

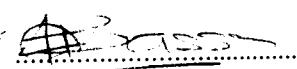
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

25/05/16

CASE NO: 27572/2016

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
	25/5/2016
SIGNATURE	DATE

MOTSEMME ELIE TSIETSI

Applicant

and

CITY OF MATLOSANA LOCAL MUNICIPALITY

1st Respondent

RAMAGAGA SETH
(ADMINISTRATOR: CITY OF MATLOSANA)

2nd Respondent

REASONS FOR JUDGMENT

AC BASSON, J

- [1] In this matter the applicant (Mr Motsemme) sought on an urgent basis an order declaring that the termination of his contract of employment was “unlawful and/or invalid and/or unconstitutional thus null and void and as a result thereof setting the same aside”. The applicant also sought an order to compel the 1st respondent (the City of Matlosana Local Municipality) to comply with the contract until the contract lapses or until the lawful termination thereof.

- [2] At the hearing of the urgent application, the court was of the view that the matter was not urgent. The matter was struck from the role with costs on an attorney and own client scale. Here are brief reasons for my order.

- [3] The applicant was employed as the Municipal Manager of the first respondent on a fixed term contract with effect from 22 February 2012 and terminating on 21 February 2017.

- [4] The first respondent was placed under administration and the second respondent (Mr Ramagaga) was appointed as the administrator of the first respondent.

- [5] The applicant was placed under precautionary suspension on 9 February 2015. The applicant unsuccessfully challenged his suspension in the Labour Court. I should also point out that the applicant had also approached the Labour Court for an order interdicting the respondents (in that application) from proceeding with the disciplinary proceedings against him pending the final determination of proceeding before the High Court. In those proceedings the applicant sought amongst other things to challenge the second respondent's (Mr Ramagaga) authority to institute disciplinary proceedings against him. Van Niekerk, J concluded that he was not persuaded that the failure of the Labour Court to intervene in domestic disciplinary proceedings would lead to a grave injustice and therefore dismissed the application with costs.

- [6] The applicant was thereafter charged and called to appear before a disciplinary hearing. After protracted delays in bringing the disciplinary hearing to a finality, the applicant was informed on 31 March 2016 that his fixed term contract was terminated with one month's notice.
- [7] The applicant now contends that he is entitled to an order on an urgent basis declaring that the termination of the contract was unlawful and that he be allowed to continue in his position as the Municipal Manager until the contract lapses or until the lawful termination thereof.
- [8] The applicant contended that the termination of his contract "is an extremely important issue" and that his "matter also involves public interest considering the fact that [he is] employed in the most senior position in Local Government".

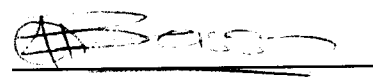
Is the matter urgent?

- [9] The fact that his contract may have been unlawfully terminated (although I have not decided this issue in light of the fact that the matter was struck from the role) does not *per se* justify the hearing of a matter as one of urgency. I am further of the view that the applicant has an alternative remedy at his disposal: The applicant can approach the court in the ordinary course and should a court find in his favour that the termination of the employment contract had been unlawful, the applicant would be entitled to damages flowing from such unlawful termination.
- [10] The applicant also contended that the issues raised in this application are of "public interest". There is no merit in this submission. The mere fact that a matter may be in the public interest (although I am not persuaded that this matter raises issues that are in the public interest) does not *per se* mean that the matter is urgent.
- [11] In the founding affidavit the applicant is further evasive in respect of why he will suffer irreparable harm should the matter not be dealt with on an urgent basis.

The applicant also does not adequately address the issue of whether he has an alternative remedy at his disposal. This is a glaring omission as the applicant clearly has an alternative remedy at his disposal and that is to approach a court and claim damages resulting from the alleged unlawful termination of his contract.

[12] In the event I am of the view that the matter is not urgent. The matter is therefore struck from the role.

[13] In respect of costs I have taken into account that the applicant had sought a special costs order against the respondents without laying a proper basis for such an order. I am in agreement with the submission on behalf of the respondents that this prayer was made recklessly. The applicant has also unnecessarily burdened these papers with copies of legislation. The papers have therefore been rendered unnecessarily voluminous. I am therefore of the view that a special costs order is warranted.



AC BASSON

JUDGE OF THE HIGH COURT

Appearances:

For the applicant	:	Mr Scholtz
Instructed by	:	Scholtz Attorneys
For the Respondent s	:	Adv. BD Hitchings
Instructed by	:	Waks Silent Inc.