

**THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN**

Not Reportable  
Case no: C185/2023

In the matter between:

**THABANG MOTJAMELA**

**Applicant**

and

**GARDEN ROUTE DISTRICT MUNICIPALITY**

**Respondent**

**Heard: 14 February 2024**

**Delivered: 3 June 2024 (This judgment was handed down electronically by emailing a copy to the parties. The 4 June 2024 is deemed to be the date of delivery of this judgment).**

**JUDGMENT**

**RABKIN-NAICKER J**

[1] This matter was set down for hearing as a point in limine and a default judgment. The respondent initially filed a Notice to Abide noting that the matter was *res judicata* in its view. It later reconsidered its position and filed an answering affidavit with the stated aim of assisting the Court and asking for condonation for the late filing of same, which was some eight months late. There is no such affidavit in the Court file that is date stamped prior to the court proceedings. I am therefore exercising my discretion to decide this matter on the Applicants pleadings and submissions alone.

[2] In his statement of claim the applicant states that the legal issues that arise from the facts of his case are:

“Section 23(1) Labour Relation Act of the Constitution republic of South Africa everyone has a right to a fair labour practice. Section 9(1) everyone is equal before the law and has the right to equal protection and benefit of law section 9(4) no person may unfairly discriminated directly or indirectly against anyone on more grounds in terms of subsection (3) national legislation must be enacted to prevent or prohibit unfair discrimination even none listed ground section 187(1)(f) Section 10 Human Dignity (everyone has inherent dignity and the right to have their dignity respected and protected.”

[3] The facts that he relies on, involving his non-appointment to a position with the respondent municipality for which he applied in 2020, are the same as those he relied on in an application before this Court under case number C388/2021. In a judgment on a point *in limine* in that matter handed down on 10 February 2023, I found that the Court did not have jurisdiction to hear the matter. I stated as follows:

“[3] This lack of jurisdiction derives from the fact that the unfair discrimination dispute referred by the applicant was not conciliated at the CCMA. It was referred to the SALGBC which does not have the power to determine discrimination claims.

[4] As correctly submitted by Counsel for the respondent, the applicant will have to refer the discrimination claim under section 10 of the EEA to the CCMA should he wish to pursue his claim. This will necessitate an application for condonation to that body.”

[4] The applicant sought leave to appeal my judgment, and, on the 31 May 2023, I declined to give leave to appeal on the normal principles. The applicant took the matter on petition to the LAC which was refused.

[5] The doctrine of *rei judicata* and *issue estoppel* was recently considered by the Supreme Court of Appeal in *SA Municipal Workers Union National Provident Fund (Pty) Ltd v Dihlabeng Local Municipality & others* (2023) 44 ILJ 1479 (SCA) in which it was stated that :

“[12] The doctrine of res judicata is founded on the policy considerations that there should be finality in litigation, and an avoidance of a multiplicity of litigation or conflicting judicial decisions on the same issue or issues. It is trite that a matter is res judicata when a competent court or similar tribunal has given a final judgment on it, and the following three requirements are satisfied. First, the matter in which judgment has been given must be between the same parties as in the previously decided matter. Second, the matter must be based on the same cause of action, which is to say that it must involve the same issue for determination. Third, the relief sought must be the same.

[13] Over the years the courts have relaxed these requirements, where circumstances so justify, by applying a doctrine which has become known as issue estoppel. In that instance, the requirements that remain are that the parties are the same and the issue that has arisen is the same. ‘Broadly stated, the latter involves an inquiry whether an issue of fact or law was an essential element of the judgment on which reliance is placed. . . . Relevant considerations will include questions of equity and fairness, not only to the parties themselves but also to others.’

[14] The purpose of issue estoppel, ‘so it has been stated, is to prevent the repetition of lawsuits between the same parties, the harassment of a defendant by a multiplicity of actions and the possibility of conflicting decisions by different courts on the same issue. . . . Issue estoppel therefore allows a court to dispense with the two requirements of same cause of action and same relief, where the same issue has been finally decided in previous litigation between the same parties.’

[6] The applicant has brought the same issue for determination now by means of a statement of case, as he did previously by means of application. The Labour Court does not have the jurisdiction to hear the unfair discrimination claim by the applicant for the reasons already laid out in C388/2021.

[7] I have treated this matter as unopposed. The applicant is a lay person without employment. I do not make an order as to costs trusting that this judgment will bring closure to the dispute and prevent any further abuse of Court process and harassment of the respondent. In view of the above, I make the following order:

Order:

1. The dispute between the parties is *rei judicata*.
2. The application for Default Judgment is dismissed.

HRabkin-Naicker  
Judge of the Labour Court of South Africa.

Appearances:

For the Applicant:

In person

For the Respondent:

Patrick MacKenzie instructed by Brand & Van Der Bergh Attorneys