

Analysing Ngceke v Chief Financial Officer, Buffalo City Metropolitan Municipality

INTRODUCTION

In the case of *Ngceke v Chief Financial Officer, Buffalo City Metropolitan Municipality and Another*, the court delved into the procedural and substantive aspects of administrative justice as they pertain to various municipal service disputes.

This article will examine the key issues, legal principles, and implications of the judgment handed down by the High Court of South Africa, Eastern Cape Division, East London Circuit Court.

CASE BACKGROUND

The applicant, Lady Octavia Ndileka Ngceke, initiated a judicial review application under the Promotion of Administrative Justice Act ("PAJA") after the Buffalo City Metropolitan Municipality failed to resolve her formal dispute concerning excessive water billing. Ngceke's primary contention was that the Municipality had overcharged her for water consumption due to a billing error, exacerbated by a water leak that was not her fault.

In June 2021, Ngceke received a bill for R29,101.70, which she believed was incorrect. Despite reporting the issue and subsequently engaging a plumber who identified and fixed a leak on municipal property, the Municipality did not address her concerns or correct the billing error. This inaction led Ngceke to formally dispute the charges in May 2023, a dispute that went unacknowledged and unresolved by the Municipality.

THE CORE LEGAL ISSUES IN THIS CASE INCLUDED:

Failure to Exhaust Internal Remedies:

The Municipality argued that Ngceke's application was premature as she had not exhausted internal remedies under section 62 of the Local Government: Municipal Systems Act and section 7(2) of PAJA. This provision requires aggrieved persons to seek internal redress before approaching the courts.

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Non-compliance with Municipal Policy:

The Municipality claimed that Ngceke failed to follow the specific procedures outlined in its credit control policy, which included steps to be taken when dealing with water leaks.

Right to Administrative Justice:

Ngceke contended that the Municipality's failure to respond to her dispute violated her rights under PAJA, particularly the obligation to take timely decisions and provide reasons for administrative actions.

THE COURT'S ANALYSIS AND JUDGMENT

Failure to Exhaust Internal Remedies

The court acknowledged that while PAJA generally mandates the exhaustion of internal remedies, this requirement is not absolute. In instances where internal remedies are inadequate or illusory, applicants may be excused from this obligation. The court found that the Municipality's lack of response to Ngceke's dispute rendered the internal remedies ineffective, justifying her resort to judicial review.

Non-compliance with Municipal Policy

The court scrutinized the Municipality's argument that Ngceke did not comply with the policy steps. It noted that while Ngceke might not have followed every procedural detail, she had substantively complied by reporting the leak, engaging a plumber, and lodging a formal dispute. The Municipality's reliance on procedural technicalities to avoid addressing the substantive issue of incorrect billing was deemed unreasonable.

Section 62(1) of the Municipal System's Act 32 of 2020 states that "A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor or staff member, may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision".

It is therefore important to note that section 62 does not find application in this case because the section clearly states that there must be a decision, in the present matter the City failed to make a decision in relation to the dispute that was lodged by Ngceke. As such the court found that, despite the City's argument that not all internal remedies at Ngceke's disposal had been followed, that because section 62 clearly states that only a decision can be appealed in terms of section 62 (and not a lack of a decision), that the Municipality's reliance on the lack of a section 62 appeal having been lodged, was unreasonable.

Right to Administrative Justice

Central to the court's decision was the principle of administrative justice. The court highlighted that the Municipality had an obligation to respond to Ngceke's dispute within 60 days as per its policy. The failure to do so constituted a dereliction of duty and a violation of Ngceke's right to administrative action that is lawful, reasonable, and procedurally fair.

The court concluded that the Municipality's inaction was unjustifiable. It ordered the Municipality to engage with Ngceke's dispute, provide a substantive response, and rectify any billing errors. This decision underscores the judiciary's role in ensuring that administrative bodies adhere to principles of accountability and transparency.

IMPLICATIONS OF THE JUDGMENT

The Ngceke case sets a significant precedent for municipal accountability in South Africa. It also reinforces the principle that procedural fairness and timely responses are crucial components of administrative justice. Municipalities and other administrative bodies are reminded of their duties to act diligently and transparently, particularly in matters affecting consumers' rights and interests.

This judgment also highlights the courts' willingness to intervene when internal remedies fail to provide adequate relief, ensuring that aggrieved parties can seek judicial redress when administrative processes are ineffective or unjust.

CONCLUSION

Ngceke v Chief Financial Officer, Buffalo City Metropolitan Municipality and Another is a landmark case in the realm of administrative law. It reaffirms the necessity for municipal bodies to act within the bounds of fairness, reasonableness, and promptness, thus protecting the rights of individuals against bureaucratic inertia. As municipalities navigate their administrative duties, this judgment serves as a potent reminder of the legal and ethical standards they must uphold.



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