IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case Number: 6450 / 2020

In the matter between:

SANDILE BONTSA **Applicant**

and

DEPARTMENT OF THE PREMIER **First Respondent**

LIAAN VAN DER MERWE **Second Respondent**

Coram: Wille, J

Date of Hearing: 4th of October 2021

Date of Judgment: 15th of October 2021

JUDGMENT

WILLE, J:

INTRODUCTION

[1] This is an opposed 'review' application of a very peculiar nature. I say peculiar because the relief contended for by the applicant is, to say the least, difficult to discern and is problematic. I accept that the applicant is unrepresented and remains so unrepresented. That having been said, no case has been made out on the papers for any of the relief sought by the applicant.

[2] Moreover, in my view, there are several further insurmountable hurdles to the application as progressed by the applicant. To add to this, is the fact that there is no indication by the applicant if indeed the 'review' portion of his application is a review under the provisions of the Promotion of Administrative Justice Act[1] or a legality review, under the common law.

[3] The applicant requests the following relief namely: '*a mandamus, declaring the decisions null and void, an interdict, a moratorium and further and/or alternative relief'*

[1] Act, 3 of 2000 ('PAJA')

THE PARTIES

[4] The applicant cites two respondents. The first respondent is 'baldly' cited as the Department of the Premier[2]. The second respondent is merely cited by the recordal of her full names. These parties are not in any manner further described or elaborated upon. This, apart from the listing of their names as they appear on the Notice of Motion. The second respondent is also loosely referred to as the 'Administrator' in the applicant's founding affidavit. Nothing more and nothing less is said by way of description of the respondents to this application.

THE RELEVANT BACKROUND FACTS

[5] In summary, the background facts are the following, namely: that the applicant applied for an employment position of that of an 'Education Officer' with the provincial Department of Social Development[3]. This at a place of safety, situated in Bonny-Town.

[6] His application for this employment and the recruitment process was facilitated by the DOTP. The second respondent is employed by the DOTP, and she facilitated the recruitment process and accordingly, *inter alia*, therefore inter-acted with the shortlisted candidates for the vacant post for which the applicant applied and sought employment.

---

[2] The 'DOTP'
[3] The 'DSO'

[7] On the 20th of November 2019, upon enquiry by the applicant, he was informed that his application for his employment to the post, for which he applied, was unsuccessful. He directed this enquiry to the second respondent.

[8] No doubt, aggrieved by this decision, the applicant launched his 'urgent application' on the 5th of June 2020. After the filing of the customary answering affidavits and the replying affidavits, this application came before me for adjudication as an opposed review application[4], on the 4th of October 2021.

THE RESPONDENTS' POINTS IN LIMINE

[9] Initially, the respondents' advanced no less than (4) points *in limine.* The first point raised in this connection was related to the issue of urgency. Wisely, counsel for the respondents effectively abandoned any reliance on this issue immediately before the hearing of the matter. This, since the applicant remained unrepresented and that the matter was in any event before court for my adjudication.

[10] The misjoinder and non-joinder points are well raised by the respondents. I say this for the following reasons, namely: that the applicant applied to the 'DSD' for the post of an educator and that the applicant completely omitted to cite the relevant executive authority in this connection, being the MEC for Social Development[5].

[11] It is trite law that the test as to whether there has been a misjoinder or a non-joinder is whether the subject party has a direct and substantial interest in the subject matter of the

[4] My difficulties in this connection having been mentioned earlier in my judgment.
[5] The member of the Executive Committee in the Province.

litigation, which may prejudice the party, that has not been so joined to the matter to be adjudicated upon[6].

[12] It was obligatory and incumbent upon the applicant to cite the executive authority of the department concerned as the nominal defendant or respondent.[7] This much is trite. The employer for the DSD is the Western Cape Provincial Minister for the Department of Social Development. The applicant omitted to cite the relevant executive authority for the relief that he seeks. As a matter of logic, the DOTP has less to do with the appointment for the post for which the applicant applied. As alluded to earlier, the DOTP merely facilitated the recruitment process, which was limited to an administrative and supportive function.

[13] The second *in limine* point goes to an argument about the violation of the time limits imposed in terms of PAJA. This in turn, is inextricably limited to the final *in limine* point, namely the non-compliance with rule 53 of the court rules.[8] Even if I were to accept that this review application was in essence in the form of a legality review, no explanation is advanced in connection for the reasons occasioned for the delay in the launching of this application. This since the 20th of November 2019.

[14] As mentioned, the precise nature of the relief sought by the applicant is vague and I dare say, also somewhat embarrassing. This, at best for the applicant. If the application as presented, is a review application in terms of which PAJA finds application, then in that event, such review proceedings are to be launched without unreasonable delay and in any event, by no later than (180) days after becoming aware of the impugned decision.

---

[6] *Gordon v Department of Health, KwaZulu-Natal* 2008 (6) SA 522 (SCA).
[7] Section 2 (1) of the State Liability Act, 20 of 1957.
[8] The Uniform Rules of Court.

[15] On the applicant's own version, he became aware of the decision adverse to him on the 20th of November 2019. His application was launched on the 5th of June 2020, which was well outside of the prescribed time limits. The application has also been launched absent any discrete application for the condonation of these time limits, albeit under PAJA, or under a strict formulation of a legality review. No explanation whatsoever is given for the applicant's unreasonable delay.

[16] Further, the court rules specifically regulate and prescribe the procedure to be followed in connection with a review application. Rule 53 (1) (b) stipulates as follows:

'...as the case may be, to dispatch within 15 days after receipt of the notice of motion, to the registrar the record of proceedings sought to be corrected or set aside, together with such reasons as he is by law required or desires to give or make, and to notify the applicant that he has done so'

[17] This rule has not been complied with by the applicant. Moreover, as the entire application was directed to the incorrect party, it follows as a matter of logic, that the first respondent would in any event, as a matter of law, not have been able to comply with the provisions of Rule 53 (1)(b) of the court rules.

CONCLUSION AND ORDER

[18] It is for these reasons, that it is not necessary for me at all, to deal in any manner with the 'merits' of the application launched at the instance of the applicant. The *in limine* points discussed above, are well taken and are dispositive of the entire application.

[19] In the result the following order is granted, namely:

1. That the application is dismissed.

2. That the applicant is liable for the costs of and incidental to the application on the scale as between party and party, as taxed or agreed.

E. D. WILLE

Judge of the High Court
Western Cape Division