REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 15635/13

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

....
DATE SIGNATURE

In the matter between:

NTHIADEVAN NAICKER Plaintiff

And

SERVICES SECTOR EDUCATION

AND TRAINING AUTHORITY Defendant

J U D G M E N T

KEIGHTLEY, AJ:

INTRODUCTION

[1] The plaintiff in this matter is Mr Nithiadevan Naicker. Until 10 December 2012, Mr Naicker was employed as a Deputy Executive Officer of Strategy by the Services Sector Education & Training Authority ("the SSETA"). The SSETA is a statutory body established in terms of section 9(1) of the Skills Development Act 97 of 1998. It is the defendant in this matter.

[2] In the present proceedings, Mr Naicker sues the SSETA on a contractual basis for monies he avers are due and payable to him under his contract of employment.

[3] Mr Naicker was dismissed from the services of the SSETA following disciplinary proceedings instituted against him. He challenged his dismissal through the processes established under the Labour Relations Act, 96 of 1995, on the basis that his dismissal and suspension were unfair ("the labour proceedings").

[4] The history of the labour proceedings is not relevant for the purposes of the issues raised in the present action, save that I should record that a settlement of the labour proceedings ultimately was reached between the parties. In terms of that settlement, which was made an order of the Labour Court, the contractual issues between the parties were expressly excluded, and it was recorded that the parties would continue to engage in that respect.

[5] The effect of this is that the parties accepted that the present contractual action, which was instituted in this court, would be separated out, and dealt with independently from the labour-related issues dealt with through the labour proceedings.

[6] In terms of section 77(3) of the Basic Conditions of Employment Act 75 of 1997, the ordinary civil courts have concurrent jurisdiction with the Labour Court to hear and determine matters concerning a contract of employment, even in circumstances where the contract in question involves conditions of employment. Mr Naicker's claim before me is purely contractual in nature, save for the fact that the contract regulated his conditions of employment with the SSETA. Accordingly, I am satisfied that the matter is properly before this court.

THE CONTRACTS IN QUESTION

[7] Mr Naicker's claim is based on two agreements he avers he entered into with the SSETA. He also relies on an Executive Remuneration Policy he pleads was ancillary to those agreements.

[8] The first agreement in question is a fixed term contract of employment concluded on 2 February 2011 ("the fixed term contract"). The second is an addendum to the fixed term contract, which was concluded a few weeks later, on 28 February 2011 ("the addendum").

[9] Mr Naicker relies on the following terms of the fixed term contract:

[9.1] The contract would commence on 1 November 2011, and would terminate on 31 October 2014.

[9.2] His remuneration package, in terms of cost to company, would be R 1, 15 million per annum.

[9.3] The remuneration package would automatically increase annually by CP1 plus 2% on 1 June each year.

[9.4] He would be entitled to 6 months notice pay on termination of the fixed term contract; a guaranteed annual bonus calculated on his monthly contract value; and 25 working days leave per year.

[10] As far as the addendum is concerned, Mr Naicker relies on the following terms:

[10.1] The fixed term contract would commence on 1 March 2011, and would terminate on 30 April 2014.

[10.2] Clause 4, dealing with termination of employment, which read:

> "*Notwithstanding anything to the contrary contained in the Agreement (being the fixed term contract), in the event that (Mr Naicker's) employment with the SSETA is terminated for any reason whatsoever, including the operational requirements of the SSETA, prior to the expiry of the fixed term period of employment, (Mr Naicker) will be entitled to be paid out the full contract value of the remainder of the contract and the notice period of 6 (six) months.*" (emphasis added)

[11] The most striking features of the addendum are that it brought forward the commencement date of the fixed term contract from November 2011 (some 8 months after the fixed term contract was entered into) to March 2011 (some 2 days after the amendment was concluded). In addition, it guaranteed for

Mr Naicker full payment for his contract period, and notice period, in the event that the fixed term contract was terminated for whatever reason.

[12] The significance of these features will become clearer when I discuss the background against which the two agreements in question were entered into.

[13] It is on the basis of these material conditions that Mr Naicker quantifies his claim against the SSETA. He claims:

[13.1] R4 758 879. 37 for the remaining period of his fixed term contract from the date of the termination of his employment;

[13.2] R337 749. 00 for the annual performance bonus guaranteed under the fixed term contract for December 2012, and December 2013;

[13.3] R127 740. 83 for leave days owed to him under the fixed term contract.

[14] The SSETA denies that Mr Naicker is entitled to any payment at all under these contracts. The essence of the SSETA's defence is that the contracts were not duly authorised by the SSETA, and accordingly, are not binding on them.

[15] To aid a better understanding of the legal and factual issues that fall to be determined, it is necessary for me to place the conclusion of the two contracts in context by providing some background facts.

BACKGROUND FACTS

[16] Mr Naicker was employed by the SSETA for a period of over 10 years. After commencing employment with the SSETA in 2000 as a non-executive employee, he was appointed to the executive position of Deputy CEO-Strategy in August 2007. This was on the basis of a permanent contract of employment. This contract of employment persisted until the conclusion of the fixed term contract and addendum in February 2011.

[17] Mr Naicker's case is that his change from a permanent contract of employment to a fixed term contract came about because the SSETA embarked on a new retention strategy for key staff members. These included Mr Naicker, as a Deputy CEO, as well as the CEO and some six other members of the executive staff. All of these staff members also signed fixed term contracts and addenda at about the same time, and more or less in the same terms as those in Mr Naicker's agreements.

[18] Subsesquent events revealed that there was a bigger, and nefarious plot afoot in the conclusion of these fixed term contracts and addenda. During March 2011 the CEO and all the other executives who had entered into the fixed term agreements (except Mr Naicker), concluded "mutual full and final severance settlement agreements" ("MSAs") with the SSETA. In terms of these MSAs the affected executives' employment with the SSETA was terminated, with the consequence that all of the benefits identified in the fixed term contracts and in the addenda immediately came into play. Given that the MSAs were entered into shortly after the conclusion of the fixed term contracts and addenda, the overwhelming benefit accruing to each staff member who concluded a MSA is manifest.

[19] As a result of this, each executive who signed a MSA was entitled to full payment of the all amounts due for the remainder of their fixed term contract periods, as well as six months notice pay. If one reads the MSAs in conjunction with the fixed term contracts and the addenda, the full ambit of what can only be described as a carefully planned fraudulent scheme is readily apparent. The fixed term contracts were a necessary precursor to allowing most of the executive staff members to leave the employment of the SSETA with a guaranteed payment for their full fixed terms, which in all cases were three years. The cost of this to the SSETA was over R37 million, shared among a few high level staff members. Both the CEO and the HR director were central to the scheme. They signed the fixed term contracts and the addenda on behalf of the SSETA. They were also beneficiaries of the MSA scheme

[20] All of these facts are common cause between the parties. However, it is also important for me to highlight another common cause fact. This is that despite signing the fixed term contract and addendum, Mr Naicker was not a party to the broader fraudulent scheme.

[21] Mr Naicker's evidence was that he was offered a MSA, but refused to take up the offer as he did not believe it was lawful. He also gave evidence, which was not disputed, that he was instrumental in reporting various irregularities associated with the MSAs, and in pushing for a full investigation into the matter. These investigations were carried out and, as a result, legal action is being taken against the executives involved. However, the SSETA has not joined Mr Naicker as a defendant in those proceedings.

[22] This, then, is the rather complicated context to the fixed term contract and the addendum upon which Mr Naicker bases his claim.

THE PLAINTIFF'S CASE AND THE SSETA'S DEFENCE

[23] Mr Naicker's case is that the fixed term contract and the addendum are separate from the MSAs, to which he was not a party. Whatever the legality of the MSAs is, he says that his fixed term contract and the addendum were lawfully concluded between him and the SSETA, duly represented by the CEO, Mr Blumental. Accordingly, Mr Naicker avers that the SSETA is bound to comply with its obligations under the fixed term contract and addendum. This includes the obligation to pay him out for the remainder of his fixed term period of employment from the date of his dismissal. This obligation arises from clause 4 of the addendum, set out above.

[24] Mr Naicker pointed out in his evidence before court that although the various investigations that were conducted into the scheme concocted by the CEO and other executives found the MSAs to be tainted, no investigating party found his fixed term contract or addendum to have been tainted.

[25] He asserted further in his evidence that he entered into the fixed term contract on the basis that it was part of a legitimate retention strategy adopted by the SSETA to retain key executive staff members. He signed the addendum without really studying it, and accepted that it was necessary simply to make proper practical provision for the date of the transition from a permanent to a fixed term contract. He asserted in his evidence that he did not appreciate the extent to which clause 4 of the addendum provided him

with the benefit of a guaranteed payment out for the full fixed term of his contract upon premature termination for any reason whatsoever.

[26] Mr Naicker accepts that he bears the onus of satisfying the court that the CEO and the HR Manager "duly represented" the SSETA in entering into the fixed term contract and addendum with him on its behalf. In other words, he accepts that he must satisfy the court that the agreements were duly authorised by the SSETA for them to be binding on it.

[27] A key element of Mr Naicker's case is that both the fixed term contract, and the addendum, were signed by the officials properly designated to do so under the SSETA's Signatory Policy, viz. the CEO and the HR Manager. In the circumstances, his case is that these contracts bind the SSETA, in that they were signed by duly authorised representatives. Accordingly, he asserts that his claim is well founded.

[28] The nub of the SSETA's defence is that the CEO was not authorised to enter into the fixed term contract and the addendum. It contends that these contracts required authorisation from the SSETA's Council, which authorisation was never given. In the circumstances, the CEO and the HR Manager were not authorised to represent the SSETA in entering into the agreements, and the SSETA is not bound by them.

[29] In the alternative, and in the event that Mr Naicker succeeds in persuading the court that the CEO and HR Manager were authorised to enter into the agreements, the SSETA contends that in view of the CEO's fraudulent intent in concluding the fixed term contract and addendum on the SSETA's behalf,

these agreements should be declared to be void. Further, alternatively, that the terms of the agreements in guaranteeing payment to Mr Naicker of the full amount due under the fixed term contract regardless of the cause of termination, is *contra bonis mores*, and in contravention of the provisions of the Skills Development Act and the Public Finance Management Act. For these reasons, too, the SSETA pleads that the fixed term contract and addendum is unenforceable.

[30] The first question to consider is whether or not the CEO and HR Manager were duly authorised to enter into the fixed term contract and addendum with Mr Naicker and to bind the SSETA to their terms.

WERE THE AGREEMENTS DULY AUTHORISED?

[31] On closer consideration there are two aspects to this question:

[31.1] The first is the issue of whether the CEO and HR Manager required Council approval or authorisation to conclude the fixed term contract and the addendum with Mr Naicker.

[31.2] The second aspect only arises if I find that such approval or authorisation was necessary. If so, the second issue that arises is whether, as a matter of fact, the Council did authorise these agreements.

[32] Turning to the first aspect, clause 8 of the SSETA's Constitution sets out the powers and duties of the SSETA Council, which is the controlling body of the SSETA, much like a Board. It provides, in relevant part, that the Council:

" *… shall, subject of the provisions of the (Skills Development) Act, have all such powers as may be necessary to enable it to carry out its functions and fulfill its objectives and without limiting the generality thereof, have the following powers to:*

……..

(b) appoint an executive officer and staff the national office with such other employees … as are necessary for the effective running of the SETA, against a set of agreed policies and procedures;

…

(f) determine the scale of remuneration and other related matters for SETA staff;

(g) determine the terms and conditions of employment and areas of responsibility of the executive officer and other employees of the SETA."

[33] The SSETA's Signatory Policy appears to have been adopted in 2007. The rationale of the policy is stated to be "*to ensure continuity in work flow throughout the organisation*". It provides further that:

"*All documentation that must be authorised for Human Resource purposes including, but not limited to … (e)mployment (c)ontracts … (m)ust be authorised by the Chief Executive Officer, Human Resource Executive and the Divisional Executive Manager where applicable. In the absence of the Chief Executive Officer only the Deputy Chief Executive or Human Resource Executive may authorise such*

documentation. In the absence of the Human Resource Executive, the Human Resource Manager may authorise same. At no stage may any other party authorise any formal documentation other than a combination of the above signatories. Where authorisation has been obtained from parties not listed above, this documentation will be considered to be null and void and will not be binding on the organsation."

[34] It is common cause that Mr Naicker was an executive officer. He seemed to accept in his oral evidence that in terms of the Constitution, the Council was required to determine the terms and conditions of his appointment. However, he sought to draw a distinction between "determination" and "authorisation" of these terms and conditions. His contention was that although the Council was required to determine his terms and conditions, the signatory policy gave the CEO the power to "authorise" them by entering into the relevant contract.

[35] On Mr Naicker's argument, the effect of the Signatory Policy is that if the CEO and HR Manager signed the fixed term contract and addendum (which everyone agrees was the case) this made them valid and enforceable. This is so, Mr Naicker contended, because without those signatures, these agreements would be null and void, in accordance with the last sentence of the Signatory Policy set out above. Conversely, then, his argument was that where the agreements were signed with the signatories authorised under the Policy, the agreement must be binding. This is regardless of whether or not the Council actually authorised the relevant terms and conditions set out in the agreement.

[36] As I read the relevant provisions of the SSETA Constitution, this cannot be so. Clauses 8(b) and (g) clearly specify that the Council must appoint an executive officer, and the Council must authorise his or her terms and conditions of employment. As stated earlier, it is common cause that Mr Naicker was an executive officer. In fact, according to Mr Grobler, a member of the SSETA's Council, who gave evidence for the SSETA, as the Deputy CEO-Strategy, Mr Naicker occupied the second most senior position in the SSETA. In my view, Mr Naicker plainly fell within that category of employees whose appointment and terms and conditions of employment were constitutionally required to be authorised by the Council.

[37] As to whether the Signatory Policy can be read as placing a different gloss on these constitutional requirements, the answer must be no. This is demonstrated by the terms of the Policy itself. The underlined portions of the Policy, set out earlier, makes it plain that the authorisation referred to in the Policy is limited to the authorisation of employment documents. The Policy does not give the CEO and HR executives power to authorise appointments or terms and conditions of appointment. It is, after all, a Signatory Policy, not an appointments policy. All the Policy does is to set out which officers must sign employment documents to ensure that those documents (and not necessarily the appointment underlying them) are valid. If an employment contract is not signed by the designated officer, the document itself is not valid for that reason alone.

[38] As I see it, the fundamental flaw in Mr Naicker's case in this regard is that it conflates the authority to sign an employment contract, on the one hand, with

the authority to make the appointment and to determine employment terms and conditions, on the other. These are not one and the same things. The SSETA Constitution is clear as to which body can carry out the latter function, and the Signatory Policy does not override this.

[39] In his evidence, Mr Grobler, testifying on behalf of the SSETA, confirmed that executive appointments are made in accordance with my interpretation of the relevant provisions. He explained that while the CEO has the power to appoint junior staff members in accordance with employment policies without going through the Council, this does not apply to executive staff members. For an appointment of a Deputy CEO, like Mr Naicker, Council approval is necessary. While the CEO had the power to sign an employment contract with Mr Naicker, Mr Grobler confirmed that he could not do so without the approval of Council. As Mr Grobler explained it, this is because in signing an employment contract the CEO represents the Council, and accordingly the Council had to approve or authorise the terms of the contract the CEO signed.

[40] This aspect of Mr Grobler's evidence was not placed in question under cross-examination.

[41] I conclude, therefore, that the Signatory Policy did not permit the CEO and the HR Manager to conclude the fixed term contract and the addendum in the absence of the Council's approval of his appointment on a fixed term basis, and its authorisation of the terms and conditions set out in those agreements. In other words, I reject Mr Naicker's contention that the

signatures by these officers on the documents, purportedly evidencing the agreements in question, *per se* renders those agreements valid and binding on the SSETA.

[42] As I indicated earlier, this finding makes it necessary for me to consider the second issue, viz. whether, as a matter of fact, the Council did approve and authorise the fixed term contract and the addendum.

[43] Mr Naicker's evidence was to the effect that he understood from his interactions with the CEO, Mr Blumental, that Council had authorised the fixed term contract and addendum. He testified that Mr Blumenthal had told him that the Council had agreed to a shorter fixed term period contract with him (Mr Naicker), i.e. three years. This was less than the period of 5 years that Mr Blumental previously had suggested to Mr Naicker might be acceptable.

[44] Part of Mr Naicker's evidence, and his counsel's cross-examination of the SSETA's witness, was aimed at demonstrating that Mr Naicker had no reason not to believe in the truth of what Mr Blumenthal had represented to him regarding the Council's consent to the fixed term contract and addendum. However, as counsel for Mr Naicker accepted was the case, Mr Naicker had not pleaded estoppel in response to the SSETA's plea. Accordingly, the issue of whether the SSETA would be bound by any misrepresentation on the part of Mr Blumenthal in this regard does not arise.

[45] The only question is whether the evidence supports a conclusion that the Council authorised Mr Naicker's fixed term contract and addendum.

[46] Mr Grobler, who is a member of the Council and who was also a member during the period relevant to Mr Naicker's claim, testified on behalf of the SSETA. He categorically denied that the Council had ever authorised Mr Naicker's fixed term contract or the addendum.

[47] His evidence was that the only fixed term contract that the Council considered and approved was one in relation to the CEO. He gave the background to this state of affairs.

[48] According to Mr Grobler, the SSETA was mindful of the need for transformation, and particularly racial transformation, at the leadership level. Mr Blumenthal, the CEO at the time, was a white male, and he had been in office for a number of years. The SSETA realised that this did not meet transformation objectives. It planned to replace Mr Blumenthal with a new CEO who fit the SSETA's transformation requirements more closely.

[49] In order to aid transformation, Council embarked on a plan to effect a smooth transition from Mr Bluementhal to a new CEO who was more acceptable from a transformation point of view. This involved a sub-committee of Council entering into negotiations with Mr Blumenthal, and guiding the process. Mr Grobler was one of the sub-committee members.

[50] Ultimately, what was agreed on was that Mr Blumenthal's employment position would be altered from that of a permanent employee to that of CEO on a fixed term contract of two years. The idea behind this was to retain Mr Blumenthal's skills and institutional knowledge so that they could be used to train and mentor a new CEO appointee during this two-year period. If the

new appointee was assessed as being able to cope on his own at an earlier stage, the termination date of Mr Blumenthal's contract would be brought forward. However, to deal with this possibility, the SSETA deemed it fair to give a contractual guarantee to Mr Blumenthal that if this occurred, he would nonetheless be entitled to payment for the full two years of his contract.

[51] Mr Grobbellar explained that this was the reason why Mr Blumenthal's fixed term contract included a clause to this effect, viz. that if his contract of employment was terminated early due to the operational requirements of the SSETA, he would be entitled to payment for the full period of two years. Mr Grobler explained that this was an unusual clause to include in a fixed term contract of employment, but that it was regarded by the Council to be necessary to deal with the very particular situation it was facing. In addition, he emphasised that the entitlement was restricted to early termination for operational requirements. He pointed out that clause 4 of the various addenda, which extended the benefit of payment for the full contract period on early termination for any reason whatsoever, was never, and would never have been agreed to by the Council.

[52] Mr Grobler testified further that the terms of Mr Blumenthal's fixed term contract were drafted by a firm of attorneys, and subsequently put before Council. Council approved of the terms and authorised the conclusion of the fixed term agreement with Mr Blumenthal. This occurred at the SSETA's "Bosberaad" that was held on 1-2 February 2011. Mr Grobler confirmed that the addendum to Mr Blumenthal's fixed term contract had not been authorised by the Council.

[53] Mr Grobler was adamant that the Council had never approved or authorised Mr Naicker's fixed term contract or addendum. He pointed out that it would have made no sense, and indeed would have been quite improper, to put a staff member like Mr Naicker on a fixed term contract of employment when he was already a permanent employee.

[54] Furthermore, Mr Grobler testified that the SSETA had a policy of looking to its existing staff to fill more senior vacant positions. In line with this policy, the SSETA's succession plan envisaged that it was likely that one of the Deputy CEOs would be appointed as Mr Blumenthal's successor. Mr Naicker was one of the officers in line for consideration for promotion to the post, as he met transformation objectives as being a member of a designated group.

[55] The thrust of this aspect of Mr Grobler's evidence was that it would not have been in the interests of the SSETA for the Council to agree to contract with Mr Naicker on the terms set out in his fixed term contract or in the addendum. He was adamant that the Council had not authorised the fixed term contract or the addendum, and that it would never have do so.

[56] Mr Grobler explained in his testimony that the Council only became aware of the existence of Mr Naicker's fixed term contract and addendum, and those of the other 6 members of the executive staff after the existence of the MSAs came to light. This was after the CEO and the other 6 members of staff had terminated their employment under the MSAs. It was then that the whole nature of the scheme became apparent.

[57] Under cross-examination Mr Grobler was not really challenged on his evidence that the Council had never authorised Mr Naicker's fixed term contract and addendum. There is no reason for me to doubt his credibility or the accuracy of his evidence. He was a witness who had been intimately involved with the relevant events in the Council and the SSETA more broadly. He was able to give clear, and detailed first-hand testimony about the issues at hand.

[58] In going through the documentary evidence for purposes of preparing my judgment, I came across one reference that could, possibly, give some support to the thesis that the Council did authorise Mr Naicker's fixed term contract and addendum. This is an entry in a document headed: "Minutes of the 36th Council Bosberaad of the Services SETA" and the dates inserted are 1-2 February 2011.

[59] On the final page of this document, under a heading "Decisions taken from Closed session", it is noted that: "*It was agreed by both constituencies that the CEO converts his position of permanent employment to a limited two-year fixed term contract, in terms of which he will mentor the new incumbent into the role of CEO and sees (sic) the organization through the period of transformation.*" Thereafter it is noted further that: "*The members also agreed in principle that <u>the CEO could extend the above terms to certain executive managers per his discretion</u> in operational matters. The CEO would by extension, <u>attend to the necessary HR processes</u>.*" (emphasis added)

[60] At first blush, this entry in the document seems to confirm that Mr Blumenthal was telling the truth in his conversation with Mr Naicker to the effect that the Council had agreed to enter into a fixed term contract with him (Mr Naicker). On closer scrutiny, however, this is not so.

[61] In the first place, the "Minutes" are not signed, and so their accuracy cannot be guaranteed. It is common cause that Mr Naicker was never present at closed sessions of the Council. He could not testify to the accuracy of what is recorded in the document. Moreover, counsel for Mr Naicker did not raise this entry with Mr Grobler under cross-examination. Accordingly, the document is not evidence of the truth and correctness of what it purports to record. This alone puts paid to the issue.

[62] However, even assuming, for argument's sake, that the minutes are accurate and were presented in the form of admissible evidence, at a more substantive level, too, cracks appear.

[63] It is clear from this document that the closed session only commenced after the Bosberaad closed on 2 February 2011. Mr Naicker's fixed term contract was dated the day before, on 1 February 2011. Mr Naicker signed the contract the following day, viz. 2 February 2011. However, that was the day on which the closed session was held. It is not clear what time Mr Naicker signed the contract. However, given the overlap of these dates, it simply cannot be concluded that the CEO's offer to Mr Naicker, and the latter's acceptance thereof occurred <u>after, and flowing from</u>, the decision apparently taken in the closed session. At the very least, the document was prepared in

advance of any authorisation that may have been given by Council, and may even have been signed by Mr Naicker prior to the closed session that followed the Bosboeraad. Accordingly, the document does not constitute proof that the Mr Naidoo's fixed term contract was concluded under the authorisation that appears to have been recorded in the document.

[64] Further, it seems to be clear that even if the Council gave some authorisation for Mr Blumenthal to conclude fixed term contracts to executive staff members, this was not a blanket authorisation. It was limited to "certain" executive staff members. What Mr Blumenthal did was to place virtually all of the executive staff on fixed term contracts *en masse* at the same time. He then went further and gave extended benefits to these members in the addenda concluded with each of them. Mr Naicker's fixed term contract and addendum formed part of this *en masse* exercise. It follows that Mr Blumenthal was not authorised to conclude these agreements with him, even taking into account what is recorded in the minutes document.

[65] There was also, at best, authorisation to conclude contracts on the same terms as those of Mr Blumenthal. However, Mr Naidoo's fixed term contract and his addendum gave him better terms than those agreed to with Mr Blumenthal. His fixed term contract was for a period of three, as opposed to two, years. In addition, in terms of the addendum, his full payment was guaranteed for early termination for any reason whatsoever, and not only for operational reasons. Mr Grobler's evidence was clear that the Council had never authorised Mr Blumenthal's addendum. In the same vein, it must be accepted that it did not authorise Mr Naicker's addendum.

[66] Finally, neither of the parties dealt with this entry in the minutes document in presenting their cases to court. Critically, as I have already indicated, Mr Naicker's counsel did not draw Mr Grobler's attention to it in cross-examination. He did not put to Mr Grobler that it brought the veracity of his testimony into question.

[67] I conclude, therefore, that whatever the provenance, accuracy and evidentiary status of the entry in the minutes document might be, it does not constitute a sufficient basis for rejecting Mr Grobler's evidence to the effect that the Council did not authorise Mr Naicker's fixed term contract and addendum.

[68] Consequently, I find that the CEO and the HR Manager were not duly authorised by the Council to conclude these agreements with Mr Naicker. As such, these officers did not "duly represent" the SSETA in contracting with Mr Naicker. In the absence of such authorisation, Mr Naicker fails to meet the onus on him to establish that the fixed term contract and the addendum were valid and binding on the SSETA.

[69] It follows that Mr Naicker's claim, which is based on these agreements, is without a valid legal basis, and must fail.

[70] Insofar as he also relies on the Executive Remuneration Policy to advance his claim, this too must fail. Mr Naicker's particulars of claim expressly aver that this Policy was ancillary to the fixed term contract and the addendum. Mr Naicker's case was not that the Policy provides an independent basis for his contractual claim. He calculated the quantum of his claim on the fixed

term contract and the addendum. Thus, if the agreements to which the Policy is ancillary are invalid, the Policy must meet the same fate.

[71] In view of my finding in respect of the SSETA's main plea, it is unnecessary for me to consider the alternative pleas.

[72] I make the following order:

[72.1] The plaintiff's claim is dismissed with costs.

_____

R KEIGHTLEY
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Date Heard:	3-6 August 2015
Date of Judgment:	27 August 2015
Counsel for the Plaintiff:	Adv D Khumalo, SC
Instructed by:	Crawford and Associates Attorneys
Counsel for Respondent:	Adv R Raubenheimer
Instructed by:	Ndumiso Voyi Inc