



## 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

**Date:** 20 April 2023

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*South African Municipal Workers' Union National Provident Fund v Dihlabeng Local Municipality and Others (65/2022) [2023] ZASCA 55 (20 April 2023)*

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Today, the Supreme Court of Appeal (SCA) dismissed an appeal with costs, including the costs of two counsel, against the judgment of the Free State Division of the High Court, Bloemfontein (the high court), which dismissed an application brought by the appellant, the South African Municipal Workers' Union National Provident Fund (the Fund), in terms of s 13A of the Pension Funds Act 24 of 1956 (the Act), for payment of certain alleged arrear pension fund contributions as well as statutory interest thereon from the first respondent, Dihlabeng Local Municipality (the Municipality), and demanded the provision of certain minimum information claimed from the Municipality.

The facts of the matter were as follows. On 6 April 2009, various employees of the Municipality engaged in an unprotected strike resulting in their subsequent dismissal on 31 July 2009 following a disciplinary hearing. The affected 75 employees challenged their dismissal in the high court. Before the application could be heard, the Municipality and the affected employees entered into a settlement agreement on 8 October 2009, whereby the affected employees would again be employed by the Municipality with effect from 8 October 2009, in their previous positions under certain conditions.

In 2011, the affected employees approached the Fund, and requested payment of their withdrawal benefits on the basis that the benefits accrued to them as a result of their dismissal on 31 July 2009. The Fund refused to pay their benefits, stating that the employees were reinstated and not re-employed. The affected employees referred the complaint to the Pension Funds Adjudicator (the Adjudicator), who, on 14 December 2012, dismissed the complaint. The Fund then approached the high court, claiming payment of alleged arrear pension fund contributions from the Municipality.

The issues to be determined in the appeal were the following. Firstly, whether the doctrine of *res judicata* applied in view of the Adjudicator's determination, and whether the Municipality and the second respondent, the Municipal Employees Pension Fund (MEPF), were estopped from arguing that the affected employees' memberships of the Fund had terminated. Secondly, whether the affected employees were re-employed or reinstated in terms of the settlement agreement. And lastly, whether the Fund's claim (up to and including September 2010) had prescribed.

In regard to *res judicata*, the SCA found that the Fund did not even get past the starting blocks on the requirements of issue estoppel because not all the parties in the high court were in the matter determined by the Adjudicator. When the Adjudicator gave her determination, the Municipality was not a party in the proceedings. The Municipality was mentioned in the determination only as the employer and no relief was sought against it. The SCA thus found that that should have been the end of the matter.

Moreover, the SCA found further that the issue that arose in the high court was not that which was finally determined by the Adjudicator. Before her, the complaint was about the Fund's refusal to pay the complainants, who were the employees of the Municipality. In the high court, the Fund sought to enforce payment of contributions by the Municipality. The Adjudicator did not decide this issue. The SCA therefore held that issue estoppel found no application in this matter, and the high court was correct in rejecting the Fund's argument in this regard.

In regard to whether the relevant employees were reinstated or re-employed, the SCA considered the settlement agreement. In applying the well-established interpretative principles on the terms of the settlement agreement, including bearing in mind the context in which the agreement was concluded, and the conduct of the parties after its conclusion, the SCA held that it could not be disputed that the intention of the Municipality and the employees was that the affected employees were in fact re-employed and not reinstated.

The SCA found that the text of the settlement agreement in para 2 that read, ' . . . no salary benefits or compensation . . . and no retrospective salaries/benefits . . . ', when sensibly interpreted, was clearly understood to mean that the parties (the Municipality and the employees) intended re-employment instead of reinstatement. The SCA found further that the purpose and surrounding circumstances of the settlement agreement were that the employees received new employee numbers; the employees freshly elected a pension fund to which their pension fund contributions would be made; the employees freshly elected a medical aid fund; and their annual leave and sick leave cycles commenced on 1 October 2009. Those factors and the circumstances in which the settlement agreement was concluded, as well as the conduct of the parties after its conclusion, were clearly at odds with reinstatement.

Lastly, the SCA held that, in view of the above findings, it was not necessary to consider the defence of prescription.

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