

SOUTH AFRICA / JUDGMENT

South African Municipal Workers Union v Maluti-A-Phofong Local Municipality (J235/2018) [2021] ZALCJHB 442 (13 December 2021) [2021] ZALCJHB 442

COURT

Labour Court Johannesburg

BEFORE

Nkutha-Nkontwana

CASE / FILE NUMBER

J235/2018

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THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable

Case no: J235/2018

In the matter between:

THE SOUTH AFRICAN MUNICIPAL WORKERS UNION Applicant

And

THE MALUTI-A-PHOFUNG LOCAL MUNICIPALITY Respondent

Decided: In chambers

Delivered: In view of the measures implemented as a result of the Covid-19 outbreak, this judgment was handed down electronically by circulation

to the parties' representatives by email. The date for hand-down is deemed to be 13 December 2021.

JUDGMENT:

APPLICATION FOR LEAVE TO APPEAL

NKUTHA-NKONTWANA. J

[1] This is an unopposed application, the applicant seeks leave to appeal against the whole judgment and order handed down by this Court on 08 April 2021, where I dismissed Applicant urgent application with costs.

[2] I note with regret that there is excessive lapse between the period when this application was filed and when it came to my attention. It would seem that the initial papers were misfiled due to the infrequent manner in which the support staff members in this Court

have been operating in line with the health protocols in terms of the National Disaster Management Act[1] in response to COVID-19 pandemic. As a result, this application only came to my attention on 07 December 2021.

[3] This application is hinged on two grounds which are articulated in detail in applicant's written submissions and I do not intend repeating them in this judgment, save to state that I have considered all of them. Also, I am of the view that I have clearly addressed all the issues canvassed in this application in the impugned judgment and, to that extent, I defer to the reasons therein.

[4] However, I deem it expedient to address two grounds. In respect of the first ground of appeal, the applicant persists with the contention that the issue of mootness was not an issue to be canvassed because before court there was no evidence to suggest that the recruitment and placement policy process had been completed. Well, it is the applicant that failed to place before the Court any evidence to show that the recruitment it sought to interdict was still persisting three years later or whether there was still a live controversy between the parties.

[5] Secondly, the applicant contends that I found that it did not expose a right worthy of protection by means of judicial decree. It further contends that the issue before me was the issue of a manner of execution of statutory authority and a clear violation of agreement reached between the parties at the local labour forum. It is mind boggling that the applicant still insist that it is entitled to an interim order when it failed to demonstrate any protectable interest that warrants such protection. If its main qualm pertains to alleged breach of contract, it has an alternative contractual remedy, if at all. Clearly, the applicant is under a mistaken belief that it has a right to willy-nilly restrain the exercise of the Municipality's statutory powers in terms of the Local Government: Municipal Systems Act (Systems Act) in a very muddled case and absent the allegation of mala fides.[2]

[6] It is accepted that a party seeking leave to appeal must show that there is a reasonable prospect that the factual context could receive a different treatment or that there is a legitimate dispute on the law. However, in labour matters another consideration, which is pivotal, is the imperative in terms of the LRA for the expeditious resolution of labour disputes, a principle well-articulated by the LAC, as per Davis JA, in *Martin and East (Pty) Limited v National Union Mineworkers and Others*. [3]

- [7] In the present instance, I am not persuaded that there is a reasonable prospect that the factual matrix in this case might receive a different treatment at the appeal. Put differently, the applicant has failed to make out a case that another court might reasonably arrive at a decision different to the one reached by this Court.
- [8] In the circumstances, the application for leave to appeal is dismissed with no order as to costs.

P. Nkutha-Nkontwana

Judge of the Labour Court of South Africa

- [1] Act 57 of 2002, as amended.
- [2] See *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) at para 50.
- [3]
- (2014) 35 ILJ 2399 (LAC).

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Prepared on 11 October 2026 · Esheria