Of interest to other judges

THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

Case no: P332/14

In the matter between:

THOZAMA JAKO-WUTU	**First Applicant**
and	
NTABANKULU LOCAL MUNICIPALITY	**First Respondent**
THE MUNICIPAL MANAGER: NTABANKULU LOCAL MUNCIPALITY	**Second Respondent**

Heard: 10 February 2016
Delivered: 16 February 2016
Summary: (Review s 157(2)(b) - illegality of institution of disciplinary proceedings of municipal senior manager – proceedings and dismissal set aside)

JUDGMENT

LAGRANGE J

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Introduction

[1] In this application, the applicant a former Chief Financial Officer of the first respondent ('the Municipality') seeks to review and set aside her dismissal on 1 September 2015 on the basis of the principle of legality. In pursuit of this aim, she seeks to set aside a number of preceding decisions of the municipality concerning the decision to institute disciplinary proceedings, the appointment of an independent investigator and the presiding officer and the presiding officer's recommendation that she be dismissed as well as the municipality's decision to do so on the grounds that they were all unlawful.

[2] The municipality opposes the application and also as brought a counter motion to review and set aside its own decision on 31 August 2015 granting the applicant need to appeal against its own decision to dismiss her. It also has applied to strike out paragraph 40 of the applicant's founding affidavit in which she deals with her personal circumstances. Although the respondent did not pursue this latter relief, I would agree that those averments were not relevant in these proceedings.

The key issues

[3] The crux of the applicant's case rests on her claim that a number of decisions of the municipality relating to the disciplinary proceedings against her, were taken in breach of section 160 (3) (c) of the Constitution and the parallel provisions of section 30 (3) of the Local Government: Municipal Structures Act,111 of 1998. The constitutional provision states that "all questions before a municipal Council decided by a majority of the votes cast", and section 30 (3) states that "All other questions for a municipal Council decided by a majority of the votes cast,…"

[4] The relevant provision of the Systems Act regulations[1] state that:

'Policy

[1] Local Government : Disciplinary Regulations for Senior Managers, 2010, Notice No 344, GG 34213 dd 21/04/2011.

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4 (1) If a senior manager is alleged to have committed misconduct, the municipal council must institute disciplinary proceedings in accordance with this Disciplinary Code....

Disciplinary procedures

5(1) Any allegation of misconduct against a senior manager must be brought to the attention of the municipal council.

(2) An allegation referred to in subregulation (1) must be tabled by the mayor or the municipal manager, as the case may be, before the municipal council not later than seven days after receipt thereof, failing which the mayor may request the speaker to convene a special council meeting within seven days to consider the said report.

(3) If the municipal council is satisfied that -

(a) there is reasonable cause to believe that an act of misconduct has been committed by the senior manager, the municipal council must within seven days appoint an independent investigator to investigate the allegation[s] of misconduct; and

(b) there is no evidence to support the allegation[s] of misconduct against the senior manager, the municipal council must within seven days dismiss the allegation[s] of misconduct.

(4) The investigator appointed in terms of subregulation (3)(a) must, within a period of 30 days of his or her appointment, submit a report with recommendations to the mayor or municipal manager, as the case may be.

(5) The report contemplated in subregulation (4) must be tabled before the municipal council in the manner and within that timeframe as set out in subregulation (2).

(6) After having considered the report referred to in subregulation (4), the municipal council must by way of a resolution institute disciplinary proceedings against the senior manager.

(7) The resolution in subregulation (6) must -

(a) include a determination as to whether the alleged misconduct is of a serious or a less serious nature;

(b) authorise the mayor, in the case of the municipal manager, or municipal manager, in the case of the manager, directly accountable to the municipal manager to -

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(i) appoint -

(aa) an independent and external presiding officer; and

(bb) an officer to lead evidence; and

(ii) sign letters of appointment.

…

Sanctions

12. (1) The presiding officer may impose any, or a combination of the following sanctions, with or without conditions:

(a) suspension without pay for no longer than three months;

(b) demotion;

(c) transfer to another post;

(d) reduction in salary, allowances or other benefits;

(e) an appropriate fine; or

(f) dismissal."

(emphasis added)

[5] The applicant claims that the following decisions of the municipality were taken without being voted upon:

5.1 the appointment of an independent investigator on 3 October 2014 to investigate allegations of misconduct against the applicant;

5.2 the decision to subject the applicant to disciplinary proceedings taken at the Council meeting of 31 to 2014 and the decision authorising the municipal manager to appoint a presiding officer taken on the same day.

[6] The applicant further contends that in the absence of a resolution authorising the appointment of the fourth respondent as evidence leader, the fourth respondent was not authorised to prepare the charges against her. In this instance, the applicant points out that there was not even a

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purported resolution appointing the fourth respondent in that capacity. In argument, applicant's counsel *Mr Zilwa SC,* assisted by *Mr N R Mtshabe,* rightly conceded that the appointment of the evidence leader was not a matter which caused the applicant any substantial prejudice on the facts of this matter, so this relief was not pursued.

[7] When the disciplinary proceedings commenced in January 2015, the respondents were warned that the proceedings had no legal validity and were susceptible to being set aside for want of compliance with "relevant statutes". As a result, the applicant raised her objections in the disciplinary enquiry and the employer responded to them in great detail. On 23 January 2015, the chairperson of the enquiry concluded that the Council had complied with the Constitution, the Municipal Structures Act and the Regulations Dealing with the Discipline of Senior Managers and directed that the enquiry could proceed.

[8] It is important at this juncture to note that in her representations to the chairperson, the applicant pertinently raised the complaint that no voting on the various resolutions culminating in the institution of the disciplinary proceedings against her had taken place in the municipal council and she argued that this was contrary to the requirements of section 30(3) of the Structures Act and section 160(3)(c) of the Constitution. Equally important is that, in the municipality's answering, and carefully considered submissions opposing the application, it proceeded on the basis that it was common cause that voting had not taken place, but that the resolutions recorded in the minutes of the Council meetings were nonetheless valid resolutions. The following passages from the municipality's representations are noteworthy:

> "7. The crux of the employee's challenge relates to an alleged requirement that the majority of members municipal council be present for a boat be taken on any matter. In essence the employee contends that since the resolutions outlined … were not subject to a vote, that such resolutions are null and void and of no force and effect.
>
> …

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> 10. In this regard it is submitted that the municipal manager will confirm through oral evidence that the practice adopted when adopting resolutions do not require a voting process each and every decision…."

The municipality had argued before the arbitrator that on a proper interpretation of section 160 (3) of the Constitution and of section 30 (3) of the Structures Act, the word 'questions' in both those provisions was intended only to refer to important key decisions or ones of principle and not to operational issues. Since the institution of disciplinary proceedings was an operational matter the voting requirements of those provisions did not apply to the resolutions in question. It must be noted that this argument was not one that was raised by the municipality in these proceedings.

[9] In consequence of the presiding officer not being properly appointed, the applicant contests the validity of any findings he made and his recommendations that she be dismissed. She also challenges the Council's decision to adopt the chairperson's recommendations to dismiss her.

[10] The respondent raises a number of defences to the review, which may be stated summarily under the following headings:

10.1 The applicant should be non-suited because she unduly delayed launching these proceedings by waiting until she had been dismissed.

10.2 The applicant should have pursued a remedy for unfair dismissal instead of launching these proceedings.

10.3 Because the relief sought was declaratory in nature the court in the exercise of its discretion should decline to grant the relief, because the matter was now moot.

10.4 There was a factual dispute about whether or not the imputed resolutions had been voted upon or not and on the *Plascon-Evans* principle the dispute should be decided in the respondent's favour.

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10.5 The applicant failed to review the *in limine* ruling of the disciplinary enquiry chairperson on the issues which are the subject matter of this review.

10.6 The applicant's reliance on the principle of legality was fundamentally misconceived because the legal effect of her dismissal is undiminished by any challenge to the antecedent decisions leading to her dismissal.

[11] These arguments are addressed below in dealing with the merits of the application.

Evaluation

The Nature of the Review Application

[12] Section 157(2)(b) of the labour relations act 66 of 1995 ('the LRA') states:

> "The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from-
>
> (a) …
>
> (b) any dispute over the constitutionality of any executive or administrative act or conduct, or any threatened executive or administrative act or conduct, by the State in its capacity as an employer; …"

Clearly, the decision to institute disciplinary proceedings against the applicant and to dismiss her is action by the local authority as an organ of state acting in its capacity as an employer, and falls within the purview of the court's powers under this section. The proceedings are in the nature of the review proceedings based not on challenging the reasoning of the municipality taking disciplinary action, but aimed at challenging the very foundation of its legal authority to have done so, constituting a review based on the legality of its actions.

[13] The principle of legality was succinctly expressed by Ngcobo J, as he then was, in the Constitutional Court judgement in ***Affordable Medicines Trust and others v Minister of Health and others*** as follows:

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> "[49] The exercise of public power must therefore comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the Constitution. It entails that both the Legislature and the Executive 'are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law'. In this sense the Constitution entrenches the principle of legality and provides the foundation for the control of public power."[2]

[14] It was argued that the applicant ought to have pursued her remedies for unfair dismissal. It is true that she might well have done, but nothing includes her from independently challenging the legality of the disciplinary measures instituted against her. The respondent contended that authority for its argument lay in the LAC judgment in ***Member of the Executive Council for Education, North West Provincial Government v Gradwell*** [3], but that case was dealing with the right to a hearing before a precautionary suspension and the court held that :

> "A final declaration of unlawfulness on the grounds of unfairness will rarely be easy or prudent in motion proceedings. The determination of the unfairness of a suspension will usually be better accomplished in arbitration proceedings, except perhaps in extraordinary or compellingly urgent circumstances. When the suspension carries with it a reasonable apprehension of irreparable harm, then, more often than not, the appropriate remedy for an applicant will be to seek an order granting urgent interim relief pending the outcome of the unfair labour practice proceedings."[4]
>
> (emphasis added)

[15] However, that the matter is distinguishable from this one because the basis of the claim of unlawful action in this application rests on illegality which is not a matter over which a bargaining council has jurisdiction. At this juncture it should also be mentioned that while the suggestion that the

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[2] **2006 (3) SA 247 (CC)** at 272.

[3] **(2012) 33 *ILJ* 2033 (LAC)**

[4] At 20-52, para [46]

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applicant's relief is merely declaratory in nature is misconceived: the relief sought is to review and set aside the resolutions of the municipal council and, if granted, will have very practical consequence that the ensuing action of the respondent in pursuing the disciplinary proceedings was unlawful and that the outcome of those proceedings is also a legal nullity. That is not merely declaratory relief of a hypothetical nature without practical effect, nor is it a moot issue. The associated point raised by the respondent in relation to the ***Oudekraal Estates (Pty) Ltd v City of Cape Town and Others*** [5] decision will be addressed later.

[16] Whilst on this point, the municipality's argument that the applicant should have taken the *in limine* ruling of the chairperson of the disciplinary enquiry on review can also be addressed. Essentially, the chairperson's ruling on whether the enquiry should proceed or not was an issue he was duty bound to consider. It was also correct for the applicant to first raise the issue in the forum whose authority is being challenged, thereby avoiding premature recourse to the courts. However the kind of ruling under attack is never anything more than a provisional view on the jurisdictional question, even though it does affect the subsequent course of the proceedings in that forum. As a matter of law, the determination of legal authority to act, unless specifically provided for otherwise in statute, is a matter for this court or another high court to determine, and is determined on an objective basis quite independently of what the functionary in that forum decided. Whether the application to determine the issue takes the form of a review of the forum's jurisdictional ruling or whether it is simply to set aside that forum's deliberations as null and void for want of legality is a choice of approach open to the litigant, but the outcome will be decided on the same factual and legal basis.

[17] The crisp issue in this case is whether the municipality was empowered to institute the disciplinary proceedings against the applicant without voting on the resolutions setting the proceedings in motion. The municipality no longer contends that it was not necessary for the Council to vote on the various resolutions but now alleges that in fact they were voted on. This is

[5] 2004 (6) SA 222 (SCA)

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the factual dispute which the municipality contends should be decided in its favour. In this regard it is useful to set out the complete formulation of the rule laid down in ***Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*** to determine factual disputes in applications for final relief:

> "In such a case the general rule was stated by VAN WYK J (with whom DE VILLIERS JP and ROSENOW J concurred) in *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C) at 235E - G, to be:
>
> "... where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order... Where it is clear that facts, though not formally admitted, cannot be denied, they must be regarded as admitted."
>
> This rule has been referred to several times by this Court (see *Burnkloof Caterers (Pty) Ltd v Horseshoe Caterers (Green Point) (Pty) Ltd*1976 (2) SA 930 (A) at 938A - B; *Tamarillo (Pty) Ltd v B N Aitkin (Pty) Ltd*1982 (1) SA 398 (A) at 430 - 1; *Associated South African Bakeries (Pty) Ltd v Oryx & Vereinigte Bäckereien (Pty) Ltd en Andere*1982 (3) SA 893 (A) at 923G - 924D). It seems to me, however, that this formulation of the general rule, and particularly the second sentence thereof, requires some clarification and, perhaps, qualification. It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or *bona fide* dispute of fact (see in this regard *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd*1949 (3) SA 1155 (T) at 1163 - 5; *Da Mata v Otto NO* 1972 (3) SA 858 (A) at 882D - H). If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under Rule 6 (5) *(g)* of the Uniform Rules of Court (*cf Petersen v Cuthbert & Co Ltd* 1945 AD 420 at 428; *Room Hire* case *supra* at 1164) and the Court is satisfied as to the inherent credibility of the applicant's factual averment, it

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may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks (see eg *Rikhoto v East Rand Administration Board and Another*1983 (4) SA 278 (W) at 283E - H). Moreover, there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers (see the remarks of BOTHA AJA in the *Associated South African Bakeries* case, *supra* at 924A)."[6]

[18] As mentioned, it was argued by the respondent that there was now a dispute of fact about whether or not the resolutions were voted upon. Contrary to the submissions made when the point was argued at the disciplinary enquiry, the municipal manager made the following statements in his answering affidavit:

> "9.4 The basis for the application is after all a factually incorrect premise- that the impugned decisions/resolutions of October 2014 when not voted on by the first respondent. Later I am demonstrate this assertion is incorrect. The resolutions were indeed voted on.
>
> …
>
> 20.4 Fourthly, it is apparent *ex facie* the resolution itself that the resolution was after all voted. I can confirm this since I was present during the process of deliberations."

[19] Of all the resolutions referred to, the only one which contains an explicit reference to voting is the first of four resolutions purportedly taken at the Council meeting on 31 October 2014, which is contained in the extract from the minutes set out below:

> "Thereafter, the Council RESOLVED
>
> 1. That the chief financial officer be and is hereby formally precautionarily suspended with immediate effect with full pay for a period not 90 days. This is in line with section 6 (1)(a) and (b) of the Local Government Systems Act, no 32 of 200: Disciplinary Regulations for Senior Managers. The suspension was approved by 26 casted votes, with no opposing view or vote.

[6] **1984 (3) SA 623 (A)** at 234F-235D.

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2. That the disciplinary proceedings against the chief financial officer be instituted within the prescribed period thereof.

3. That the municipal manager be and is hereby mandated to appoint the presiding officer that will preside over the disciplinary processes and hearings.

4. That Ms N Gixane, a chief accountant, be and is hereby appointed as the Acting Chief Accountant for a term of three months."

[20] In the previous meeting on 3 October 2014 the report on the alleged misconduct of the applicant tabled and ended with recommendations, inter alia, that disciplinary procedures should be implemented against her that independent investigator should be appointed and that she be suspended. The minutes of that meeting show that a motion to adopt the report on the allegations against her was moved and seconded, but the minutes contained no mention of any vote on the resolution.

[21] In this instance, there is no evidence that the minutes were ever amended when they were presumably adopted in subsequent meetings to reflect that voting had taken place on those resolutions where no specific reference to quote is made. The municipal manager in his answering affidavit makes no attempt whatsoever to explain why the municipality had never argued during the disciplinary enquiry that the resolutions had in fact been voted on, nor does he attempt to explain why the representation was made by the municipality to the chairperson of the enquiry that he would lead evidence to the effect that resolutions were often taken without voting. The failure of the municipal manager to explain the contradiction between the case that was argued at the disciplinary enquiry and his current position that the resolutions were indeed voted upon, given the absence of any minutes correcting those resolutions or any verified extract of a transcript of the proceedings, and given also that the municipality had known since early 2015 the applicant had challenged the submissions on that basis but it had done nothing what it now claims is a factually correct position, in my view renders his denials that the resolutions were voted on so untenable and far-fetched that they cannot be accepted as true. Accordingly, as a matter of fact I am satisfied that the only resolution which was voted on was the resolution suspending the applicant.

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[22] In consequence ,as the other resolutions were not lawful, they were legally inconsequential and could not empower the respondent to proceed with disciplinary action against the applicant because they violated the previously mentioned provisions of the Structures Act and the Constitution.

[23] The last issues that need to be addressed concern the municipality's defence that if the applicant was entitled to set aside the resolutions, the time has passed for doing so and the decision to dismiss her has now rendered any prior unlawfulness in the disciplinary process irrelevant because the decision to dismiss her still stands.

[24] In this regard, the respondent firstly argues that the applicant ought to have challenged the Council's authority to proceed immediately after the chairperson ruled in its favour. In support of this contention, the respondent referred to the case of ***Lebu v Maquassi Hills Local Municipality & others (3)***[7], in which the applicant in that matter had sought an interdict to prevent the respondent municipality from proceeding with disciplinary proceedings against him until it had complied with various provisions of the disciplinary regulations. However, that case is not authority for the proposition that such a challenge must be brought to court at early stage on an urgent basis. In ***Booysen v Minister of Safety & Security & others***[8], the LAC noted that sometimes a timeous intervention by the court *can* save more time and money than letting proceedings run their course, but the court did not suggest that a failure to let an enquiry run its course before approaching the court would non-suit an aggrieved employee. The respondent referred to the recent Constitutional Court decision in ***Khumalo And Another v MEC for Education, Kwazulu-Natal***[9] in which the court reaffirmed the "long standing rule" that:

> " …a legality review must be initiated without undue delay and that courts have the power (as part of their inherent jurisdiction 30 to regulate their own proceedings) to refuse a review application in the face of an undue delay in initiating proceedings or to overlook the delay. This discretion is

[7] (2012) 33 ILJ 2623 (LC)

[8] **(2011) 32 *ILJ* 112 (LAC)** at 129, para [51]

[9] **2014 (5) SA 579 (CC)**

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not open-ended and must be informed by the values of the Constitution. However, because there are no express, legislated time periods in which the MEC was required to bring her application, there is no requirement that a formal application for condonation needs to have been brought.

[25] In this case, the applicant pertinently and pointedly timeously raised her objection to the proceedings with the chairperson of the enquiry and there was no evidence that she waived her right to challenge it in court. Having unsuccessfully challenged the proceedings while they were in progress, the applicant decided to let them run their course having made clear her objection to the fundamental unlawfulness thereof at the outset. She could have tried to interdict the proceedings but then would also have had to satisfy the court she was entitled to do so on an urgent basis and run the risk of the matter being struck off for lack of urgency. It is well established that the court will only rarely intervene in incomplete disciplinary proceedings.[10] The applicant wasted no time launching the review once the process had run its course. In *Khumalo,* the court also emphasized that there are a number of factors that come into play in deciding if a delay should be condoned. In that case the MEC, whom the court held had a duty to correct any unlawfulness relating to a promotion[11], waited 20 months before attempting to set the promotion aside without any explanation for the delay. However, because of the hesitancy of the courts towards intervening in incomplete disciplinary proceedings, I do not think it can be said on the facts of this matter that when the applicant launched these proceedings she had unduly delayed. Accordingly, it is not necessary to consider if the factors governing the condonation of such a delay are satisfied. It must also be remembered in this matter that, it is not as if the applicant surprised the respondent with her challenge to the legality of the proceedings. The respondent was well aware of the flaw in

[10] See ***Jonker v Okhahlamba Municipality & others*** **(2005) 26 *ILJ* 782 (LC)** at 789:

> "[34] Applications to interdict disciplinary proceedings are granted in the most exceptional circumstances (*Mantzaris v University of Durban-Westville & others*(2000) 21 ILJ 1818 (LC); *Molefe v Dihlabeng Local Municipality*(2004) 25 ILJ 680 (O))"

[11] At 590, para [35].

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the proceedings she had raised but did nothing to regularize them which it could have done.

[26] The last argument raised by the respondent is that any previously invalid acts in relation to the institution of the disciplinary proceedings did not invalidate the conclusion of the process as a result of which she was dismissed. In support of this contention it seeks to rely on the principle in *Oudekraal.* In argument, the respondent submitted that the effect of that principle is that the legal efficacy of the applicant's dismissal was independent of the antecedent acts leading up to it and she could not mount a 'collateral attack' on her dismissal by trying to set those aside.

[27] In *Oudekraal* the SCA found that the Administrator's original permission to establish a township had been unlawful because the decision had been made without regard to the presence of cultural and religious sites on the land, which was a material factor that ought to have been considered in granting the permission. However, whether subsequent decisions taken in relation to the proclaimed land were valid or not did not depend on whether the initial act was valid but rather whether its substantive validity was a necessary precondition for the validity of consequent acts. If the validity of consequent acts was dependent on no more than the factual existence of the initial act, then the consequent act would have legal effect for so long as the initial act was not set aside by a competent court.[12] It is apparent from this principle that the application before me is not one in which the consequent acts are lawful simply because certain decisions were taken to institute disciplinary proceedings against the applicant and to make the various appointments mentioned. The impugned decisions specifically empowered the holding of the enquiry in terms of the regulations and the legal authority of the council to authorise those proceedings was inextricably tied up with the lawfulness of those resolutions as the authority to conduct the proceedings and to dismiss the applicant flows from the lawfulness of the disciplinary proceedings. In consequence, a successful attack on the lawfulness of those antecedent resolutions completely undermines the legal foundation of the all the

[12] At 243-244, para [31].

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subsequent acts, because it renders the entire disciplinary proceedings a legal nullity. As a result, the applicant's dismissal for misconduct cannot be lawful as it was effected in breach of the regulations governing the taking of disciplinary action against senior managers because the decisions that needed to be taken in terms of those regulations, which were prerequisites for establishing a lawful disciplinary enquiry were not lawfully valid resolutions of the municipal council. In any event, it is not the council that is empowered in terms of Regulation 12 to impose a sanction. Thus, even if the enquiry had not been invalidly initiated, it was the chairperson of the enquiry who was empowered to impose the sanction, which he only recommended.

[28] For the purposes of formulating the appropriate relief, the order made reflects this.

The counter-application

[29] The counter-application was primarily to set aside the respondent's own decision to afford the applicant a right of appeal against its decision to dismiss her. As the decision to dismiss her is a legal nullity, this application ceases to be relevant.

Order

[30] In light of the above, the following orders are made:

30.1 the resolution of the Special Council meeting of the first respondent held on 3 October 2010 adopting the report on allegations against the applicant and which appear in paragraph 6.5 of the minutes of that meeting is reviewed and set aside and is declared null and void;

30.2 the resolutions of the Council meeting of the first respondent dated 31 October 2010 instituting disciplinary proceedings against the applicant, authorising the municipal manager to appoint a presiding officer are reviewed and set aside and declared null and void;

30.3 the resolution of the Council meeting of the first respondent on 31 August 2015 dismissing the applicant is reviewed and set aside and is declared null and void.

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30.4 The first respondent's counter-application is dismissed.

30.5 The first respondent must pay the applicant's costs including the costs of two counsel.

Lagrange J

Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT:	PHS Zilwa assisted by NR Mtshabe instructed by NZ Mtshabe Inc
FIRST RESPONDENT:	Madonsela SC instructed by X Ntshulana

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