



**THE LABOUR APPEAL COURT OF SOUTH AFRICA, GQEBERHA**

Reportable

Case No: PA 01/2024

In the matter between:

**M.C MANANA**

**Appellant**

And

**KING SABATA DALINDYEBO LOCAL  
MUNICIPALITY**

**Respondent**

**Heard: 25 February 2025**

**Delivered: 7 May 2025**

**Coram: Van Niekerk JA, Nkutha-Nkontwana JA, and Mooki AJA**

**Summary: Section 158(1)(c) of the Labour Relations Act – enforcing a settlement agreement – failure to prove authority to bind the Municipality – legality implicated – invocation of ostensible authority untenable.**

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**JUDGMENT**

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**NKUTHA-NKONTWANA, JA**

[1] This appeal is with the leave of the Labour Court and concerns a claim by the appellant (Mr Manana) to enforce a settlement agreement against the respondent (the Municipality) by making it an order of the court in terms of s 158(1)(c) of the Labour Relations Act<sup>1</sup> (LRA). Mr Manana invoked the principle of ostensible authority to resist the Municipality's defence that Mr Simlindile Nodo (Mr Nodo), the official who signed the settlement agreement, lacked the requisite authority. The Labour Court dismissed Mr Manana's claim on the basis that ostensible authority cannot be imputed to an official of the organ of state because the source of their authority can only come from the proper delegation of statutory powers to such a functionary.

[2] There is not much controversy concerning the factual matrix in this matter. Mr Manana referred an unfair discrimination dispute to the CCMA, challenging the inequitable implementation of the TASK evaluation job grading collective agreement (TASK agreement). The dispute was amicably resolved through a settlement agreement in which the Municipality undertook to pay some outstanding amounts due to Mr Manana in terms of the TASK agreement.

[3] The Municipality failed to honour its obligations in terms of the settlement agreement. Mr Manana sought to enforce the settlement agreement through a section 158(1)(c) application that served before the Labour Court. He contended that Mr Nodo, the Director: Corporate Services, professed to have been duly authorised to settle the dispute on behalf of the Municipality. Alternatively, Mr Manana contended that Mr Nodo had actual authority derived from the Municipal Manager's delegated authority to enter into settlement agreements on behalf of the Municipality, which he alleged was duly sub-delegated to Mr Nodo. The Municipality successfully opposed the application on the basis that Mr Nodo lacked the requisite authority to conclude the settlement agreement.

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<sup>1</sup> Act 66 of 1995, as amended.

[4] At the heart of the matter is whether the Municipality is bound by the settlement agreement based on the principle of ostensible authority or, as phrased by the Labour Court, '*whether the municipality can be estopped from denying Mr. Nodo's authority because of the principle of ostensible authority*'.

[5] The Labour Court found, on the strength of *Merifon (Pty) Ltd v Great Letaba Municipality and Another*<sup>2</sup> (*Merifon*) that, unlike in the case of private individuals or entities, the principle of ostensible authority cannot be successfully invoked in instances, as in the present case, involving actions of state organs creating an impression that a representative has authority to act on their behalf.

[6] In this Court, Mr Manana contends that the Labour Court erred in failing to appreciate that the principles of ostensible authority and estoppel do apply to organs of state insofar as the second category referred to in *City of Tshwane Metropolitan Municipality v RPM Bricks (Pty) Ltd*<sup>3</sup> (*RPM Bricks*) and quoted with approval in *Merifon*. Mr Manana further contends that his case falls within the second category referred to in *RPM Bricks*, and the Municipality should be estopped from denying that Mr Nodo had ostensible authority.

[7] Conversely, the Municipality contends that the invocation of ostensible authority in the present case is untenable as Mr Nodo was not amply clothed with authority in terms of section 59 of the Local Government: Municipal Systems Act<sup>4</sup> (Systems Act). Section 59 provides:

'(1) A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may -

(a) delegate appropriate powers, excluding a power mentioned in section 160 (2) of the Constitution and the power to set tariffs, to decide to enter into a

<sup>2</sup> 2022 (9) BCLR 1090 (CC) (*Merifon*).

<sup>3</sup> *City of Tshwane Metropolitan Municipality v RPM Bricks Proprietary Ltd* 2008 (3) SA 1 (SCA) (*RPM Bricks*).

<sup>4</sup> Act 32 of 2000, as amended.

service delivery agreement in terms of section 76 (b) and to approve or amend the Municipality's integrated development plan, to any of the Municipality's other political structures, political office bearers, councillors, or staff members;

(b) instruct any such political structure, political office bearer, councillor, or staff member to perform any of the Municipality's duties; and

(c) withdraw any delegation or instruction.

(2) A delegation or instruction in terms of subsection (1) –

(a) must not conflict with the Constitution, this Act or the Municipal Structures Act;

(b) must be in writing;

(c) is subject to any limitations, conditions and directions the municipal council may impose;

(d) may include the power to sub-delegate a delegated power;

(e) does not divest the council of the responsibility concerning the exercise of the power or the performance of the duty; and

(f) must be reviewed when a new council is elected or, if it is a district 39 council, elected and appointed.

(3) ...

(4) Any delegation or sub-delegation to a staff member of a power conferred on a municipal manager must be approved by the municipal council in accordance with the system of delegation referred to in subsection (1).  
(emphasis added)

[8] Therefore, the Municipality contends that this case falls within the first category referred to in *RPM Bricks*, as correctly found by the Labour Court. In *RPM Bricks*, the Supreme Court of Appeal explicitly distinguished between the two 'categories' of cases involving the exercise of power by the state functionaries. The first category pertains to an act beyond or in excess of the legal powers of a public authority. In contrast, the second category pertains to the irregular or informal exercise of power granted.<sup>5</sup> Expounding on these categories, the court made the following observation:

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<sup>5</sup> *RPM Bricks* above fn 3 at para 11.

[12] In the second category, persons contracting in good faith with a statutory body or its agents are not bound, in the absence of knowledge to the contrary, to enquire whether the relevant internal arrangements or formalities have been satisfied, but are entitled to assume that all the necessary arrangements or formalities have indeed been complied with... Such persons may then rely on estoppel if the defence raised is that the relevant internal arrangements or formalities were not complied with.

[13] As to the first category: failure by a statutory body to comply with provisions which the legislature has prescribed for the validity of a specified transaction cannot be remedied by estoppel because that would give validity to a transaction which is unlawful and therefore ultra vires...'

[9] In *Merifon*, the Constitutional Court endorsed the dictum in *RPM Bricks* per the first category that when the principle of legality is manifestly implicated, estoppel cannot be upheld as it would be tantamount to a court sanctioning an illegality.<sup>6</sup> In that matter, the sale agreement the applicant sought to enforce was found to be unenforceable for want of compliance with peremptory provisions of s 19 of the Local Government: Municipal Finance Management Act.<sup>7</sup>

[10] While I accept that both *Merifon* and *RPM Bricks* dealt with the invocation of estoppel, they apply in this case by parity of reasoning because of the legality principle. I also do not deem it imperative that I traverse the etymological perspective of the variation between estoppel and ostensible authority expounded by the Constitutional Court in *Makate v Vodacom (Pty) Ltd*<sup>8</sup> (*Makate*). That is so because, to the extent that this matter implicates the principle of legality, *Makate* finds no application in the present instance. In *Makate*, the Constitutional Court upheld ostensible authority, defined as 'the authority of an agent as it appears to others', in the context of an agreement between an individual and a private company. Therefore, it is not helpful for Mr Manana to rely on *Makate*.

<sup>6</sup> *Merifon* above fn 2 at para 27-28.

<sup>7</sup> Act 56 of 2003.

<sup>8</sup> 2016 (6) BCLR 709 (CC) (*Makate*).

[11] Mr Manana asserts in his founding affidavit that Mr Nodo professed to have the requisite authority to conclude the settlement agreement. Mr Nodo, however, disavowed that he had the authority to settle the dispute and made the following assertions in his confirmatory affidavit that:

‘... I confirm that no authority from the Council of the respondent existed for the signing of the settlement agreement I signed. I was under the wrong impression that I could sign on behalf of the respondent. Given the absence of a delegation or a Council Resolution for signing the settlement agreement, I now notice that I was not supposed to sign.’

[12] In reply, Mr Manana referred to the Municipality’s delegation of authority protocol adopted in terms of s 59(1), which states, *inter alia*, that the Municipal Manager has a delegated authority to litigate and conclude settlement agreements on behalf of the Municipality, which he, in turn, could sub-delegate.

[13] Mr Manana’s counsel, realising the hurdle of proving that Mr Nodo had sub-delegated authority, submitted that, while a delegation of authority by the Municipality to the Municipal Manager in terms of s 59 had to be in writing, that requirement does not apply to the sub-delegation of authority by the Municipal Manager. This construction of s 59 is untenable and, if accepted, would lead to insensible or unbusinesslike results or fundamentally undermine the apparent purpose of the legislation.<sup>9</sup>

[14] It is apparent from s 59(2)(a) and (d) that the requirement that a delegation of authority must be in writing extends to sub-delegation of authority. Moreover, as correctly pointed out by counsel for the Municipality, s 59(4) enjoins the municipal council to approve any sub-delegation to a staff member of an authority conferred on a Municipal Manager.

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<sup>9</sup> *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at para 18.

[15] It follows that, absent proof that the municipal council had approved the sub-delegation of the Municipal Manager's authority to settle disputes, Mr Nodo could not give himself such authority unilaterally. It is well accepted that whenever the principle of legality is implicated, an agent who seeks to act on behalf of the organ of state, pertinently a local government, must be specifically authorised. This notion was highlighted by the Constitutional Court in *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others*<sup>10</sup> where it was stated:

'[A] local government may only act within the powers lawfully conferred upon it. There is nothing startling in this proposition - it is a fundamental principle of the rule of law, recognised widely, that the exercise of public power is only legitimate where lawful. The rule of law - to the extent at least that it expresses this principle of legality - is generally understood to be a fundamental principle of constitutional law.'<sup>11</sup>

[16] The peremptory provisions of s 59 regulate the delegation of authority and have established the boundaries beyond which the Municipality may not venture. The system of delegation of authority in a local government is not gratuitous. Still, it ensures that appropriate checks and balances are in place to prevent abuse of power and to ensure that decisions are made within the bounds of the law. Mr Nodo's conduct in concluding the settlement agreement on behalf of the Municipality is at variance with the injunctions of s 59. It is therefore apparent that the invocation of ostensible authority is untenable, as what Mr Manana seeks, if granted, would amount to sanctioning illegality.<sup>12</sup>

[17] Understood within the context of the finding I have arrived at above, the Labour Court correctly found that the invocation of ostensible authority against public functionaries cannot be upheld where the impugned authority is regulated by legislation and exercised *ultra vires* its provisions. Otherwise stated, where the principle of legality

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<sup>10</sup> 1999 (1) SA 374 (CC).

<sup>11</sup> Ibid at para 56.

<sup>12</sup> *Merifon* above fn 2 at para 26 and 29.

is implicated, the invocation of ostensible authority is untenable on the strength of the first category referred to in *RPM Bricks*.

[18] The last issue pertains to costs. The Labour Court awarded costs against the Municipality, the successful party. It furnished plausible reasons for deviating from the general rule applicable in labour matters that, ordinarily, costs do not follow the result. In short, the Labour Court expressed displeasure with how the Municipality treated Mr Manana. However, it was not convinced that punitive costs were warranted. In this Court, Mr Manana impugns the Labour Court's decision not to award punitive costs. In my view, this impugning is devoid of merit. There is accordingly no reason for this Court to interfere with the judicially exercised discretion by the Labour Court.

[19] Insofar as costs in this Court are concerned, there is no exceptional consideration to justify a departure from the general rule that costs do not follow the result in labour matters.

[20] In all the circumstances, I make the following order:

Order

1. The appeal is dismissed.
2. There is no order as to costs.

P Nkutha-Nkontwana  
Van Niekerk JA and Mooki AJA concur.

Appearances

For the Appellant: Adv M Simoyi SC  
Instructed by: B Mwelase Attorneys

For the Respondent: Adv M Gwala SC



Instructed by:

Jolwana Mgidlana Inc

LABOUR APPEAL COURT