**REPUBLIC OF SOUTH AFRICA**

**THE LABOUR COURT OF SOUTH AFRICA, DURBAN**

**JUDGMENT**

Reportable

Case No D04/14

In the matter between:

| | |
|---|---|
| **IMBABAZANE MUNICIPALITY** | **Applicant** |
| and | |
| **IMATU obo N H GUMBI AND 25 OTHERS** | **First Respondent** |
| **I BLOSE** | **Second Respondent** |
| **M COWLING** | **Third Respondent** |
| **THE SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL** | **Fourth Respondent** |

**Heard:** **20 January 2015**

**Delivered:** **14 May 2015**



**Summary – Review of ruling and subsequent arbitration award. Whether in terms of the principal of legality, the employment contracts concluded between the Applicant and the First Respondent's members were unlawful and if so, whether they are nevertheless enforceable through the application of the principle of ostensible authority, because at the time of conclusion of the contracts, the person who signed as 'Municipal Manager' no longer occupied that position. Whether the Commissioners' ruling and award respectively, is**

**reviewable in that they misunderstood the law in regard to the principles of legality and ostensible authority. Commissioners' decisions found to be that of reasonable decision-makers**

---

**JUDGMENT**

---

PATHER, AJ:-

Introduction:

[1] This is an application to review and set aside:

1.1 the ruling issued by the Second Respondent ("Commissioner Bulose") ; and

1.2 the award of the Third Respondent ("Commissioner Cowling")

as Commissioners of the Fourth Respondent ("the bargaining council"). Commissioner Bulose's ruling and Commissioner Cowling's award are set out in paragraphs 4 and 6 of this judgment.

[2] The application is opposed.

[3] It is common cause that:

3.1 The Applicant, the Imbabazane Municipality had advertised vacancies which it required to fill.

3.2 The 26 members of the First Respondent ("the employees") responded to the advertisements, were individually shortlisted, interviewed, selected and later issued with letters of appointment from the Applicant. The letters of appointment incorporated the individual contracts of employment between the Applicant as employer on the one hand, and the individual employees as employees on the other.

The employees commenced employment with the Applicant on 1 June 2012.

3.3 Mr Ndlela who signed the employment contracts on behalf of the Applicant, had been the Municipal Manager since 3 November 2008. His term of office expired on 17 May 2012 by operation of law.

3.4 Despite the expiry of his term of office, Mr Ndlela continued to occupy the position of Municipal Manager, performed all the duties as before and was remunerated for his work. In terms of a High Court order issued on 21 December 2012, Mr Ndlela's continued occupation of the position of Municipal Manager beyond 17 May 2012 was declared null, void and invalid.

3.5 On 23 January 2013, Mr Madlala was appointed as Ministerial Representative to administer the affairs of the Applicant. Subsequently, in terms of letters dated 2 April 2013, Mr Madlala advised the employees individually that their appointments had been unauthorised and that they had to vacate their positions with immediate effect and not to perform any further services.

[4] The employees then referred an unfair dismissal dispute to the bargaining council. At the hearing before Commissioner Bulose, the Applicant raised a point *in limine* that the bargaining council lacked jurisdiction to determine the matter because the employment contracts ("the contracts") were not lawful as the signatory on behalf of the Applicant, Mr Ndlela, had had no authority to conclude the contracts. On 1 July 2013, Commissioner Bulose dismissed the point and ruled that the bargaining council had jurisdiction to hear the matter. Evidently Commissioner Bulose then gave notice that he would proceed with the arbitration on the merits at a later date, 1 August 2013.

[5] Prior to the proposed arbitration hearing, in a related case, *Imbabazane Municipality v Ligela Products and 32 Others* (unreported), in the Kwazulu-Natal High Court, Pietermaritzburg, before Seegobin J, Case Number 8522/13, the Applicant sought a *rule nisi*, pending a final determination, that, among other relief, Commissioner Bulose be interdicted from continuing with

the arbitration involving the employees as an interim order with immediate effect. Seegobin J dismissed the application for interim relief on 22 August 2013.

[6] Commissioner Bulose recused himself from the arbitration hearing. Commissioner Cowling, who was subsequently appointed as arbitrator in the dispute, found that the signatory on behalf of the Applicant had ostensible authority to conclude the contracts with the employees, that the employees were employed by the Applicant and that the termination of their ('the employees') contracts constituted an unfair dismissal. He ordered that the employees be reinstated.

[7] The grounds for review of Commissioner Bulose's ruling are that:

7.1 It having been submitted on behalf of the Applicant that the bargaining council did not have jurisdiction as the members of the First Respondent were not employees because no valid or lawful contracts had ever come into existence, Commissioner Bulose failed to answer this legal issue. It was submitted in this regard that Commissioner Bulose did not provide the basis for his finding that the members of the First Respondent were employees and that therefore the bargaining council had jurisdiction.

7.2 Commissioner Bulose demonstrated a lack of understanding of the legal importance of the case of *City of Tshwane Metropolitan Council v RPM Bricks (Pty) Ltd* 2008 (3) SA 1 SCA by finding that rather than advancing the case of the Applicant, it advanced the First Respondent's case. In *City of Tshwane* case the court drew a distinction "between an act beyond or in excess of the legal powers of a public authority (the first category), on the one hand, and the irregular or informal exercise of power granted (the second category), on the other." The court found that the question of whether the doctrine of estoppel applied in that case would depend upon in which category the conduct complained of would be classed. In paragraph 12, the court stated as follows:

'In the second category, persons contracting in good faith with a statutory body or its agents are not bound, in the absence of knowledge to the contrary, to enquire whether the relevant internal arrangements or formalities have been satisfied, but are entitled to assume that all the necessary arrangements or formalities have indeed been complied with. … Such persons may then rely on estoppel if the defence raised is that the relevant internal arrangements or formalities were not complied with'. And in paragraph 13, the court stated as follows:

'As to the first category: failure by a statutory body to comply with provisions which the legislature has prescribed for the *validity* of a specified transaction cannot be remedied by estoppel because that would give validity to a transaction which is unlawful and therefore ultra vires'.

7.3 It was submitted that the facts of this matter fell squarely within the first category, and not the second category, for the reason, inter alia, that the import of the judgment issued on 21 December 2012 which led to the removal from office of Mr Ndlela, was that any decisions and/or actions taken by him after 17 May 2012 were unlawful, invalid and null and void.

7.4 Commissioner Bulose's finding appears to be based on his reasoning that the Applicant should have approached a court to review and set aside the employment of the employees. It was submitted that in this regard, Commissioner Bulose failed to apply his mind to the principles outlined in the case of *Municipal Manager*: *Qaukeni Local Municipality and Another v F V General Trading CC* 2010 (1) SA 356 (SCA) at para 26, where the court stated as follows:

'…If the second respondent's procurement of municipal services through its contract with the respondent was unlawful, it is invalid and this is a case in which the appellants were duty-bound not to submit to an unlawful contract, but to oppose the respondent's attempt to enforce it. This it did by way of its opposition to the main application and by seeking a declaration of unlawfulness in the counter-application. In doing so, it raised the question of the legality of the contract fairly and squarely, just as it would have done in a formal review. In these circumstances, substance must triumph over form.

And while my observations should not be construed as a finding that a review of the award of the contract to the respondent could not have been brought by an interested party, the appellant's failure to bring formal review proceedings under PAJA is no reason to deny them relief'.

7.5 It was submitted that on the material before him, Commissioner Bulose should have found that there was no "dismissal" as the members of the First Respondent were not employees, because their contracts were void *ab initio*. Furthermore, he should have found that the termination of the contracts was a rectification of the illegality that had been perpetrated in the conclusion of the contracts and that by law, the Applicant was duty-bound to do so. Commissioner Bulose should then have found that the bargaining council did not have the jurisdiction to entertain the dispute referred by the First Respondent.

[8] The grounds for the review of Commissioner Cowling's award are:

8.1 He too failed to apply the principles stated in the *City of Tshwane* case by incorrectly finding that the circumstances of this matter fell under the second category, when the only reasonable conclusion should have been that they fell under the first category.

8.2 Commissioner Cowling's finding seems to have been based on the concepts of fairness and prejudice, when there is authority that in these matters, the principle of legality and not fairness or prejudice applies. In this regard, the following extract from the case of *City of Tshwane* referred to above, is relevant:

'Estoppel cannot, as I have already stated, be used in such a way as to give effect to what is not permitted or recognised by law. Invalidity must therefore follow uniformly as a consequence. That consequence cannot vary from case to case. 'Such transactions are either all invalid or all valid. Their validity cannot depend upon whether or not harshness is discernible in a particular case.' (per Marais JA in *Eastern Cape Provincial Government v Contractprops 25 (Pty) Ltd* 2001 (4) SA 142 (SCA) para 9)'.

8.3 Commissioner Cowling unreasonably visited Mr Ndlela with ostensible authority, and therefore found that the Applicant was estopped from relying on his lack of authority. Commissioner Cowling made this finding despite evidence having been placed before him that Mr Ndlela was aware at the time the contracts were concluded, that his own contract with the Applicant had terminated. By applying the principle of estoppel, Commissioner Cowling had failed to apply his mind to the principle outlined in the *City of Tshwane* case, where at paragraph 16, the court stated:

'It is settled law that a state of affairs prohibited by law in the public interest cannot be perpetuated by reliance upon the doctrine of estoppel…, for to do so would be to compel the defendant to do something that the statute does not allow it to do. In effect therefore, it would be compelled to commit an illegality'.

8.4 Commissioner Cowling also relied on the fact that the Applicant had not established that the employees were aware or should have been aware that Mr Ndlela was no longer lawfully employed by the Applicant. In this regard, it was submitted that he committed an irregularity in that he had read the *City of Tshwane* case, particularly where the court stated the following at paragraph 18:

'The fact that the plaintiff was misled into believing that the defendant's employees were authorised to vary an agreement that had earlier been lawfully concluded with it, can hardly operate to deprive the defendant of that power which had been bestowed upon it by the legislature. To do so would be to deprive the ultra vires doctrine of any meaningful effect'.

8.5 Commissioner Cowling incorrectly found that he had no power to make his own finding regarding the issue of jurisdiction, because it had already been made by Commissioner Bulose. And as he, Commissioner Bulose had subsequently withdrawn from the matter, it was Commissioner Cowling's legal duty to satisfy himself that he did in fact and in law have the jurisdiction to hear the matter.

8.6 Commissioner Cowling acted unreasonably by ordering the Applicant to reinstate the employees despite the Applicant's contention that it was practically impossible for it to give effect to such an order, since the posts which the employees previously occupied had been abolished pursuant to a restructuring exercise.

8.7 Commissioner Cowling committed a gross irregularity by issuing an award without having first established the precise identity of the employees who were before him. In his award, he alluded to the fact that he was in possession of varying lists of the employees. Furthermore, at the commencement of the arbitration hearing he raised the issue as appears on page 1 of the transcript. Notwithstanding his appreciation of the importance of determining the exact identities of the employees before him, he proceeded to issue the award on the understanding that the parties would agree between themselves on the employees' identities. It was submitted that in so doing Commissioner Cowling committed a gross irregularity because he unreasonably assumed that there would be agreement between the parties whereas as it turned out, the list and/or identities of the employees had never been agreed upon between the parties.

[9] Mr Zondi on behalf of the applicant submitted that if the court were to find that the Applicant had acted unlawfully in terminating the contracts, the appropriate order would be compensation. In this regard, he argued that section 193 of the Labour Relations Act (the Act) determines instances where reinstatement would not be appropriate. Commissioner Cowling ought to have considered the different scenarios provided in the Act argued Mr Zondi. In the circumstances, the Applicant sought a substitution of compensation for Commissioner Cowling's order that the employees be reinstated.

[10] As there had not been strict compliance with the Court's Directives in terms of the filing of Heads of Argument, those filed by the First Respondent, while capturing the essence of its case, does not directly address each ground of review submitted by the Applicant, as the First Respondent's Heads were filed first. This shortfall was however, rectified during argument.

[11] The First Respondent submitted that:

11.1 After considering the facts and section 213 of the Act, Commissioner Bulose ruled that the 26 members of the First Respondent were in fact employees of the Applicant.

11.2 Although not tasked with deciding whether the 26 members of the First Respondent were employees of the Applicant, Seegobin J, in *Imbabazane Municipality* at paragraph 15 considers this and concluded that the 26 employees were in fact lawful employees.

11.3 Mr Ndlela, the Municipal Manager at the time and who had signed the contracts had all the trappings of authority. He was being held out as the Municipal Manager by the Applicant and carried out the functions of that office on a day to day basis. It was submitted that he obviously had ostensible authority to do so when he signed each of the employees' contracts. Even if he was not in law authorised to sign the contracts when he did, at the very least he had ostensible authority upon which innocent persons such as the employees relied and which bound the Applicant on the basis of the principle of estoppel.

11.4 It is the Municipality and not the Municipal Manager that gave effect to the contracts by utilising the services of the employees. The Municipality remunerated them and treated them as its employees.

11.5 It was unfair of the Applicant to have simply notified the employees that they were no longer employees.

11.6 The Municipal Manager had signed the employees' contracts on the culmination of a process that had been followed and that had led to the Applicant's appointing them.

11.7 The validity or otherwise of the contracts are not dependent on the lawful appointment of the Municipal Manager who signed the letters of appointment. The fact that at some time in the future a defect in his appointment emerges does not invalidate the contract retrospectively

or mean that there was never a contract or that the employees were not employees as defined in the Act.

11.8 What the Applicant is asking of the court is not merely to set aside the contracts but the entire process which culminated in the appointments and the signing of the contracts. The Applicant has not however, made out a case for so doing.

11.9 Mr Geldenhuys argued further that if the court finds that the dismissal of the employees was unfair, the only remedy applicable is reinstatement.

11.10 In regard to the list of employees, this is in the documents and was available at the arbitration before Commissioner Cowling. The employees are as cited as being represented by *IMATU*, the First Respondent, namely *N H Gumbi and 25 Others*. Therefore, they are 26 in all.

11.11 The Constitution guarantees everyone the right to fair labour practices. Therefore, the conduct of the then former Municipal Manager cannot simply be set aside, as the process of advertisement, recruitment and selection had been conducted while he was legitimately in office. The letters of appointment simply state 'I confirm your appointment…'.

11.12 No proper procedure had been followed in regard to a dismissal of the employees by the Applicant, namely the *Imbabazane Municipality*.

11.13 The judgment of Henriques J in the case of *The Member of the Executive Council for Co-Operative Governance and Traditional Affairs v Imbabazane Municipality and 14 Others* under case Number 5238/12 (unreported) in the Kwazulu-Natal High Court, Pietermaritzburg, wherein it was held that the continued occupation by Mr Ndlela of the office of Municipal Manager was null and void, was delivered on 21 December 2012. The letters of termination of their contracts were only sent to the employees on 2 April 2013. In this regard argued Mr Geldenhuys, it was alarming that the Applicant had done nothing

between the date of the judgment in which Mr Ndlela's continued occupation of the position of Municipal Manager was declared unlawful and the date when the employees received the letters of termination of their contracts.

11.15 Finally, Mr Geldenhuys submitted that if the MEC for Co-Operative Governance and Traditional Affairs had acted swiftly to remove Mr Ndlela (on expiry of his contract), the acting Municipal Manager or even the new Municipal Manager would have signed the employees' contracts of employment.

[12] Mr Zondi for the Applicant countered as follows:

12.1 The fact that there had been no publication of the status of the Municipal Manager after 17 May 2012 did not assist the First Respondent because it was wrongly relying on the principle of ostensible authority.

12.2 He cited again the case of *Qaukeni Local Municipality* where at paragraph 23, the SCA remarked:

'There is no doubt that the MEC was not only entitled but also duty-bound to approach a Court to set aside her own irregular administrative act'.

Evaluation:

[13] Once Henriques J in *The Member of the Executive Council for Co-Operative Governance and Traditional Affairs*, referred to above, ordered that the continued employment of Mr Ndlela as Municipal Manager beyond 17 May 2012 was null, void and invalid, all administrative actions carried out by him as 'Municipal Manager' beyond that date would therefore have been unlawful. His contract of employment had terminated by operation of law and he no longer had the authority of the office of Municipal Manager. In *Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa* 2000 (2) SA 674 CC, it was held that no person exercising a public power may exercise such a power unless it is conferred on him by law.

[14] It follows therefore, that he no longer have the authority of Municipal Manager, when he signed the contracts of employment with the employees between 18 May 2012, after his own contract had terminated and 4 June 2012 when he had been advised of this fact, Mr Ndlela's actions were unlawful. Considering the amount of public funds at stake in cases where officials act 'beyond or in excess of the legal powers of a public authority' (*City of Tshwane Metropolitan Municipality v RPM Bricks (Pty) Ltd* [2007] SCA 28 (RSA), the importance of the principle of legality is understandable.

[15] Mr Geldenhuys referred to the case of *Khumalo and Another v MEC for Education: Kwa-ZuluNatal* [2012] 12 BLLR 1232 (LAC) where at paragraph 42, Zondi AJA said

> 'But the fact that an administrative act is unlawful does not necessarily follow that it has to be set aside. In reviewing and considering whether to set aside an administrative action, Courts are imbued with a discretion and may in the exercise thereof refuse to order the setting aside of an administrative action, notwithstanding substantive grounds being present for doing so (*Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2010 (1) SA 333 (SCA) at paragraph 33) (*Oudekraal 2)*.Sections 172 (1) (b) of the Constitution and 8 of PAJA are statutory provisions providing the source of the Courts' discretion. In terms of section 172 (1) (b) of the Constitution a Court, when deciding a constitutional matter within its powers, may make an order that is just and equitable, including an order suspending the declaration of invalidity for any period. Similarly, under section 8 (1) of PAJA the Court in proceedings for judicial review in terms of section 6 (1), may grant any order that is just and equitable (*Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others* 2011 (4) SA 113 (CC) at para 82; *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA) (*Oudekraal 1*); *Chairperson, Standing Tender Committee and Others v JFE Sapela Electronics (Pty) Ltd and Others* 2008 (2) SA 638 (SCA) at para 28)'.

[16] Notwithstanding Mr Ndlela's lack of authority to sign the contracts/letters of appointment on behalf of the Applicant at the time he had done so, the position of the employees, were it to be ordered that the unlawful administrative action be set aside, would be untenable. Apart from their rights

to fair labour practice, the employees had been appointed to the various positions after a legitimate process involving applications for advertised positions, shortlisting of potential recruits and selection. After being appointed as employees, they commenced working for the Applicant, some of them as early as after 17 May 2012, and were paid for their work. All the while, Mr Ndlela continued to perform the functions of a Municipal Manager, reported for duties as usual it would seem and was paid for his work beyond the expiry date of his contract. For all intents and purposes, it was business as usual at the Imbabazane Municipality, focusing as it ought to have been, on the delivery of services to residents within its area of jurisdiction.

[17] That the employees were suddenly notified on 2 April 2013 that their contracts of employment were terminated can on the face of it immediately be considered a violation of their right not to be unfairly dismissed. They had been working for the Applicant for at least six months – reporting for work and performing their individual duties in terms of their respective contracts of employment. In terms of section 186 (1) (a), "dismissal" means that an employer has terminated a contract of employment with or without notice. It is common cause that no notice was given to the employees, it being argued on behalf of the Applicant that it merely sought to reverse the wrongdoing caused by Mr Ndlela's signing of the contracts when he had no authority to have done so.

[18] Section 188 (1) of the Amended LRA provides as follows:

> 'A dismissal that is not automatically unfair, is unfair if the employer fails to prove-
>
> (a) that the reason for dismissal is a fair reason-
>
> (i) related to the employee's conduct or capacity; or
>
> (ii) based on the employer's operational requirements; and
>
> (b) that the dismissal was effected in accordance with a fair procedure'.

[19] The dismissal of the employees was unfair as it was not related to their conduct or capacity, nor was it based on the Applicant's operational requirements and, no procedure had been followed, let alone a fair procedure.

The Applicant had sought to correct what it termed, a 'wrongdoing' and in so doing, violated every principle of an employee's right to fair labour practice and the right not to be unfairly dismissed.

[20] The comprehensive and well-reasoned Ruling of Commissioner Bulose and Award of Commissioner Cowling, indicates that it was precisely this unfairness of the dismissal of the employees that had formed the bases of their respective decisions. While they may not have had sight of the more recent case of *Khumalo*, both Commissioner Bulose and Commissioner Cowling were clear that undue prejudice would befall the employees if the unfair dismissal were to be superseded by the administrative action found to be unlawful. Furthermore, I agree to an extent with Commissioner Bulose that the case of *City of Tshwane* is not entirely applicable. Unlike the plaintiff in *City of Tshwane*, whose rights flowed from a contract for the provision of services, the employees *in casu* derived their rights from legislation, especially the Constitution which guarantees the right to fair labour practices. As Commissioner Cowling pointed out, if the principle of legality were to result in the setting aside of the employment contracts, the Applicant would be entitled to reclaim the salaries paid to the employees, which would be grossly unfair, as was their summary dismissal. In my view, this is a case in which the interests of justice demand that the declaration of invalidity of Mr Ndlela's actions in signing the employees' contract, be suspended pending the proper resolution of their continued employment in terms of the LRA.

[21] In the case of *Khumalo*, Zondi AJA, stated:

> '[52] The mere fact that the impugned decision is based on ignorance, mistake or fraud does not necessarily mean that it has to be set aside. In appropriate circumstances a Court will decline, in the exercise of its discretion, to set aside an invalid administrative action in order to avoid or minimise injustice when legality and certainty collide. … .
>
> [53] While it may be true that the review is aimed at setting aside an invalid act on the basis that it fails to satisfy the principle of legality,

> sometimes practical considerations would require finality, rendering it less desirable to set aside an invalid act. That would be a case where an invalid administrative act has over a period of time remained unchallenged and the parties have arranged their affairs in accordance therewith and its setting aside may cause them injustice.…'

[22] In this regard, Commissioner Cowling referring to the employees, postulates, on page 9 of the Award, that:

> 'Thus, employment contracts are formed through the employee performing work for the employer and this is precisely what the Applicants have done. At the time of their alleged dismissal they had all performed at least six months service for the Respondent for which they had been remunerated. They were entitled to assume that they had been permanently employed and could plan their futures in this regard. Many of them had resigned from other jobs in order to take up the offer of employment given to them by the Respondent'.(sic)

[23] Mr Ndlela's invalid administrative act had remained unchallenged for approximately six months. Then, after being sent letters on 2 April 2013 to the effect that their employment contracts were terminated, the employees attempted to enforce their rights by referring a dispute about the unfair dismissal to the bargaining council. The proceedings involving the parties and others, the latter who had an interest in the High Court litigation, have been protracted. It would be in the interests of justice that finality is reached in the matter. In my view, the decisions made by Commissioner Bulose and Commissioner Cowling respectively, being just and equitable against the background of the employees' right not to be unfairly dismissed, are those which a reasonable decision-maker would have reached.

[24] In weighing the prejudice to be caused to the parties, it is clear that the employees, who have already suffered financial prejudice as a result of being summarily dismissed, will continue to suffer financial prejudice through no fault of their own.

[24] I agree with Mr Geldenhuys' submission that there is no suggestion that the employees would not have been appointed by either the acting Municipal Manager or the new one. The Applicant required to fill the positions and accordingly embarked on a process of advertising and recruitment at a time when Mr Ndlela lawfully occupied the post of Municipal Manager. Mr Zondi submitted that the Applicant had undergone a restructuring exercise and that reinstatement was not appropriate. However, as the unfair dismissal of the employees preceded the restructuring, if in fact this has been finalised, and as Commissioner Cowling had ordered reinstatement, the remedy must be reinstatement as this is what the employees had sought.

[25] Mr Zondi's argument that the employees had not been properly identified cannot be sustained. The reason is that the First Respondent, being the Applicant before Commissioner Bulose first and subsequently before Commissioner Cowling was always cited as it appears in this case, namely *IMATU on behalf of N H Gumbi and 25 Others.* According to the transcript of the proceedings before Commissioner Cowling, neither party objected to reaching consensus on the exact number and identities of the members, being the employees. In this regard and without a doubt I find that the Applicant is estopped from raising the lack of definite identification of the employees as a bar to the finalisation of the review.

[25] As regards the issue of costs, the general rule is that costs follow the event. There is no reason to depart from this rule – the successful litigant, namely the First Respondent is entitled to the costs incurred in defending the application.



Order

[26] For these reasons, I make the following order:

26.1 The application for review is dismissed.

26.2 The Applicant is ordered to pay the costs.

_____

S Pather

Acting Judge of the Labour Court of South Africa



APPEARANCES

For the Applicant: Mr S C Zondi from Mdledle Inc

For the First Respondent: Mr E Geldenhuys from Tomlinson Mnguni James