IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

CASE NO: J202/09

In the matter between:

RADINALEDI JOSIAH MOSIANE Applicant

and

TLOKWE CITY COUNCIL

Respondent

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REASONS FOR THE ORDER MADE

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FRANCIS J

1. The applicant brought an urgent application on 25 February 2009 for an order declaring that his suspension from his position as municipal manager and accounting officer was invalid, unlawful and of nor force and effect. He sought an order that he be permitted to resume his full duties as the respondent's municipal manager and accounting officer with immediate effect with his full benefits.

2. The application was opposed by the respondent who raised the issue of urgency or lack thereof.

3. After I had heard arguments, I struck the matter from the roll for lack of urgency with costs. I said to the parties that I would provide reasons for the order that I made. These are my reasons.

4. The applicant is employed by the respondent as its municipal manager and accounting

officer. He was first suspended in terms of a letter dated 5 November 2008. On 18 November 2008 the respondent passed a resolution rescinding his suspension. In a letter dated 20 November 2008 the respondent's executive mayor advised the applicant that if any disciplinary action must be taken against him, it must be consistent and meet the terms of the same process as delineated in his legal and current contract of employment that he had entered with the respondent. As a result, all the respondent's councillors had until Wednesday, 26 November 2008 by not later than 12h30 to submit in written form allegations against him as the municipal manager/accounting officer in the execution of his duties to the office of the executive mayor. All of these allegations would be submitted to him as soon as possible after the closing date and time for a response within 48 hours as prescribed by his legal and current employment contract would be afforded. During January 2009 at the first sitting of the respondent's council for the new year, he would, as instructed by the council in terms of the resolution of 18 November 2008 submit a comprehensive report on the matter for its consideration and finalisation.

5. In an undated letter delivered to the applicant on 8 December 2008, the respondent's executive mayor advised the applicant that written submissions had been received by his office alleging that he had committed various serious offences. Such written allegations were not provided to the applicant. He was called to make submissions to the office why his suspension from his designated duties including the provisions contained in paragraph 15 of his employment contract, should not be implemented. He was informed that the written submissions had to be delivered to his office within 48 hours of receipt of the notification. Should he fail to respond within the specified time frame, a decision by the respondent to suspend him would be considered without

taking his submissions into account.

6. On 9 December 2008 the applicant's previous attorney addressed a letter to the respondent that it was impossible for the applicant to respond to the allegations as outlined in their letter, as they were vague, lacked detail and particularities. The applicant required copies of the actual written allegations submitted to the respondent, with supporting and underlying documentation. It advised the respondent that the applicant was unable to respond to the allegations in any meaningful way and would not be responding to same unless the written allegations were furnished to him, with all the supporting and underlying documentation pertaining to each allegation.

7. In a letter dated 19 January 2009, the respondent notified the applicant of the respondent's decision to suspend him. The decision to suspend him was purportedly taken during a special sitting of the respondent's council on 12 January 2009.

8. The applicant contended that his suspension was invalid and of no force and effect in that it was effected in contravention of the provisions of clause 16(1) and (2) of the Regulations and the provisions of clause 15 of the employment contract. The decision to suspend him was purportedly taken at a meeting which did not comply with the provisions of section 19 of the Systems Act.

9. The applicant launched this application on 6 February 2009 and enrolled it for a hearing on 13 February 2009. The matter was postponed to 25 February 2009 after the parties had reached an agreement about the filing of further affidavits.

10. The applicant has set out in paragraph 5 of his founding affidavit the grounds of

urgency. He said that the notice of suspension was delivered to him on 19 January 2009. On 23 January 2009 his attorneys of record addressed a letter to the respondent contending that his suspension was invalid and that such suspension should be uplifted by 27 January 2009. No such response was received. He had to wait for the respondent's response before taking any steps to bring the application. The respondent's ruling political party is the African National Congress (the ANC). Shortly after he had delivered his letter of 23 January 2009, George Molapisi, the chairperson of the Potchefstroom branch of the ANC advised the applicant that the Provincial Executive Committee of the ANC had instructed the respondent'speaker and executive mayor to rescind the purported resolution to suspend him and that such rescission would take place on Friday, the 30 January 2009. He had arranged to meet with his attorneys of record to instruct them to prepare this application on Friday, 30 January 2009. However, because he was advised by Molapisi, his meeting with his attorney of record had to be cancelled. The purported resolution to suspend him was not rescinded as he was advised.

11. The applicant stated that the allegations made against him are a matter of public record. The fact that he has been suspended for alleged wrongdoing was also a matter of public record. The fact that the respondent purportedly gave him an opportunity to respond to the allegations and that he has failed to do so is also a matter of public record. Accordingly, to the relevant public at large, it is now considered that he has no answer to the allegations made against him when in fact he has not been given a fair and reasonable opportunity to respond thereto. This clearly has affected his reputation and credibility negatively.

12. The applicant contended that if the application was not heard as one of urgency, his reputation and character would continue to be tarnished due to the cloud of misconduct hanging over him. He said that he would accordingly not obtain substantial redress at a hearing in due course as the relevant public would have finally concluded that he has no answer to the allegations made against him. If this application is only heard at a later stage, the suspension would have had a complete negative impact in him and would have prejudiced his reputation, advancement and job security. A long time would pass before a hearing takes place in the normal course and during such long time, he would be viewed as one who has no answer to the allegations against him. He would never be able to recover from such a wrong perception. The personal and social consequences of his suspension cannot be measured. His social acceptability and usefulness are negatively affected by the unlawful suspension. Every day that he is on suspension, his self-esteem and sense of self-worth that are the essential components of his right to human dignity are negatively affected and eroded. A hearing in due course or at a later stage would not afford him any substantial redress as far as the personal and social consequences of the suspension are concerned.

13. The applicant said that in the circumstances, when regard is had cumulatively to the fact that the purported decision to suspend him was taken in contravention of the Systems Act, the Structures Act, his contract of employment, the Regulations with the grounds of urgency, in particular, the personal and social consequences of the suspension, that the application deserved to be heard as one of urgency.

14. Rule 8 of the rules of this Court deal with urgent applications. It requires an applicant

to provide reasons why the matter is urgent and why the rules of this Court have not been complied with. Where a matter is urgent and a proper case has been made out for urgency this Court will grant such an application.

15 A worrying trend is developing in this Court in the last year or so where this Court's roll is clogged with urgent applications. Some applicants approach this Court on an urgent basis either to interdict disciplinary hearings from taking place, or to have their dismissals declared invalid and seek reinstatement orders. In most of such applications, the applicants are persons of means who have occupied top positions at their places of employment. They can afford top lawyers who will approach this Court with fanciful arguments about why this Court should grant them relief on an urgent basis. An impression is therefore given that some employees are more equal than others and if they can afford top lawyers and raise fanciful arguments, this Court will grant them relief on an urgent basis.

17. All employees are equal before the law and no exception should be made when considering such matters. Most employees who occupy much lower positions at their places of employment who either get suspended or dismissed, follow the procedures laid down in the Labour Relations Act 66 of 1995 (the Act). They will also refer their disputes to the CCMA or to the relevant Bargaining Councils and than approach this Court for the necessary relief. Other employees would still approach this Court for relief in the ordinary manner and not on an urgent basis.

18. The reasons advanced by the applicant why urgent relief is sought relates to his reputation. This can hardly be a basis to approach this Court for relief on an urgent

basis. All employees who get dismissed or suspended and believe that they are innocent, their reputations are tarnished by their dismissals or suspensions. They will eventually get an opportunity to be heard where the employer should justify the charges against them. Should they fail to do so, such employees will be reinstated with no loss of benefits. I accept that some damage to their reputations would have been done. This Court however is not in the business of ensuring that an employee's reputation should not be tarnished. If so, it will open the flood gates and this Court will be inundated with many such applications.

19. The grounds of urgency raised by the applicant and the type of dispute before me are in my view not sufficient to allow the applicant to jump the que. There is nothing exceptional about this case that might require the applicant to jump the que. If the applicant feels strongly about his suspension and that his reputation has been tarnished, he may have separate civil remedies at his disposal.

20. It was for these reasons that I made the order of 25 February 2009.

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FRANCIS J

JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

FOR APPLICANT:	K TSATSAWANE INSTRUCTED BY GILDENHUYS LESSING MALATJI ATTORNEYS
FOR RESPONDENT:	C TODD OF BOWMAN GILFILLAN INC
DATE OF HEARING:	25 FEBRUARY 2009
DATE OF ORDER:	25 FEBRUARY 2009
DATE OF REASONS:	24 APRIL 2009