



ARBITRATION AWARD

Panelist/s: Karen Kleinot _____
Case No.: PSCBC174-22/23 _____
Date of Ruling: 16 February 2023 _____

In the matter between:

PSA obo NP Gcumisa, SP Mlotshwa, GM Mfeka & BS Shezi

(Union / Applicant)

and

Department of Health - KZN

(1st Respondent)

DPSA

(2nd Respondent)

Details of the hearing

- 1 The matter was scheduled for arbitration on 24 January 2023 and held on a virtual platform, Zoom. Mr. Ngubane from the PSA attended and represented the applicants. Mr. Lembethe attended on behalf of the respondent. Mr. H Nhlupo represented the DPSA. The arbitration proceedings were recorded.
- 2 Opening statements were tendered and thereafter it was decided that parties provide written submissions as the issue was narrow. Parties were directed to provide heads of argument on 31 January 2023, the applicant to respond on 7 February 2023 and the respondents to reply on 14 February 2023. The closing arguments were supplied by the Respondent on 7 February 2023. The applicant party failed to supply closing arguments.

Issue in dispute

- 3 The issue in dispute is the interpretation and application of Resolution 1 of 2012, clause 18.1” *Amendments to PSCBC Resolution 3 of 2009 18.1 Clause 3.6.3.2 of PSCBC Resolution 3 of 2009 is hereby amended to allow employees whose posts are graded on salary levels 10 and 12 to be appointed and remunerated on salary levels 10 and 12 respectively.*”

Background to the dispute

- 4 The applicants seek to be upgraded from their salary level 9 to 10. Applicants, N P Gcumisa, SP Mlotshwa, and GM Mfeka were appointed as Assistant Directors on 1 February 2022. BS Shezi was appointed as an Assistant Director on 5 March 2018.

Survey of the submissions

Applicant’s submissions

- 5 Mr. Ngubane argued that the first respondent employed delaying tactics in that Mr. Lembethe indicated that he could not submit oral argument as he was not adequately prepared. This is improbable as Mr. Lembethe has been involved in the grievance relating to this case. Consequently, it was argued that a costs order was appropriate.
- 6 All four applicants applied for their posts which were advertised on salary level 9, Assistant Director: Labour Relations. The respondent was supposed to advertise the posts of Assistant Director: HRM: Labour Relations Head Office on salary level 10 as per the job evaluation result. This is dated 4 May 2017. The applicants became aware of the job evaluation on 4 May 2022 when the document was placed on the intranet. When Ms. Shezi applied for the post in November 2014 it was advertised at level 10. Upon attending the interview, Ms. Shezi was informed that the post was temporarily down graded to salary level 9 pending the confirmation of job evaluation results from the DPSA. Ms. Shezi was

appointed on 1 February 2016. The remaining applicants applied for their posts which were advertised at level 9 but given the job evaluation were graded at level 10.

- 7 Resolutions 3 of 2009 and 1 of 2012 are clear in that clause 3.6.3.2 was amended by clause 18.1 which allows employees whose posts are graded on salary level 10 and 12 respectively to be appointed and remunerated on salary level 10 and 12 respectively. The respondent has failed to implement this clause.
- 8 The documents submitted do not reflect that there is a job evaluation which graded the post at level 9. In **Makgoba MM & Others v MEC for Health Limpopo and 3 Others (JR1806/17) [2021] ZALCMP 11** the court held that failing to appoint the applicants in their posts that were graded 10 and 12 as of 1 August 2012 was unlawful and that the respondent had failed to implement Resolution 1 of 2012 and ordered that the applicants be placed in their posts at the correct grade retrospectively to their dates of appointment.
- 9 Therefore, it was argued that the first and second respondent had failed to apply Resolution 1/2012 correctly and that the applicants stand to be appointed at level 10 and remunerated accordingly.

First respondent's submissions

- 10 The first respondent argued that the matter proceeded and that the request to submit arguments which was afforded in other cases did not prejudice the applicants and as such no order for costs should be made.
- 11 It is submitted that Resolution 1 of 2012 clause 18.1 is read with Resolution 3 of 2009 clause 3.6.3.2. The applicants applied for the posts that were advertised at level 9 and were offered and accepted offers at salary level 9.
- 12 The posts, Assistant Directors, were evaluated and approved by the Head of Department in May 2007 prior to Resolutions 3 of 2009 and 1 of 2012. The job evaluation referred to by the applicants were only changes to the job title from Assistant Manager to Assistant Director. This it was submitted had nothing to do with job weight or levels. Further this was not verified by the Minister, Public Service and Administration (MPSA).
- 13 Respondent submits that Resolution 1 of 2012 applies to only those employees who were appointed prior to the implementation of Resolution 1 of 2012. Employees can only be upgraded to salary level 10 if the post that they occupy is regraded and verified by the MPSA at salary level 10.

- 14 The DPSA issued a number of circulars after Resolution 3 of 2009 directing Departments to regrade program 1 posts as per the resolutions. The posts occupied by the applicants were not verified by the DPSA at salary level 10. The first respondent embarked on a process of benchmarking these posts. The Directorate Organizational Efficiency Services also embarked on the process of removing all program 1 posts from the intranet that were not verified by the DPSA in order to limit unnecessary enquiries, grievances, and staff dissatisfaction.
- 15 When determining a collective agreement, the common intention of the parties must be determined, and the words are afforded their ordinary and grammatical meaning. The primary objectives of the collective agreements are relevant: resolution 1 of 2007 purpose was to develop and implement salary progression and career pathing for employees not covered by occupational specific salary structures.
- 16 Resolution 3 of 2009 was a product of Resolution 1 of 2007. Clause 1.1 of Resolution 3 of 2009 provides: *"To give effect to clause 5 of Resolution 1 of 2007 by introducing a revised salary structure for all categories graded on salary levels 1-12 not covered by any Occupation Specific Dispensation (OSD)."*
- 17 Clause 1.2 of Resolution 3 of 2009 *"To introduce a career pathing model and grade progression for identified salary levels. One of the principles of grade progression model is that: Posts are graded based on the outcome of Job Evaluation."* For salary levels 9 and 10 the grade (salary level) progression model is structured as follows: Clause 3.6.3.2 *"The commencing salary for all employees on posts not covered by any OSD as per PSCBC Resolutions 1 of 2007 and 3 of 2008, and appointed as Assistant Directors and Deputy Directors shall, with effect from 1 July 2010 be on salary levels 9 and 11 respectively."*
- 18 Resolution 1 of 2012 in clause 18.1 reads: *"Clause 3.6.3.2 of PSCBC Resolution 3 of 2009 is hereby amended to allow employees whose posts are graded on salary levels 10 and 12 to be appointed and remunerated on salary levels 10 and 12 respectively"*. This came into effect on 31 July 2012. This meant that those employees whose posts were graded on salary level 10 and 12 be appointed and remunerated on salary level 10 and 12. Resolution 3 of 2009 came into effect from 1 April 2009 except for clauses 3.6.2 and 3.6.3 which take effect from 1 April 2010. Clause 3.6.3.2 provides that *"employees appointed as Assistant Directors and Deputy Directors shall with effect from 1 July 2010, be on salary levels 9 and 11 respectively"*. It was argued that the applicable period in respect of which clause 18.1 finds operation is 1 July 2010 to 31 July 2012.

Second Respondents' submissions

- 19 The applicants allege that the respondent refuses to comply with Resolution 1/2012 clause 18.1. The applicants rely on the job evaluation of 4 May 2017 which was not verified by the MPSA and approved by the executive authority.
- 20 Resolution 3/2009 in clause 3.6.3.2 *"the commencing salary for all employees not covered by any OSD as per PSCBC Resolution 1/2007 and 3 of 2008, and appointed as Assistant and Deputy Directors shall with effect from 1 July 2010 be on salary levels 9 and 11 respectively"*
- 21 Resolution 1 of 2012 *"18.1 Clause 3.6.3.2 of PSCBC Resolution 3 of 2009 is hereby amended to allow employees whose posts are graded on salary levels 10 and 12 to be appointed and remunerated on salary levels 10 and 12 respectively."* The resolution provides that the agreement shall come into effect on the date it enjoys the majority support and will remain in force unless terminated or amended by agreement. The agreement enjoyed majority support on 31 July 2012.
- 22 In terms of the Public Service Act 1994 the MPSA for proper implementation of the collective agreement elucidate or supplement such a determination by means of a directive, provided it is not in conflict with or does not derogate from the terms of the agreement.
- 23 The following DPSA circulars were issued: Circular 16/P dated February 2013 and Circular 4 of 2014. The circulars were issued to all departments to ensure consistency and uniformity in the implementation of the Resolution.
- 24 Circular 4 of 2014 provides paragraph 5 *" (a) The Minister directed in terms of PSCBC Resolution 1 of 2012 Clause 18.1 and as set out in Circular 1/P dated 25 February 2013 that all posts/jobs that were graded on salary levels 10 and 12 between 1 July 2010 and 31 July 2012 and whose incumbents were appointed on salary levels 9 and 11 to be automatically upgraded to salary levels 10 and 12 respectively with effect from 1 August 2012, subject to the availability of supporting job evaluation results. (b) The MPSA directs in terms of Section 31 (1) (c) and 3 (2) of the Public Service Act that "Should executive authorities grade new jobs/posts or regrade existing job/posts within the corporate services environment at salary level 9,10,11 or 12, the grades of such job/posts must be consulted with and approved by the MPSA before a final decision on the grade post is taken."* It was submitted that this directive was applicable to posts /jobs and employees who were appointed on or after 1 August 2012.

- 25 The MPSA also directs in terms of paragraph 4 of Circular 1 of 2016 that where departments have already upgraded employees who were appointed from 1 August 2012 on job/post graded on salary level 10 and 12 in Corporate Services (Program 1) without consultation with the MPSA such departments should reverse those irregular upgrades and overpayments must be recovered. The necessary remedial administrative action must be undertaken in terms of the PSA, 1994 Section 16A and Section 38.
- 26 The MPSA's directive is not in conflict with the Resolution, nor does it derogate from the Resolution and stands to be considered by the Commissioner. The applicants were all appointed after 1 August 2012. Their posts were advertised based on Resolution 3 of 2009 pending the verification of posts by the MPSA. The posts were last subjected to job evaluation in 2007. In terms of Regulation 40 (c) of the PSR, 2016 *"Before creating a post for any new job, or filling any vacancy, an executive authority shall- in case of a vacant post not determined in terms of an OSD or graded by the Minister in terms of regulation 41 (2) (d), evaluate the job unless the specific job has been evaluated in the last 60 calendar months"*. The posts have not been evaluated in the last 60 calendar months and there has been no consultation with the MPSA for verification as per PSR, 2016 and the circulars. The applicants were appointed after 1 August 2012 and as such clause 18.1 does not apply to them. The applicants were not employed when Resolution 1 of 2012 came into effect. Circular 16/P and 4 of 2014 provide for the scenario that from 1 August 2012, the employees occupying posts on salary level 9, 10, 11, 12 should be appointed on salary level 9 and 11 pending the verification by MPSA before final grading is confirmed. Therefore, the Department was correct to appoint the applicants on level 9.
- 27 The Labour Court held in **National Commissioner for South African Police Services v Mokoena and Others (2013)**, that when interpreting a collective agreement the entire context of the agreement must be considered. The court reiterated that what is called for is a practical approach giving effect to the ordinary meaning of the words used. It was argued that the Applicants are selective in their interpretation and ignore the totality and context of the collective agreement by relying solely on clause 18.1 and disregarding the Circulars. The applicants' interpretation that employees should be upgraded from salary levels 9 to 10 and 11 to 12 perpetually does not take note that clause 3.6..3.2 of Resolution 3 of 2009 came into effect on 1 July 2010 and lapsed on 31 July 2012 through clause 18.1 and clause 25 of Resolution 1 of 2012.
- 28 Therefore the respondent has complied with Resolution 1 of 2012 and with the Circulars. The applicants cannot claim that they qualify to be upgraded from salary level 9 to 10 when it is common cause that they were appointed into the current posts/job after 1 August 2012. Clause 18.1 of Resolution 1 of 2012, only applied to those posts that were graded on salary levels 10 and 12 between 1 July 2010 and 31

July 2012 and whose incumbents were appointed on salary level 9 and 11 subject to the availability of supporting job evaluation results as stipulated Circular 4 of 2014

- 29 It is common cause that the First Respondent advertised the posts of Assistant Directors and appointed the incumbents on salary level 9 pending the verification of posts by the MPSA. The applicants applied for the posts and were the successful candidates. The applicants were appointed on salary level 9 which they accepted. Resolution 3/2009 came into effect from 1 July 2009 and was amended by clause 18.1 in Resolution 1 of 2012 on 31 July 2012. The applicants were appointed after 1 August 2012 and appointed correctly as Resolution 3 of 2009 was still active until the post is evaluated and consulted with MPSA for final grading. The applicants were not employed in the posts when Resolution 1 of 2012 came into effect. Thus, the applicants appointed in salary level 9 after 1 August 2012 do not qualify to be upgraded to salary level 10. The respondent has thus complied with the resolution.

Survey of the argument

Applicant's argument

- 30 The applicants were appointed in posts of Assistant Director at head office. It is common cause that NP Gcumisa, ST Mlotshwa and GM Mfeka applied and were appointed at salary level 9 and remunerated on this level. These posts should have been advertised on salary level 10 and the applicants remunerated on this level.
- 31 Ms. Shezi applied for the post that was advertised on 31 October 2014 at salary level 10.
- 32 The job evaluation on page 33 was sourced from the respondent's intranet and after the grievance this was removed. The respondent has not provided evidence about the grading of the posts at the time of the advert only that the applicants applied for the posts which were advertised at level 9.
- 33 The respondent's contention that the job evaluation was merely a title change is incorrect and bears the evaluation score and job weight. That is the job evaluation was evaluated at salary level 10 after approval from the Head of Department with the weight of 603.28. The job evaluation results of 2013 were withdrawn. This was not a process of a title change but a proper job evaluation for the post Assistant Director.
- 34 The argument that clause 18.1 of Resolution 1 of 2012 and clause 3.6.3.2 of resolution 3 of 2009 cannot be applicable for the period July 2009 to 31 July 2012. This is borne out in that the respondent advertised the posts at level 10 in November 2014 and the job evaluation of 4 May 2017 reflects that the job is at level 10.

- 35 The post was graded at salary level 10 on 13 May 2007 which took place prior to the two resolutions.
- 36 Circular 4 of 2014 reflects that in paragraph 5 (b) that employees who were appointed on or after 1 August 2012, should the executive authorities grade or regrade the posts within the corporate service on salary levels 9,10,11, or 12 the grades of such jobs or posts must be consulted with and approved by the MPSA before a final decision on a grade is taken. The respondent has not regraded the post of Assistant Director nor has there been consultation with the MPSA regarding regrading of the post. The post has been graded and evaluated at salary level 10 from May 2007 to present.
- 37 It was argued that the applicants discovered an underpayment in their remuneration, and they are seeking that this be rectified. The applicants submit that the respondent has not interpreted Resolution 1 of 2012 or 3 of 2009 correctly and seek to be placed at level 10 earning the requisite remuneration at level 10.

First respondent's argument

- 38 It was argued that there was no basis for a costs order as there was no application for postponement, rather the request was to submit written heads of argument which has been granted by the Council.
- 39 Resolution 1 of 2012 must be read in conjunction with Resolution 3 of 2009. The applicants were appointed on 1 February 2022. The posts were advertised at level 9. Ms. Shezi was appointed on 5 March 2018 on salary level 9. The applicants were offered and accepted their positions at salary level 9. The posts of Assistant Directors were evaluated and approved by the Head of Dept in May 2007 prior to the coming into effect of the Resolutions (1 of 2012 and 3 of 2009). The evaluation results changed the job title but not the weight and levels. This was not verified by the MPSA.
- .
- 40 It is submitted that Resolution 1 of 2012 applies only to those employees appointed prior to the implementation of Resolution 1 of 2012. Employees can only be upgraded to salary level 10 if the posts that they occupy are regraded and verified by the MPSA at level 10.
- 41 After Resolution 3 of 2009 various circulars were issued by the DPSA directing departments to regrade the program 1 posts as per the resolution. The posts occupied by the applicant were not verified by the DPSA at salary level 10. There is a process of benchmarking that has been embarked upon. The Directorate: Organizational Efficiency Services has also embarked on the process of removing all program 1 posts from intranet that were not verified.

- 42 It was submitted that when determining an interpretation and application dispute the words used are given their ordinary and grammatical meaning. The primary objectives of the collective agreements must also be considered. Resolution 1 of 2007 reflects that the parties will develop and implement a salary progression and career pathing model for those employees that are not covered by occupational specific salary structures. Resolution 3 of 2009 gives effect to resolution 1 of 2007 by introducing a revised salary structure for salary levels 1-12 that are not covered by any Occupation Specific Dispensation. One of the objectives of Resolution 3 of 2009 was to introduce career pathing and grade progression for identified salary levels. Posts are graded based on the outcome of a job evaluation. Clause 3.6.3.2 provides that *“The commencing salary for all employees on posts not covered by any OSD as per PSCBC Resolutions 1 of 2007 and 3 of 2008 and appointed as Assistant Directors and Deputy Directors shall with effect from 1 July 2010 be on salary levels 9 and 11 respectively”*. Resolution 1 of 2012 in clause 18.1 amends Clause 3.6.3.2 *“to allow employees whose posts are graded on salary levels 10 and 12 to be appointed and remunerated on salary levels 10 and 12 respectively”*.
- 43 Clause 18.1 of Resolution 1 of 2012 came into effect on 31 July 2012. Clause 5.1 of Resolution 3 of 2009 provides that the agreement comes into effect from 1 April 2009, except for clauses 3.6.2 and 3.6.3 which take effect from 1 April 2010. Clause 3.6.3.2 provides that *“employees appointed as Assistant Directors and Deputy Directors shall with effect from 1 July 2010, be on salary levels 9 and 11 respectively.”* It was thus argued that the applicable period in which clause 18.1 was applicable was from 1 July 2010 to 31 July 2012.
- 44 In terms of the Public Service Act the Minister of the Public Service is entitled to issue directives to supplement or elucidate a collective agreement. This was done as the DPSA issued various circulars 16/P dated 12/09/2011, 16/P dated 25 Feb 2013 and 4 of 2014. These Circulars apply, that only employees serving in the posts that were graded salary level 10 and 12 since implementation of the Resolution 3 of 2009 up to and including 31 July 2012 be automatically absorbed into the regraded posts with effect from 1 August 2012 on condition such posts were job evaluated and graded at salary level 10, or 12. If the applicants occupied the posts prior to the commencement of Resolution 1 of 2012 they would have qualified to be elevated to salary level 10 and would have been upgraded. In **Yende v Public Service Coordinating Bargaining Council (PSCBC and Others (C690/2018) [2021] ZALCCT 36** the court held the directives issued by the Minister were applicable provided these are not in conflict or derogate from the agreement. The court held that the decision reached by the arbitrator that clause 18.1 was to ameliorate the negative impact of clause 3.6.3.2 upon existing incumbents of posts graded salary level 10 during a period when the executive authority still had a discretion to grade the job at either level 9 or 10 was reasonable.

- 45 Clause 18.1 of Resolution 1 of 2012 and 3.6.3.2 is only applicable to those who were occupying posts by 31 July 2012. The Yende case cited above supports this conclusion. The operative period of clause 18.1 of Resolution 1 of 2012, read with clause 3.6.3.2 of Resolution 3 of 2009 was from 1 July 2010 to 31 July 2012. The provisions applied to Assistant Directors and Deputy Directors at salary level 9 and 11 during 1 July 2010 to 31 July 2012. Clause 18.1 of Resolution 1 of 2012 does not apply to the applicants as they were appointed after 1 August 2012. Therefore, the respondent had complied with the resolution.

Analysis of the submissions

- 46 In **HOSPERSA obo Tshambi v the Department of Health KZN DA1/2015** the court pointed out that a dispute, requires at, minimum a difference of opinion about something between two or more persons. An interpretation and application dispute requires a difference of opinion about what a provision of the agreement means, that is where parties differ over the meaning of a clause in the collective agreement. About the application of a collective agreement, which requires at, minimum a difference of opinion whether it can be invoked. That is whether the collective agreement is applicable or whether the activity which gives rise to the controversy is covered by the collective agreement and includes whether an agreement applies to the facts in question and the manner in which the agreement is applied which includes non- compliance.
- 47 When determining a dispute pertaining to the interpretation and application of a Collective Agreement such as Resolution 1 of 2012 and 3 of 2009 the golden rule applies, that is the ordinary meaning of the words to the clause are applied. According to Grogan (Workplace Law tenth edition,2012) "The constitutional injunction that where possible, all legislation must be interpreted to give effect to fundamental constitutional rights, rather than limit or exclude them" It is important to ensure that an absurdity does not result.
- 48 The court set out the test that applies in interpretation and application disputes, in **National Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)** the court held that "Interpretation is the process of attributing meaning to the words used in a document, be it legislation or some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed, and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be

weighed in the light of all these factors. The process is objective and not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusiness like results or undermines the apparent purpose of the document. The inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document”.

- 49 In this case the applicants contend that they are entitled to be at level 10 as there is a job evaluation putting the post/job at level 10 dated 4 May 2017. Further that this had always been the level as of 2007 where the job post was positioned at level 10. The respondent contends that they are not entitled to be upgraded as the agreement only applied between 1 July 2009 and 31 July 2012. Further that the job evaluation had not been approved by the MPSA. That the applicants were employed after 2012 and the resolution does not apply.
- 42 It is common cause that the applicants applied for the posts and accepted the posts which were advertised at level 9 and that the applicants were appointed after 2012, three on 1 February 2022 and one in March 2018. Ms. Shezi has broken service and was employed prior to 2018 but left the service and was then employed once more in March 2018.
- 43 To understand the context reference is made to clause 3.6.3.2 which was amended by clause 18.1. This is as follows: *Resolution 3 of 2009 clause 3.6.3.2 The commencing salary for all employees on posts not covered by OSD as per PSCBC Resolutions 1 of 2007 and 3 of 2008, and appointed as Assistant Directors and Deputy Directors shall with effect from 1 July 2010 be on salary levels 9, and 11 respectively.*
- 44 Clause 18.1 reads as follows: *“18.1 Clause 3.6.3.2 of PSCBC Resolution 3 of 2009 is hereby amended to allow employees whose posts are graded on salary levels 10 and 12 to be appointed and remunerated on salary levels 10 and 12 respectively.”* Clause 25 is titled “Implementation of Agreement”, clause 25.1 *“This agreement shall come into effect on the date it enjoys majority support and will remain in force unless terminated by agreement.”* The agreement is dated 31 July 2012.
- 45 The words are straightforward and peremptory reflecting that employees whose posts are graded on salary level 10 and 12 to be appointed and remunerated on these salary levels. It was argued that in terms of the DPSA circulars such job evaluation had to be approved by the MPSA. It is common cause and that the job evaluation that the applicants seek to rely on has not been verified by the MPSA. This is borne out in Section 3 (1) (c) of the Public Service Act *“Should executive authorities grade new jobs or posts or regrade existing jobs or posts within corporate services environment at salary level 9,10, 11, or 12, the grades of such jobs/posts must be consulted with and approved by the MPSA before a final*

decision on the grade is taken". The language used is peremptory and clear that without approval by the MPSA the grade cannot change.

- 46 The Circulars referred to are supporting documents as to how the collective agreement is implemented and are relevant to the interpretation and application of the collective agreement. It is noteworthy that Circular 4 of 2014 reflects that resolution 1 of 2012 and specifically clause 18.1 is applicable for the period 1 July 2010 and 31 July 2012 for those incumbents who were appointed on salary levels 9 and 11. This is conditional on the availability of supporting job evaluation results. It is logical and reasonable that once a post is graded or evaluated, that there must be consultation and approval by the MPSA in order to ensure consistency. If this were ignored, employees fulfilling similar, or the same posts or jobs would be remunerated differently, giving rise to disputes, and leading to inequity. Circular 1 of 2016 reflects that where the executive authority has re-graded a post without consultation or approval from the MPSA such must be reversed and over expenditure recovered. The Public Service Regulations amplify this in terms of regulation 40 (c) which indicates that prior to filling a vacancy or creating a post that, the executive authority evaluates, the job unless the job has been evaluated in the last 60 months. This is not the case in this matter. There has been no job evaluation in past 60 months. Even if I accept that there has been a job evaluation as per the document dated 4 May 2017 this has not been verified by the MPSA and as such does not have much weight.
- 47 Reference was made to a grading as of May 2007 which is reflected on the memorandum of the job evaluation dated 4 May 2017. This states that "the results of the undermentioned post/job that was evaluated (approved by Head of Department on 13 May 2007) are-. It is undisputed that the grading of 4 May 2017 reflects level 10. This reflects that there was an attempt to grade the post at level 10 in 2007. However, this was approved by the Head of Department and not the MPSA.
- 48 Resolution 1 of 2012 came into effect on 31 July 2021. Read with Resolution 3 of 2009 and Circulars 4 of 2014 it is apparent that the clause was limited to the period that the two resolutions seek to cover, that is from 1 July 2010 to 31 July 2012. The applicants were appointed in 2022 and 2018 respectively and Resolution 1 of 2012 does not apply to them.
- 49 It was argued that the adverts dated 2014 reflect that the post was graded at level 10 and even prior to this date. The Resolutions are clear in that what is required is a job evaluation placing the post at level 10. Although a job evaluation has been done this has not been verified by the MPSA and has no weight.
- 49 The Applicants seek to rely on **Makgoba MM V MEC for Health Limpopo and 3 Others JR1806/17**, this case is distinguishable from the above set of facts before me in that the applicants were not

appointed between 1 July 2010 to 1 July 2012. In the above case the applicant's posts were graded at salary levels 10 and 12 respectively as at, 01 August 2012. In the matter before me the Applicants post was not graded at level 10 or 12 during this period. The evaluation that they seek to rely on is dated 4 May 2017 and has not been verified by the DPSA. The reliance on the fact that the grade was approved in May 2007 by the Head of Department and not verified by the MPSA indicates that the post was not graded on level 10. It further appears that there is a process underway to benchmark the post and this is not yet complete.

50 The First Respondent has complied with resolution 1 of 2012.

51 Turning to the request for costs. The matter was not frivolous nor was the conduct of the respondent vexatious. There is thus no foundation for a costs order.

Award

52 The First Respondent has complied with Resolution 1 of 2012.

53 There is no order as to costs.



Signature:

Panelist/s: Karen Kleinot