

High Court finds appointment of Makhado CFO unlawful

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Top-scoring candidate Godfrey Raliphada was overlooked by Makhado council.



Louis Trichardt union members who protested the appointment of their municipality's Chief Financial Officer have been vindicated. Illustration: Lisa Nelson / GroundUp

- Makhado Municipality's appointment of a chief financial officer was unlawful, the Polokwane High Court has ruled.
- Acting judge Sydwell Sikwari has set aside the council's decision to appoint the second highest scoring candidate for the job.
- The total disregard of the selection panel's recommendation by the council was prejudicial and unlawful under the Constitution, the judge said.
- The council decision resulted in protests by union members last year.

The Limpopo High Court in Polokwane has set aside a decision by the Makhado Municipality to ignore the recommendation of a selection panel. The municipality had instead appointed the second-highest scoring candidate as its chief financial officer (CFO).

Acting Judge Sydwell Sikhwari has ruled that the decision taken by the council in August last year to appoint Mulatwa Thangavhuelelo as CFO was unlawful, unreasonable and procedurally unfair. The judge ordered the municipal respondents to pay the costs.

[Read the judgment](#)

The case came before the court in an application by Godfrey Raliphada, the overlooked, top-scoring candidate.

In response, lawyers for the municipality raised technical points. They argued that the court had no jurisdiction to entertain the application and it should be referred to labour bargaining forums or the Labour court. They said Raliphada's case was about unfair discrimination on the basis of his gender – he was overlooked for the position simply because he was a man – and as such he should have invoked the Employment Equity Act. They also submitted that the employment was not an administrative action, which could be reviewed by a court.

Judge Sikwari, however, disagreed.

He said the allegation of unfair gender discrimination was just one of many complaints, the most prominent being that the council had ignored the selection panel's recommendation without rational explanation or any explanation at all, when it had no right to do so.

"This court is satisfied that it does have jurisdiction to hear the review," he said.

On the merits, he said most issues were common cause.



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Following the interview process Raliphada had scored the highest with 86% and Thangavhuelelo second highest with 69%.

Following a competency test, both were found to be competent although Thangavhuelelo scored higher in that round.

The selection panel was unequivocally clear that Raliphada was the most suitable candidate.

It was also common cause that he had been acting in the CFO position during which period the municipality obtained unqualified audits for three successive years.

The judge said Raliphada had submitted that he had brought financial stability to the municipality whereas Thangavhuelelo was the CFO at the Vhembe District Municipality, which had never obtained an unqualified audit during her tenure.

Judge Sikwari said the council had not furnished reasons on why it disregarded the recommendation of the selection panel.

"The records show that the council appointed her and mentions that she is a female candidate. It is not clear if this played a role or not in influencing the decision. But the total disregard of the selection panel's recommendation was prejudicial to the applicant and a disregard of the law and the Constitution.

"It shows an indication on the part of the council to take decisions they wish without observing principles of law and fairness

to parties as well as fairness of the process itself,” he said.

Regarding submission by the municipality that Raliphada did not possess an NQF8 qualification, the judge said this was also not a sound ground to disregard the selection panel’s recommendation.

“If this was so, then the council should have spelt it out in the minutes of the meeting,” he said, noting that the applicant had, in law, 18 months to obtain the qualification.

Last year, the council’s decision to overlook Raliphada sparked protests by Makhado municipal workers affiliated to the South African Municipal Workers’ Union (Samwu) and Independent Municipal Allied Trade Union (Imatu). They protested outside the mayor’s office demanding answers.

Samwu and Imatu unions welcomed the court decision.

“We have long said Raliphada is the rightful person to take up the position of Makhado municipality CFO by virtue of performing well in the interview and performing well while he was acting,” said Raymond Raduvha, Makhado secretary of Samwu.

Emmanuel Mpho Mulaudzi Khorommbi, Imatu chairperson, said the court has set a good precedent that the rule of law must be applied and this should be an eye opener that politicians should stay away from administration work.

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