Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO

IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)

CASE NUMBER: 1682/2023
DATE HEARD: 20 September 2023
DATE DELIVERED: 13 October 2023

In the matter between:

SEKHOANE BENJAMIN SEHOLE **APPLICANT**

and

KGATELOPELE LOCAL MUNICIPALITY **1ST RESPONDENT**

THE SPEAKER OF COUNCIL **2ND RESPONDENT**
Mr. Mosala Leutlwetse

THE MAYOR **3RD RESPONDENT**
Mrs. Irene Williams

THE MUNICIPAL MANAGER **4TH RESPONDENT**
Mr. Willie Blunden

JUDGMENT

Olivier AJ

1. This application served before me on 20 September 2023 and subsequent to hearing argument from legal representatives for the respective parties, I made an order to the effect:

    1.1 That the points *in limine* raised by the RESPONDENTS in the matter be dismissed, the RESPONDENTS to pay the costs occasioned by the raising of said points *in limine*; and

    1.2 That the application, in as far as Part A thereof is concerned, be dismissed with costs.

2. The APPLICANT has, in the meantime, requested reasons for the dismissal of the application in as far as Part A of the application is concerned and what is to follow herein under, are the reasons for said order.

    In view of the fact that the RESPONDENTS have not requested reasons for dismissing the afore-said points *in limine*, I will not deal therewith herein.

3. It should be mentioned that, shortly before dismissing the application in as far as Part A thereof is concerned, I commented that the reason for the said dismissal of Part A of the application was the fact that a case was not made out in the Founding Affidavit for the relief sought in said Part A and I confirm that this remains the reason as to why the application was dismissed.

    I will however amplify said reason as is set out herein under.

4. The APPLICANT brought what can only be described as a strangely worded application on an urgent basis on 8 September 2023 in terms whereof the APPLICANT approached this Court seeking relief set out in 2 (two) parts.

5. Part A of the Notice of Motion (herein after referred to only as "*Part A*") reads as follows:

"***KINDLY TAKE NOTICE*** *that the Applicant intends to apply to the above Honourable Court … for an order in the following terms:*

1.1 The Rules and Directives relating to form, notice, time periods and service are hereby dispensed with and this application is to be heard as an urgent application, as provided for in Rule 6(12) of the Uniform Rules of Court.

1.2 Pending the finalisation of Part B of this application, the operation of the letter dated 30 August 2023, purporting to terminate the service of the Applicant is suspended for want of compliance with section 56(1) of the Local Government: Systems Act 32 of 2000;

1.3 The Applicant is reinstated with immediate effect to the service of the First Defendant;

1.4 The orders in prayers 1 and 2 are to implemented (sic) by First Respondent on the grant of this Court Order.

1.5 Costs of the application on the scale as between attorney and client."

It is important to note that Part A of the application did not contain a prayer for further and/or alternative relief.

6. It is common cause that this application revolved around a letter dated 31 August 2023 which was addressed to the APPLICANT and signed by the 4TH RESPONDENT and in terms whereof the services of the APPLICANT were purportedly terminated.

The date of 30 August 2023 as it appears in prayer 1.2 of Part A is therefore clearly incorrect, but this fact is neither here nor there for purposes hereof.

7. In terms of Part B of the Notice of Motion (herein after referred to only as "*Part B*") the APPLICANT purportedly moves for the review and setting aside of a decision by the 4TH RESPONDENT to terminate the services of the APPLICANT (together with certain ancillary relief) on the basis that said termination was unconstitutional, invalid and of no force and effect.[1]

8. It is further important, for the sake of context, to note that the respective parties' Counsel agreed at the commencement of and during argument of the matter:

   8.1 That I was to determine Part A of the application only and that the APPLICANT will pursue the relief sought by way of Part B at a later (and at this stage undetermined) date;

   8.2 That Part B of the application is essentially an application for the review and possible setting aside of the termination decision and that same has to be heard by at least 2 (two) Judges of this Division; and

   8.3 That the relief sought by way of prayer 1.9 of Part B is in fact *sub iudice* as it forms part of a current and pending labour dispute between the parties.

9. I remarked earlier-on herein that the Notice of Motion may be described as strangely worded and the reason for my above remark is the fact that Part A purports to be an attempt by the APPLICANT to move for interim relief pending the final determination of Part B (the review application).

   Apart however from perhaps the wording of prayer 1.2 of Part A, there is no indication that the afore-said is indeed the APPLICANT'S intention.

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[1] This refers to the decision as contained in the letter of 31 August 2023.

10. Prayer 1.3 of Part A on the other hand appears to be final relief sought by the APPLICANT and after debating this issue with Mr. Mothibi who appeared on behalf of the APPLICANT, he conceded (to his credit) that said relief was indeed final in nature and he subsequently informed me that he will be abandoning this relief.

11. Prayer 1.4 of Part A and further to the above, purports to move for certain interim relief to have immediate effect pending the finalisation of Part B, but is not worded as such and furthermore refers to prayers 1 and 2 whilst Part A does not contain such prayers.

12. The above meant that the APPLICANT effectively moved for the relief sought by way of prayer 1.2 of Part A only, in other words an order that, pending the finalisation of Part B, the operation of the letter dated 31 August 2023, which purports to terminate the services of the APPLICANT, be suspended.

    The APPLICANT in other words still sought interim relief but what boggles the mind, in my view, is the fact that this relief that is sought, effectively “hangs in the air” because it purports to suspend the effect of the letter of 31 August 2023, but it leaves it open to the Court to determine whether the relief actually sought is interdictory in nature and if so, who or whom should be interdicted.

    The RESPONDENTS, for example, are not even mentioned in prayer 1.2 of Part A and it is therefore, from the wording of the Notice of Motion, unclear whom should be responsible for suspending the operation of the letter of 31 August 2023, alternatively whom should be interdicted from acting on the contents of said letter.

13. The application could therefore have been dismissed/removed from the roll for lack of particularity at that stage already but for purposes of argument and for purposes hereof I was and am however still prepared to accept that what the

APPLICANT in essence moved for by way of prayer 1.2, is relief of an interim interdictory nature against the RESPONDENTS although it remains unclear as to what exactly the RESPONDENTS is supposed to refrain from doing.

14. It was confirmed by the Constitutional Court[2] that an interim interdict may be defined as "*a court order preserving or restoring the* status quo *pending the final determination of the rights of the parties. It does not involve a final determination of these rights and does not affect their final determination.*"

The same Court held further[3] that the question as to whether a High Court should grant an interim interdict "*does not depend on the form or effect of the interim relief. It depends on the proper interpretation of the relevant provision and on the substance of the order: does it involve a final determination of the rights of the parties or does it affect such final determination. <u>If it does not</u>, the High Court will … have jurisdiction to grant interim relief.*" [4](My underlining and omissions)

15. The above, in my view, gives rise to the first hurdle that the APPLICANT in this instance faces and it again relates to the way in which the relief sought per prayer 1.2 is worded.

In its current form, prayer 1.2 requires of this Court to effectively decide upon the legality or not of the letter of 31 August 2023 and specifically whether said letter does in fact comply with the stated statutory provisions or not, which would in effect finally determine the rights of the parties, alternatively and at the very least affect such final determination.

In view of the above authorities and if I understand same correctly, this Court does not have the necessary jurisdiction to grant an interim interdict under these

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[2] **National Gambling Board v Premier, Kwazulu-Natal & Others** 2002 (2) SA 175 (CC) at paragraph [49].

[3] **National Gambling Board**, *supra* at paragraph [50].

[4] Also see **Apleni v Minister of Law and Order & Others; Lamani v Minister of Law and Order & Others** 1989 (1) SA 195 (A) at page 201.

circumstances and Part A of the application should be dismissed on this ground alone.

16. It is trite and warrants very little discussion that an Applicant is supposed to make out a case for the relief sought by such Applicant, in the Founding Affidavit.[5]

In this instance, the APPLICANT does not deal with the above in his founding papers and the Court was not addressed during argument by Mr. Mothibi on why this Court would, in the circumstances, have the necessary jurisdiction to grant the relief sought, hence the dismissal of Part A of the Application by virtue of a failure by the APPLICANT to make out a case for the relief sought.

17. Even if I am wrong in my assessment of the above authorities, it was in any event incumbent on the APPLICANT to make out a case as to why he will be entitled to have the *status quo* prior to the letter of 31 August 2023 restored pending the final determination of Part B.

18. In this instance the APPLICANT'S founding papers again fails to address this issue at all and I was also not addressed on this issue during argument.

19. In view of the above, I found that a case was not made out for the relief sought in prayer 1.2 of Part A and as I consequence, I dismissed Part A of the application.

I furthermore saw no reason as to why the costs should not follow the result in this instance and I consequently ordered the APPLICANT to pay the costs.

20. The above order obviously does not preclude the APPLICANT from proceeding with the envisaged review application.

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[5] See *inter alia* **Skjelbreds Rederi A/S & Others v Hartless (Pty) Ltd** [1982] 1 All SA 1 (W) at pages 4 and 5 as well as the authorities cited by the Court on those pages.

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A.D OLIVIER

ACTING JUDGE

For APPLICANT	:	Adv. G.I. Mothibi o.i.o RAMS Attorneys **SANDTON** c/o Mkhokheli Pino Attorneys **KIMBERLEY**
For RESPONDENTS	:	Adv. B. Babuseng o.i.o Morwaagae Attorneys **KIMBERLEY**