

Sneller Verbatim/HVR

IN THE LABOUR COURT OF SOUTH AFRICA

BRAAMFONTEIN

CASE NO: J248/03

2002-02-03

In the matter between

P M SOKHELA

Applicant

and

THE CITY OF TSHWANE METROPOLITAN

1<sup>st</sup> Respondent

THE ACTING MUNICIPAL MANAGER:

2<sup>nd</sup> Respondent

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J U D G M E N T

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REVELAS J:

1. In this matter the applicant brought an urgent application requesting this court for an order that he be reinstated with immediate effect in his position as Strategic Manager in the office of the Municipal Manager of the first respondent pending the final adjudication of

the other relief sought.

2. The applicant wishes to be reinstated in that office for the unexpired term of his five year contract in terms of which he would be employed until the year 2007 at a monthly remuneration of R530 000.00.
3. The applicant currently holds the position to which he was and unilaterally transferred by the respondents to the licensing department of the Metro Police. The applicant contends that he has a clear right in that the contract entered into was breached and repudiated by the respondent. It was argued that this would cause the applicant irreparable harm.
4. I raised my concern that the situation regarding the payment could continue indefinitely which was also the applicant's argument in favour of the matter being dealt with by way of urgency. However, I have considered the facts of this matter, and the applicant has an alternative remedy. He may refer his dispute to the Commission for Conciliation, Mediation and Arbitration ("the CCMA").
5. I also considered whether or not to grant the interdict pending the event of the disciplinary hearing involving the chief executive officer of the Tshwane Metropolitan Municipality, Dr Thoahlane.
6. On the facts of this case I am not persuaded that this

disciplinary inquiry, which also would necessarily involve an investigation into the applicant's activities, will never take place.

7. It was pointed out to me that Dr Thoahlane earns a salary of approximately R900 000.00 a year and that it was not in the interests of the first respondent to postpone the event of the disciplinary inquiry which relied on the applicant's position in this matter.
8. However, the applicant has not referred his dispute to the Commission for Conciliation Mediation and Arbitration as one would expect the first step would be. The applicant has not demonstrated that he does not has an alternative remedy. He is still being remunerated at the same salary which he would receive in the position he now seeks to be reinstated into. He has not been suspended and he has not demonstrated any monetary loss or otherwise from conducting different functions for the same employer save for breach of contract, which on the face of it does not constitute a clear right or a reasonable apprehension of harm.
9. In the circumstances the application is dismissed with costs.

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E. Revelas