

Sneller Verbatim/PJ

IN TJ597.03HE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J597/03

2003-05-26

In the matter between

IMATU

Applicant

and

EKHURULENI METROPOLITAN MUNICIPALITY 1st Respondent

S A MUNICIPAL WORKERS UNION

2nd Respondent

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J U D G M E N T

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LANDMAN J: The applicant in this matter is the Independent Municipal and Allied Trade Union which seeks an urgent relief against the Ekurhuleni Metropolitan Municipality, the first respondent. The South African Municipal Workers Union is the second respondent. The applicant does not seek relief against

the second respondent.

The matter was adjourned from time to time. One set of papers was filed. An undertaking was given that the matter would be held in abeyance until an attempt had been made to arbitrate the dispute. Such an attempt was made and a settlement agreement was arrived at. This settlement agreement essentially repeats the provisions of the collective agreement which is the basis on which the applicant relied.

The first respondent proposed to the applicant that each party should pay their own costs. This was not acceptable to the applicant. The matter was set down today for argument on the question of costs.

In order to decide the question of costs it is necessary to take into account the merits of the matter. Although it does not seem to be incumbent upon me to go into them in very much detail. See *Jenkins v SA Boilermakers Iron Steelworkers and Shipbuilders Society* 1946 WLD at 15.

The relief which the applicant sought when the urgent application was launched was for an interdict against the municipality appointing persons in the Internal Audit Department pending the resolution of a dispute had prepared

about the municipality's alleged non-compliance with a collective agreement that had been concluded on 21 August 2002.

In my view, having regard to all the facts which are set down in these papers, this is not a case where an order for costs should be made. In the first place it does not seem that this matter was handled with the dispatch which was required. It only became urgent because the applicant did not respond to an intimation made by the Chief Audit Executive, made some time before November 2002, that all of the positions in the internal audit department were for so-called "major change" positions as opposed to "close match" positions.

This position was confirmed in a later letter dated 24 January 2003. The union and the two employees concerned were informed that the positions had been advertised and that the shortlist closed on that day. Nevertheless the matter was not prosecuted until 14 March 2003.

In addition, there is a close working relationship between the applicant and the municipality. This would be disturbed if a cost order were to be made. Negotiations took place and the parties have reached an agreement. The agreement merely affirms what is set out in the collective agreement, although I

would think that it is implicit in this settlement agreement that the municipality will not appoint the persons that it might have had in mind. Instead it will follow the process set out in the collective agreement which means that it will convene the placement committee to consider whether a post should be classified either as “major change” posts or “close match” posts.

It is also important to take into account the union's contribution to the dispute. The case for the union is that the municipality was obstructive in regard to the working of the placement committee.

During November 2002 the placement committee referred the dispute in regard to the internal audit department to the LLC . The LLC attempted to resolve the problem. If the union wished to have the placement committed reconvened in order to make a final decision it should have invited the municipality to do so. The union did not do this. Instead it left it until the last minute and it sought an interdict to prevent the municipality from making appointments.

In the result an order for costs is not warranted. The applicant was forewarned that this would be the municipality's position. Therefore the applicant is ordered to pay the costs of

today including the costs of the first respondent's  
supplementary affidavit.

**SIGNED AND DATED AT BRAAMFONTEIN ON 6 JUNE 2003**

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A A LANDMAN

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

APPLICANT: SAVAGE JOOSTE & ADAMS INC

Mr M van Staden

RESPONDENT: ADV A SNIDER

WITNESSED BY: TSHIQI ATTORNEYS