

SUMMARY

Mr. Notyawa (hereinafter “the Applicant”) applied for a position as the municipal manager of the Makana Municipality, during November 2014 and was duly appointed as same by the Municipal Council in March 2015.

Subsequent to the Applicant’s appointment, and under the authority of section 54A of the Local Government: Municipal Systems Act (hereinafter “the Act”), the MEC for Co-operative Governance and Traditional Affairs (Eastern Cape)(the Second Respondent) recorded during April 2015 that he was not satisfied that the appointment of the Applicant complied with the provisions of the Act, in that the Applicant lacked the experience required at a senior management level within municipality administration.

The Applicant thereafter launched an application in the High Court on 17 February 2017, against the MEC, the Municipality and the administrator of the Municipality to review and set aside the decision to rescind his appointment and re-advertise the post of municipal manager.

Court a quo

The Eastern Cape Division of the High Court, Grahamstown, held that the impugned decisions constituted administrative actions and as such, the Applicant failed to bring his review application timeously in terms of section 9 of the Promotion of Administrative Justice Act 3 of 2000.

Furthermore, the Court held that the explanation offered by the Applicant in an attempt to condone the delay, did not cover the entire duration of inaction and that there were substantial periods for which no explanation was provided by the Applicant. Additionally, the High Court opined that the Applicant’s prospects of success on the merits were poor. The High Court thus exercised its discretion against condonation, dismissed the application and refused the Applicant leave to appeal.

The question before the Constitutional Court was whether in refusing to overlook the unreasonable delay on the part of the Applicant to institute review proceedings, the High Court failed to properly exercise its discretion.

HELD

The Constitutional Court held that the High Court correctly applied the two-stage approach in refusing condonation, in that it firstly found that the Applicant’s delay was unreasonable and secondly determined that such delay could not be condoned.

Moreover, the Constitutional Court found that it would not in the interests of justice to grant the Applicant leave to appeal. As such, the application was dismissed.

VALUE

In order to determine whether a *court of quo* properly exercised its judicial discretion, such discretion must not be based on incorrect facts or wrong principles of law. Should neither of these two grounds be established, it cannot be said that the exercise of discretion was not judicial.

Written by Tayla Bruce Checked by Stefan Bezuidenhout

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