an order as follows:
- “1. Dispensing with the provision of Rules relating to time and manner of service referred to therein and dealing with the matter as one of urgency in terms of Rule 6 (12) of the Uniform Rules.*
2. That it be declared that the judgment and orders of this Court under case number:M290/2021 dated 20 July 2023 is suspended pending the decision of the application for leave to appeal or appeal of the Applicant filed on the 25 July 2023 which is still pending before this Court.
 3. That it be declared that pending the decision of the application for leave to appeal of the Applicant, the first and second Respondents’ notice dated 24 July 2023 terminating the employment/ appointment of the Applicant as Senior Manager: Planning and Development with immediate effect.
 4. That pending the decision of the application for leave to appeal or appeal of the Applicant, the first Respondent be ordered to reinstate the Applicant as the first Respondent’s Senior Manager: Planning and Development with immediate effect.
 5. That pending the decision of the application for leave to appeal or appeal of the Applicant, the first Respondent be interdicted from appointing a permanent Senior Manager: Planning and Development.
 6. That leave be granted to the Applicant to file the supplementary affidavit to which this notice of motion is attached.

7. That leave be granted to the Applicant to amend the notice of motion.
8. That the first and second Respondent be ordered to pay the costs occasioned by this application on an attorney and own client scale jointly and severally the one paying the other to be absolved.”

[3] The following order was granted:

“1. THAT: The Rules relating to time and manner of service referred to therein are hereby dispensed with and this matter is dealt with as one of urgency in terms of Rule 6 (12) of the Uniform Rules.

2. THAT: It is declared that pending the decision of the application for leave to appeal of the Applicant, the first and second Respondents’ notice dated 24 July 2023 terminating the employment/ appointment of the Applicant as Senior Manager: Planning and Development of the first Respondent is suspend.
 3. THAT: Pending the decision of the application for leave to appeal or appeal of the Applicant, the first Respondent is interdicted from appointing a permanent Senior Manager: Planning and Development.
 4. THAT: Leave is granted to the Applicant to file the supplementary affidavit to which this notice of motion is attached.
 5. THAT: Leave is granted to the Applicant to amend the notice of motion.
 8. THAT: The First and Second Respondents are ordered to pay the costs occasioned by this application on an attorney and own client scale jointly and severally the one paying the other to be absolved.”
- [4] This matter proceeded on an unopposed basis on 25 August 2023 as there was no appearance for the respondents, despite their attorneys being served on 23 August 2023. It is important to sketch out briefly the background on this matter to give context to the order of 25 August 2023. This matter has a history dating back to 2019 which resulted in a series of litigation between the parties. The important and relevant litigation is one where the respondents brought an application to declare the appointment of the applicant as a Senior Manager Planning and Development unlawful and to be reviewed and set aside. On 20 July 2023 judgment was handed down in favour of the respondents, reviewing and setting aside the appointment of the applicant as a Senior Manager.
- [5] On 24 July 2023 the second respondent sent correspondence to the applicant terminating his employment as a result of the judgment of 20 July 2023. The applicant filed an application for leave to appeal on 25 July 2023. He was barred from reporting for duty on 25 July 2023 and after correspondence from his attorneys to the respondent he was able to report on 27 July 2023. However, subsequent to that he was unable to gain access to his work. This resulted in an urgent application by the applicant which was heard on 11 August 2023. The application was struck off the roll for lack of urgency and jurisdiction in relation to prayer 3. The matter came back to court on 18 August 2023 by the respondents with a counter-

application and was struck off the roll for not being properly indexed and paginated.

[6] Subsequent to those court appearances the respondents convened a Special Council meeting on 23 August 2023 to deal with the appointment of Acting Senior Manager, Planning and Development. This prompted the applicant to approach court on 25 August 2023 as the respondents had not been granted an order in terms of section 18(3) of the Superior Court Act 10 of 2013 to enforce the judgment of 20 July 2023 pending the application for leave to appeal.

[7] In terms of section 18(1) of the Superior Courts Act, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal is suspended pending the decision of the application or appeal, unless the court orders otherwise. This now takes us to the provisions of section 18(3) which provides that

‘A court may only otherwise as contemplated in subsection

(1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.’

[8] Section 18(3) of the Superior Court Act allows for the execution of the order if it has been proven on a balance of probabilities by the party applying that it will suffer irreparable harm if the execution is not ordered. This was the argument advanced by the applicant that the respondents have not approached court in terms of section 18(3)

to have the order of 20 July 2023 executed. The filing of the leave to appeal on 25 July 2023 by the applicant, suspended the order of 20 July 2023 as provided for in section 18(1). The applicant argued that when the respondents called the special meeting of 23 August 2023 to discuss the appointment of the Acting Senior Manager, they were in contravention of section 18(1) of the Superior Courts Act.

[9] When the matter was heard on 25 August 2023, there was no application in terms of section 18(3) by the respondents. There was a leave to appeal the order of 20 July 2023 which effectively meant the respondents could not execute the order of 20 July 2023. It was for that reason that the order of 25 August was granted. The respondents were ordered to pay costs on a punitive scale due to their conduct of disregarding the law.

J.T. DJAJE

DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

DATE OF HEARING: 25 AUGUST 2023 DATE REQUEST FOR REASONS: 06 NOVEMBER 2023 DATE OF JUDGMENT: 18 JANUARY 2024 COUNSEL FOR APPLICANT: ADV C Z MUZA

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Prepared on 13 October 2026 · Esheria