



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Mawonga and Another v Walter Sisulu Municipality and Others (Case no 547/19) [2020] ZASCA 125 (7 October 2020)

FROM The Registrar, Supreme Court of Appeal

DATE 7 October 2020

STATUS Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Today, the Supreme Court of Appeal (SCA) dismissed with costs an appeal against a judgment of the Eastern Cape Division of the High Court, Grahamstown (the high court).

The appellant, Mr Mawonga, was appointed as municipal manager of the Gariep Local Municipality commencing on 1 August 2007. After he had occupied the position for more than ten years and following a decision to renew his contract for a second time for a further four years, with the potential of another year being added, a decision was taken by the Council of the Municipality which effectively terminated his employment as municipal manager.

Aggrieved by the decision, the appellant launched proceedings at the high court where he sought to set aside the decision of the Council of the Municipality which effectively terminated his employment as municipal manager. The court dismissed Mr Mawonga's application and granted a counter application setting aside the appointment of Mr Mawonga on the basis that such appointment was null and void. The court a quo refused leave to appeal.

On petition to this Court leave to appeal was granted. The issues for determination before the SCA were, first, whether where the employment contract of a Municipal Manager contains the terms for its renewal in terms of s 57(6)(c) of the Municipal Systems Act 32 of 2000, (the MSA) and it has been renewed prior to the expiry of the fixed term of five years, the post of Municipal Manager nonetheless become vacant in terms of s 54A(4) of the MSA on the expiry of the fixed term requiring the post to be advertised nationally. Second, whether the provisions of the appellant's employment contract as Municipal Manager of the respondent stipulated the terms of its renewal within the meaning of that expression in s 57(6)(c) of the MSA. Third, whether the appellant's employment contract was validly renewed by way of the resolution of the respondent on 28 July 2017 to renew it.

On appeal the SCA held that where an employment contract of a municipal manager has been renewed prior to the expiry of the fixed term of five years, the post becomes vacant as contemplated in s 54A (4) of the MSA upon the expiry of the fixed term of five years, requiring the post to be advertised nationally. Any renewal is only permissible within the five year fixed period prescribed by s 57(6)(a). This finding made it

unnecessary to deal with the second question as to whether the employment contract stipulated the terms of its renewal within the meaning of s 56(7)(c). With regard to the third question, this Court held that once it is found that any five year contract which has run its course is subject to the procedural requirements of s 54A, it follows that the resolution of the council of 20 July 2017 renewing Mr Mawonga's contract, was invalid for want of compliance with the section.

This Court found no reason to interfere with the order made by the high court which granted the order as sought by Mr Mawonga that the Council's decision of 8 January 2018 was set aside. However, that order was of no practical consequence because the high court also held that the counter application succeeded, and hence Mr Mawonga's appointment as the municipal manager on 20 July 2017 was also set aside.

The appeal before this court therefore failed, with costs following the result.

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