

SOUTH AFRICA / JUDGMENT

South African Municipal Workers Union and Others MEC for COGHSTA and Others (J1677/17) [2017] ZALCJHB 273 (1 August 2017)

[2017] ZALCJHB 273

COURT

Labour Court Johannesburg

BEFORE

B Witcher

CASE / FILE NUMBER

J1677/17

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IN

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not

Reportable

Case

no: J1677-17

In

the matter between:

SOUTH
AFRICAN MUNICIPAL WORKERS UNION
First Applicant
PERSONS
LISTED IN ANNEXURE A
Second to Further Applicants
and
MEC
FOR COGHSTA: S NTOMBELA N.O
First Respondent
MATJHABENG
LOCAL MUNICIPALITY
Second Respondent
EVANS
THABISO TSOAELI N.O.
Third Respondent

Heard:

28 July 2017

Delivered:

1 August 2017

JUDGMENT**WHITCHER J**

[1] On 13 July 2017 the second respondent convened a Special Council meeting and resolved that the third respondent be appointed as the Municipal Manger of the second respondent, effective from 1 August

2017. The appointment has still to be approved by the MEC.

[2] The applicant seeks on an urgent basis an order staying the appointment of the third respondent as Municipal Manager pending the finalisation of an application (still to be filed) by the applicant for the review and setting aside of the appointment of the third respondent.

[3] The applicant relies for the relief sought on a set of documents annexed to the founding affidavit. The annexed document comprises three separate documents.

[4] The first reads as follows:

“A87/2006

Draft policy: Recruitment and Selection (EMHR) 5/3/B

Purpose of Report

To request Council to approve the attached Draft Policy as the Policy of Matjhabeng Municipality Council resolved (28 November 2006)

1. That the proposed Draft Policy: Recruitment and Selection BE ADOPTED as a Council policy.
2. That SAMWU and IMATU BE CONSULTED through the Local Labour Forum on Policy.”

[5] The second document which follows reads as follows:

“A86/2006

DRAFT POLICY: RECRUITMENT AND SELECTION (EMHR) (5/3/B)”

[6] The third document is headed: “MATJHABENG MUNICIPALITY: Policy: Recruitment and Selection”. Clause 4.7 of this document

provides that the selection panel for the appointment of a municipal manager must consist of the mayor and the MMC responsible for Corporate Support. It further provides that “parties will be proportionally represented” on the panel and must include “one Labour Representative = observer status”.

- [7] The applicant contends that the above documents, read together, means that in 2006 the second respondent via a council resolution formally adopted a policy which required the second respondent to include the applicant as an observer in the appointment process of the third respondent, which the second respondent did not do. The applicant contends that this requirement is crucial because it serves to make the appointment process transparent.
- [8] In its founding affidavit, the applicant further contended that the policy moreover required that the selection panel tasked with the appointment of a municipal manager include councillors representing all political parties within the municipality. The applicant contended that the selection panel which recommended the appointment of the third respondent was not representative of all political parties. At the hearing however, the applicant only pursued the submission regarding its inclusion as an observer in the selection process.
- [9] The second respondent opposed the application on various grounds. Its main argument on the merits is that section 54A of the Local Government Municipal Systems Act 7 of 2011 read with Regulation 12(3) do not impose the requirements sought by the applicant. Regulation 12(3) provides that the selection panel for the appointment of a municipal manager must consist of at least three and not more than five members, constituted as follows: the mayor or his or her delegate, a councillor designated by the municipal council and at least one 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.
- [10] The second respondent contends that in the interest of uniformity in local government, the Act and Regulations were amended to specifically provide for the necessary entities and persons to be present during the meeting where the Municipal Manager is appointed. If every internal policy of every Municipality dictates provisions contradicting the Act and Regulations there will not be uniformity between the various local municipalities, and this is not in the interest of ordered administration and justice.
- [11] The Act and Regulations were specifically designed to address the appointment of Municipal Managers. The second respondent has fully complied therewith and it cannot be held to an internal policy that requires the applicant to observe an appointment meeting, when the applicant is not granted that right by the Act and Regulations.
- [12] The applicant does not submit that the second respondent did not comply with the Municipal Systems Act and the relevant Regulation.

Analysis

- [13] I found authority for the proposition that a municipal council is obliged to comply with its own resolutions, until such time as it is either rescinded or set aside on review.[1]

- [14] Moreover, in my view the purported policy regarding the observer status of the unions is not in conflict with the Regulations and Act. The policy can be practically incorporated into the requirements set out in the Act and Regulations and does not impose an onerous requirement on the appointment process and second respondent.
- [15] However, I am not persuaded the applicant is entitled to the drastic relief it seeks.
- [16] There is nothing in the documents relied on by the applicant which indicates that this court can be confident that the policy on which the applicant relies was finally and formally adopted by the council via a council resolution. The documents clearly refer to a draft policy which was still to be consulted on by the parties. As argued by the second respondent at the hearing there is nothing before the court which confirms that the council eventually adopted the final policy.
- [17] The second respondent complied with the Act and Regulations which regulates the appointment of the third respondent – in these circumstances it cannot be argued that the conduct of the second respondent or the appointment was unlawful.
- [18] The issue of transparency in this case can be mitigated and to an extent resolved by the applicant approaching the second respondent

for all the minutes and documentation that was produced during the appointment process, that is, the record of the appointment proceedings.

Order

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

B Whitcher

Judge of the Labour Court of South Africa

APPEARANCES:

For the Applicant:

Adv R Venter

Instructed by:

Maenetja Attorneys

For the Second Respondent:

Adv W Edeling and Adv A Loubser

instructed by:

Bokwa Attorneys

[1] See: *Manana v King Sabata Dalindyebo Municipality*

[2011] 3 BLLR 215 (SCA).

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