



REPUBLIC OF SOUTH AFRICA

Not reportable

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: J814/16

In the matter between:

NOSIPHO HAYA

First Applicant

and

KOPANONG LOCAL MUNICIPALITY

First Respondent

Heard: 2 August 2016

Delivered: 4 August 2016

Summary: (Contract – unexpired portion of fixed term contract)

JUDGMENT

LAGRANGE J

Introduction

- [1] This is an application for declaratory relief that the applicant's contract valid and binding and remuneration from 1 July 2011 to 30 June 2013 and for payment of remuneration for that period. The employment contract of

the applicant was concluded 31 July 2007 in terms of which the termination of her appointment was governed by the provisions of clauses 2.2, 2.4, 15.1 or 15.2 of the contract. She was previously dismissed 11 December 2009, but on 30 January 2011 an arbitrator found her dismissal was procedurally and substantively unfair and ordered her reinstatement with compensation.

- [2] The respondent applied to review the award but that application ended when a settlement agreement was concluded on 18 November 2015. The settlement agreement provided for payment of the applicant's salary from 11 December 2009 to 30 June 2011 and for dismissal of the review application
- [3] The applicant's rights to refer the issue of the duration of the contract to the appropriate forum for appropriate relief were expressly reserved in the settlement agreement. Consequently, I am not persuaded that it can be said that the settlement agreement concluded in respect of the review application determined any outstanding contractual claim she might have had. It is noteworthy that the settlement agreement which was made an order of court was not expressly made in settlement of all and any claims she might have had arising from her employment.
- [4] It was argued by the respondent that the municipal council could only have mandated her appointment for a five year term only because the advertisement for the position stipulated a five year term. The first difficulty is that I am asked to infer that the council decided this on the mere existence of the advertisement. No evidence of a council resolution to that effect was placed before me. Further, the council resolution confirming her appointment made no mention of the duration of the contract, nor did the letter of appointment. However, the terms of the contract clearly envisaged a contract term that could run for seven years depending when municipal elections were held.
- [5] The amended Municipal Systems Act would have prohibited such a contract if it had been concluded after the 2011 amendments, but section 16 of the Municipal Systems Amendment Act 7 of 2011 expressly provides that the Act does not affect pre-existing contracts of municipal managers

or managers directly accountable to municipal manager (of which the applicant was one) entered into before the Act took effect and states that “such contract continues until it lapses or terminates” Consequently, the applicant’s contract of employment was not ultra vires the Systems Act.

- [6] It was the municipality’s choice not to make use of her services after she was reinstated pending the review of the arbitration award in her favour, and it was only in December 2015 that a settlement was concluded in the review proceedings, by which stage her contract had expired in any event.
- [7] The municipality ought to have been alive to the contractual consequences of waiting for the outcome of the review application, and although it is regrettable to compel the council to pay out the balance of the applicant’s contract period, without it having received any value in the form of services rendered, the applicant is entitled to her contractual damages in the form of payment of her remuneration for the unexpired portion of her contract.

Order

- [8] The contract entered into between the applicant and the respondent on 31 July 2007 is valid and binding on the parties.
- [9] The respondent must pay the applicant her remuneration due in terms of the contract for the period 1 July 2011 to 30 June 2013 inclusive. In the event the parties cannot agree on the quantum of remuneration, either party may apply to court to determine the amount due.
- [10] The respondent must pay the applicant’s costs.

Lagrange J
Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT:

Adv Sibeko instructed by K
M Lekoto

RESPONDENT:

T Faku instructed by Maduba
Attorneys

LABOUR COURT