



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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Please note that the media summary is for the benefit of the media and does not form part of the judgment.

***Greater Tzaneen Municipality v Andre Jean Jacques Le Grange (685/2013) [2015]
ZASCA 17***

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) dismissed the appeal by the Greater Tzaneen Municipality (the appellant) and upheld an order of the North Gauteng High Court, Pretoria, that the municipality is obliged to employ the respondent, Mr Le Grange

The two issues before the SCA were (i) whether the high court had jurisdiction to hear a matter concerning a contractual agreement to employ a person, or whether such jurisdiction was excluded by s 157 of the Labour Relations Act 66 of 1995 (LRA) and (ii) whether the high court was correct in ordering the rectification of the contract in question and declaring that the municipality was obliged to employ Mr Le Grange..

Mr Le Grange, entered into an employment contract with the Greater Tzaneen Municipality (the municipality), in terms of which he would be employed as the municipality's chief financial officer for three years, and upon expiration of this period the municipality would 'endeavour to suitably accommodate [Mr Le Grange] in a permanent position on [its] service register....' Upon the expiry of the three year period, the municipality refused to re-employ Mr Le Grange, and applied to the high court for an order interdicting him from accessing the municipal premises as an employee. Mr Le Grange opposed this interdict on the basis that the municipality was obligated to re-employ him, and brought a counter-application in which he sought to assert his right to be re-employed and to rectify the contract in question by replacing, in the contract, the word "endeavour" with "be obliged". The basis for the rectification was that during the negotiation of the contract it was understood by all involved that in view of the 17 years he had already spent working for the municipality, Mr Le Grange

required secure employment following the three year period. Both Mr Le Grange and the drafter of the contract (the municipality's human resource manager) had been under the mistaken belief that the word 'endeavour' in fact entailed an obligation; as they both believed that it was the correct translation for the Afrikaans word 'onderneem' (which is closer to 'undertake').

The high court dismissed the municipality's application for the interdict, granted Mr Le Grange's order for rectification of the agreement, and declared that the municipality was obliged to employ him.

Before the SCA, the municipality argued that the high court had lacked jurisdiction to hear Mr Le Grange's complaint because he was essentially requesting a re-instatement, which was a labour matter that could only be brought before the labour court. The SCA rejected this submission on the basis that the remedy sought by Mr Le Grange was specific performance of a contractual term and was not based on any provisions of the LRA. In addition, the provision of the Basic Conditions of Employment Act 75 of 1997 (BCEA) relied upon by the municipality specifically allowed for concurrent jurisdiction of the labour and civil courts in matters of employment contracts.

The municipality further argued that the order for rectification should not have been granted on the basis that (i) the rectification would result in the contract being in conflict with the Local Government: Municipal Systems Act 32 of 2000 (MSA) and (ii) that Mr Le Grange had failed to prove that the word 'endeavour' inaccurately reflected the intentions of the parties. The SCA rejected both arguments. It held that the MSA only applied in respect of certain municipal posts, which were not relevant in this matter. And the municipality had failed to tender any valid first-hand evidence to contradict the background circumstances and context of the contractual negotiations presented by Mr Le Grange. Accordingly, the SCA held that the high court had properly granted the order for rectification.

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