

**THE LABOUR COURT OF SOUTH AFRICA,
(HELD AT JOHANNESBURG)**

Not reportable

CASE NO: J 421/2020

In the matter between:

MOJALEFA JOSEPH MATLOLE

Applicant

and

MAFUBE LOCAL MUNICIPALITY

First Respondent

JABULANI ELLIOT SIGASA (MAYOR)

Second Respondent

MOSES TEKOETSILE MOREMI (ADMINISTRATOR)

Third Respondent

MARIA MATSATSI MOFOKENG (SPEAKER)

Fourth Respondent

THEMBENI NXANGISA (MEC)

Fifth Respondent

Enrolled: 6 May 2020. The parties agreed that the matter be decided in Chambers on the papers.

Judgment delivered: This judgment is delivered by email, addressed to the parties' representatives on 6 May 2020 at 14:00, which the deemed date and time of delivery.

JUDGMENT

VAN NIEKERK J

- [1] This is an urgent application in which the applicant seeks an order for a rule *nisi* calling on the respondents to show cause why a final order should not be made interdicting and restraining them from stopping the applicant's monthly salary, and directing them to pay his salary into a nominated bank account. I will deal with the matter as an urgent application, although claims sounding in money only are not ordinarily regarded as urgent. If the application is to be struck from the roll for lack of urgency, it is unlikely in the present circumstances that the applicant will be able to obtain a hearing date for some time. It is in the interests of both parties that this matter be disposed of sooner rather than later.
- [2] The applicant is the municipal manager and an employee of the first respondent (the municipality). The applicant and the municipality concluded a contract of employment on 2 January 2018. On 30 January 2020, the applicant resigned from the municipality's employ by giving a calendar months' notice. The applicant states that he did so on the basis of an instruction issued by the fifth respondent, the MEC. On 28 February 2020, the applicant withdrew his resignation. He was on sick leave from 2 to 20 March 2020, and was surprised not to receive his salary on 26 March 2020. The respondents contend that the applicant resigned, that his resignation was accepted by a special meeting of the council on 30 January 2020, and that his last day of work was thus 28 February 2020. They aver that the applicant is thus not entitled to the salary he claims.
- [3] The applicable legal principle is clear. Notice of termination of employment by an employee is a final unilateral act which once given, cannot be withdrawn without the consent of the employer (see *Mafika v SA Broadcasting Corporation Ltd* [2010] 5 BLLR 542 (LC), and *Lottering and others v Stellenbosch Municipality* [2010] 12 BLLR 542 (LC)).
- [4] The applicant's letter of resignation is cast in clear and unequivocal terms he states:

Dear Mayor

Re: Resignation of MJ Matlole as Municipal Manager

My discussion and consultations with you and other leaders on above mentioned subject refers.

It is with heavy heart that I tender my resignation as Municipal Manager of Mafube Municipality...

This letter serves to notify that my last day of duty will be on the 28 February 2020.

- [5] To the extent that the applicant's case is premised on the assertion that he was interested by the MEC to resign with the object of his being employed in provincial government, this is denied by the MEC. In terms of the principles that govern the determination of factual disputes, I must accept that denial.
- [6] In short, the applicant resigned in clear and unambiguous terms. His resignation was formally accepted by his employer on 30 January 2020. It is not open to the applicant in these circumstances to seek to retract his resignation. The applicant remained employed until 28 February 2020 and was paid up to and including that date. There is no further remuneration owing to him.
- [7] In so far as the applicant seeks an interim mandatory interdict, the requirements for interim relief in this court are no different to those that apply in the High Court - a clear right or a *prima facie* right established though open to some doubt, a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief sought is granted, a balance of convenience in favour of granting interim relief, and the absence of any other satisfactory remedy (see *Spur Steak Ranches Ltd v Saddles Steak Ranch* 1996 (3) SA 706 (C)). In proceedings such as the present, where interim relief is sought pending the determination of a main dispute, it is also incumbent on an applicant to demonstrate some prospects of success in the pending action.

- [8] For the above reasons, the applicant has failed to establish a clear right or a *prima facie* right although open to some doubt. The application thus stands to be dismissed.
- [9] Finally, the respondents seek an order for costs on a punitive scale. The rule that costs follow the result is not ordinarily applicable in this court, where the requirements of the law and fairness generally militate against orders for costs in cases where disaffected individuals pursue legitimately harboured grievances against their employers. In the present instance however, the filing of the present application was misguided, and it would be unfair to saddle the ratepayers of the first respondent with the costs of opposition to these proceedings. In the exercise of the broad discretion granted to the court by s 162 of the LRA, the requirements of the law and fairness are best satisfied by an order for costs on the ordinary scale.

I make the following order:

1. The application is dismissed, with costs.

André van Niekerk

Judge of the Labour Court

APPEARANCES

For the applicant: Ntsoane Attorneys

For the respondents: Adv. BS Nene SC, instructed by the state attorney, Bloemfontein