

SOUTH AFRICA / JUDGMENT

African Independent Congress and Others v Ntshayisa and Others (1112/2021P) [2022] ZAKZPHC 14 (9 May 2022)

[2022] ZAKZPHC 14

COURT

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

Mossop AJ

CASE / FILE NUMBER

1112/2021P

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IN

THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL

DIVISION, PIETERMARITZBURG

Case

number: 1112/2021P

In

the matter between:

AFRICAN
INDEPENDENT CONGRESS
FIRST APPLICANT
STEVEN
MAHLUBANZIMA JAFTA N.O.
SECOND APPLICANT
MANDLENKOSI
PHILLIP GALO N.O.
THIRD APPLICANT
MARGARET
ARNOLDS FOURTH
APPLICANT
KHAYA
MHLABA
FIFTH
APPLICANT
NIKWE
MADIKIZELA
SIXTH
APPLICANT
TEMBA

AUBREY MHLONGO SEVENTH
APPLICANT
NOMBULELO
XATASI
EIGHTH APPLICANT
SIKIWE
DLOVA
NINTH APPLICANT
TOBEKA
GALO
TENTH APPLICANT
SI
SELEKE
ELEVENTH
APPLICANT
NKOSIVELELE
DUMA
TWELFTH APPLICANT
VUYISILE
KRAKRI
THIRTEENTH APPLICANT
and
LULAMA
MAXWELL NTSHAYISA
FIRST RESPONDENT
FUNDISWA
LANGA
SECOND RESPONDENT
PHAKAMILE
ALFRED HLOMELA
THIRD
RESPONDENT
BULELWA
XOKOYANE
FOURTH RESPONDENT
VATHISWA
XOTHONGO
FIFTH RESPONDENT
CHRIS
MAYEKISO
SIXTH RESPONDENT
Case
number: 811/2021P
LULAMA
MAXWELL NTSHAYISA N.O.
APPLICANT
MANDLENKOSI
PHILLIP GALO
FIRST
RESPONDENT
STEVEN

MAHLUBANZIMA JAFTA
SECOND
RESPONDENT
MARGARET
ARNOLDS
THIRD RESPONDENT
KHAYA
MHLABA
FOURTH
RESPONDENT
NIKWE
MADIKIZELA
FIFTH
RESPONDENT
TEMBA
AUBREY MHLONGO
SIXTH RESPONDENT
NOMBULELO
XATASI
SEVENTH RESPONDENT
SIKIWE
DLOVA
EIGHTH RESPONDENT
TOBEKA
GALO
NINTH RESPONDENT
TSHEPISO
SELEKE
TENTH RESPONDENT
NKOSIVELELE
DUMA
ELEVENTH RESPONDENT
VUYISILE
KRAKRI
TWELFTH RESPONDENT
AFRICA
INDEPENDENT CONGRESS
THIRTEENTH RESPONDENT
FIRST
NATIONAL BANK, MATATIELE
FOURTEENTH RESPONDENT
ORDER
The

following order is granted: Case
number: 1112/21P
1.
The application is dismissed; and
2.
There shall be no order as to costs.
Case
number: 811/21P

JUDGMENT

Mossop AJ:

Introduction

- [1] The first applicant in the application under case number 1112/21P, and the thirteenth respondent in the application under case number 811/21P, is the African Independent Congress (AIC), a political party. A small political party, but a registered political party, nonetheless, duly constituted according to law. At the time that these two applications were brought, the AIC had two representatives in the National Assembly. These representatives were Mr Mandlenkosi Phillip Galo (Mr Galo), and Mr Lulama Maxwell Ntshayisa (Mr Ntshayisa). The party also held several seats in various municipalities in Gauteng, namely Johannesburg and Ekurhuleni.
- [2] In addition to having two parliamentarians, the AIC also has two factions. Predictably, one faction is headed up by Mr Galo and the other by Mr Ntshayisa and they will thus be referred to as 'the Galo faction' and 'the Ntshayisa faction' respectively. The two factions have, essentially, through their inability to countenance accommodating each other's views, and through propagating internecine strife between each other, driven the AIC to the brink of political extinction. First National Bank (FNB) is the AIC's banker. Because of the conduct of the two factions, FNB has placed a hold on the AIC's bank accounts with it because it remains uncertain as to which of the two factions, if either, is the true representative of the AIC. The AIC has consequently been financially crippled, is financially moribund and is unable to engage in any financial transactions. This has occasioned great hardship to, inter alia, the salaried employees of the AIC.
- [3] A consequence of the financial hardship that salaried employees of the AIC have been put to, is demonstrated by the fact that I have been contacted personally on at least three occasions by an affected person or persons associated with the AIC, complaining of the financial hardship they are enduring. I have consistently declined to engage with the person or persons and have indicated to them that they are required to formally join the applications if they require their views to be taken into consideration. Some of the messages that I have received contained insults directed at myself. I am presently an acting judge (being a practising advocate), and I can only assume that my personal contact details were

acquired from the Society of Advocates of KwaZulu-Natal's website. When I caused the court file to be uplifted to prepare this judgment, I noted certain documents in the court file which were filed by affected persons. There has been no joinder of these persons and I have accordingly not considered what is contained in those documents.

The two applications

- [4] The application under case number 1112/21P is brought at the instance of the Galo faction. I shall refer to this application as 'the main application'. The other application under case number 811/21P, is at the instance of the Ntshayisa faction. I shall refer to this application as 'the second application'.
- [5] By way of an order of Skinner AJ granted on 25 February 2021, it was directed that both the main and the second applications would be heard together.

The relief claimed in the main application

- [6] The main application was brought as an urgent application by the AIC and twelve other applicants, some of whom apparently now serve on a body that describes itself as the 'National Executive Committee' of the AIC (NEC). The relief claimed in the main application is wide ranging and is final in nature. In summary, the applicants claim:
- (a) an order directing that the first respondent in the main application, FNB, uplift restraints imposed by it on five bank accounts held by the first applicant with it (FNB does not appear in the headnote as a party to the application, but it is, in fact, the first respondent);
 - (b) an order declaring unlawful a general meeting organised by the applicant in the second application and held on 31 October 2020 and, as a consequence, an order that any resolutions passed at that meeting be declared unlawful and be set aside;
 - (c) an order declaring the second to seventh applicants to be lawfully appointed members of the NEC of the AIC;
 - (d) an interdict restraining the second and further respondents from interfering with the business of the AIC;
 - (e) an order permitting the applicants to continue making arrangements for the convening of a national conference of the AIC;
 - (f) an order preventing the second and further respondents from using the letterheads and stationery of the AIC; and
 - (g) costs on the scale as between attorney and client, such to include the costs of two counsel.

The relief claimed in the second application

[7] The only applicant in the second application, who is also the second respondent in the main application, is Mr Ntshayisa, in his representative capacity. The respondents in the second application are largely the applicants in the main application, with one possible exception: one Tshepiso Seleke is referred to as the tenth respondent in the second application. The ninth applicant in the main application is one Si Seleke. It is not clear whether the two Seleke's referred to are one and the same person.

[8] As in the main application, FNB is also a respondent in the second application. This application was also brought as a matter of urgency. The relief claimed is also final in nature and is, in summary, the following:

- (a) a declaratory order is claimed that certain identified individuals, being the second to sixth respondents in the main application, were lawfully appointed to a structure identified as the 'second interim structure' of the AIC and that they are entitled to take over the management, administration and political functions of the AIC;
- (b) an order that all respondents cited in the second application shall cease to represent that they are members of the NEC of the AIC;
- (c) an order that those respondents must physically give up the offices of the AIC

and restore them to the applicant and must relinquish being signatories to the AIC's bank account (singular) held at the Matatiele

branch of FNB;

- (d) an order directing the applicant to arrange, and hold, the second national elective congress of the AIC within one year of the date of the court's order;
- (e) an order directing FNB to uplift the hold on the AIC's bank accounts (plural) with it; and
- (f) costs of suit on the scale of attorney and client, including the costs of two counsel.

The test

[9] The principles for adjudicating on applications of this nature are aptly summarized in *Thebe Ya Bophelo Healthcare Administrators (Pty) Ltd and others v National Bargaining Council for the Road Freight Industry and another*:^[1]

'... where an applicant in motion proceedings seeks final relief, and there is no referral to oral evidence, it is the facts as stated by the respondent together with the admitted or undenied facts in the applicants' founding affidavit which provide the factual basis for the determination, unless the dispute is not real or genuine or the denials in the respondent's version are bald or uncreditworthy, or the respondent's version raises such obviously fictitious disputes of fact, or is palpably implausible, or far-fetched or so clearly untenable that the court is justified in rejecting that version on the basis that it obviously stands to be rejected.'

[10] It will be discerned that this is a distillation of the well-known approach set out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*.^[2]

Representation

[11] The applicants in the main application and the respondents in the second application were represented by Mr Brown, and the respondents in the main application and the applicant in the second application were represented by Mr Combrink. Both counsel are thanked for their assistance.

The death of Mr Ntshayisa

[12] Argument had virtually been completed on 23 July 2021 when the sad news reached the court, after the short adjournment had been taken, that Mr Ntshayisa had died earlier that morning, while the matter was being argued. The delay in delivering this judgment was occasioned by the appointment of Mr Ntshayisa's executor and the steps outlined in Uniform rule 15(3) being taken. It took several months for this to be achieved.

[13] It was a reasonable possibility that the death of Mr Ntshayisa might bring an end to the dispute between the two factions. Regrettably, this was not the case.

Jurisdiction

[14] It is common cause that the AIC has its roots in the town of Matatiele. At the time that it was founded, there was a contestation

over which province Matatiele should form part of: KwaZulu-Natal or the Eastern Cape. Indeed, that was one of the reasons for the

establishment of the AIC.

[15] That question has been finally resolved. In terms of schedule 1A to the Constitution of the Republic of South Africa, 1996, as amended by the Constitution Thirteenth Amendment Act of 2007, and read with the Cross-Boundary Municipalities Laws Repeal and Related Matters Amendment Act 24 of 2007, the Matatiele Local Municipality now falls within the geographical boundaries of the province of the Eastern Cape.

[16] Given that none of the applicants or respondents in either application reside within KwaZulu-Natal, I questioned whether this

court had the jurisdiction to entertain the applications. After hearing argument on other aspects of the two applications, I invited

both counsel to address written argument to me on the question of jurisdiction. I am indebted, in particular, to Mr Combrink for his detailed submissions in this regard.

[17] Both counsel concluded in their submissions that this court has jurisdiction.

- [18] Section 21(1) of the Superior Courts Act 10 of 2013 provides that a division of the high court of South Africa ‘has jurisdiction over all persons residing or being in, and in relation to all causes arising . . . within, its area of jurisdiction’. In terms of section 21(2) ‘[a] division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction’.
- [19] In a judgment of this division in *Minister of Rural Development and Land Reform v Tsuputse and others*,^[3] Jeffrey AJ found that this division continues to have jurisdiction over Matatiele, notwithstanding that it now falls within the Eastern Cape Province. I am bound by that judgment unless I believe it to be incorrect, which I do not. In the result, I am satisfied that I have jurisdiction to hear the matter.

The constitution of the AIC

- [20] The AIC, as is to be expected from a voluntary association, has a constitution (the constitution). It is attached to the founding affidavit in the main application. That document describes itself as the fourth edition of the constitution, as adopted by the first National Congress of the party held at Mount Currie High School, Kokstad, from 13 to 15 July 2012.

The two competing entities

- [21] The applicants in both applications assert that the body that they respectively promote is the only legitimate body presently entitled to make decisions concerning the AIC. Both applicants contend that they should have access to the AIC’s bank accounts held at FNB, Matatiele. In the main application, the body claiming this entitlement is described as ‘the NEC’ and in the second application, the body claiming this entitlement is described as the ‘second interim structure’.
- [22] The essential question to be determined in these two applications is whether either of these bodies is the true representative of the AIC.

The NEC

- [23] Dealing firstly with the main application, the AIC’s constitution provides that the National Congress of the AIC elects the NEC, the National Congress being the highest decision-making body of the AIC. The National Congress is to be convened at least every five years. Clause 10.7 of the constitution, which is entitled ‘Election an (sic) Composition of the NEC’, sets out a detailed exposition of who shall form part of the NEC, how such persons are to be nominated, and the voting procedure that

follows once all nominations have been received. Briefly put, the NEC shall hold office for a period of five years. It is to be elected by secret ballot by the National Congress. The NEC is to be comprised of the president, deputy president, national chairperson, the secretary general, the deputy secretary general and the treasurer general, and 19 additional members, together with certain ex officio members, being the chairperson and secretary of each of the provincial executive committees, the national chairperson and secretary of the AIC Women’s Movement and

the national chairperson and secretary of the AIC Youth Movement. Provision is also made for the co-option of no more than five additional members to the NEC. In all, the NEC may thus be comprised of more than 29 members.

[24] In terms of clause 11 of the constitution, the NEC is required, as soon as possible after the conclusion of a National Congress, to meet and elect a National Working Committee (NWC). The NWC is required to carry out decisions and instructions of the National Congress and the NEC.

[25] From the constitution, it is apparent that the NEC is the highest organ of the AIC between the National Congresses. It is the body that guides and directs the functioning of the AIC. For example, it appoints an Electoral Commission and a National Finance Committee. It is thus an important and influential body and is endowed with substantial powers.

[26] The AIC convened its first National Congress from 15 to 17 July 2012 and a NEC was duly voted in. Five years later, the first attempt at convening the second National Congress of the party occurred from 15 to 17 December 2017. Given that the NEC was elected only for a period of five years, it appears that by the time the first attempt at convening the second National Congress was attempted, the term of office of the first NEC had already expired by the effluxion of time. No allegations have been made that its life was extended or that such extension was possible in terms of the constitution.

[27] The second National Congress collapsed for reasons that need not be considered and no NEC was consequently elected. A second attempt to hold the second National Conference occurred on 27 and 28 April 2018 and certain decisions were taken and elections were successfully

held. However, Mr Ntshayisa, the applicant in the second application, challenged the results of this National Congress in legal proceedings lodged with this court. Poyo-Dlwati J, under case number 5712/2018,[4] ultimately granted the following order:

‘The second national congress of the first respondent held on 27 and 28 April 2018 at Kokstad, KwaZulu-Natal and its decisions, resolutions

and elections are declared unlawful, invalid and unconstitutional and as such are hereby set aside.’

[28] The judgment was delivered on 1 March 2019. The election of the members of the NEC was accordingly set aside. Since the date of the judgment, the AIC has lacked a validly constituted NEC elected by a National Congress of the AIC.

[29] The second to seventh applicants in the main application, however, submit that notwithstanding this, they are members of the NEC of the AIC. The basis of this submission is that after the judgment of Poyo-Dlwati J, the two warring factions allegedly agreed to:

‘ . . . reconvene the National Executive Committee which existed before the litigation mentioned above under case number 5712/2018, for the purpose of continuing to run the affairs of the party . . . ’

It is further submitted that the applicant in the second application, Mr Ntshayisa, and his faction agreed to this occurring and participated to a certain point in the business of the reconvened NEC, before withdrawing their support. This is not disputed by Mr Ntshayisa and his explanation for this is that the reconvened NEC was illegitimate in terms of the AIC’s constitution. His agreement to participate, and his subsequent participation, could not change that fact. Once he and his faction were made aware of the fact that the constitution of the AIC did not countenance what was being done, he and his faction withdrew their support.

- [30] It is trite that the constitution of a voluntary association, together with all the rules or regulations passed in terms thereof, collectively form the agreement entered into by that association’s members and serves as the internal statute of that association.[5] It is a contract concluded between its members that binds them. There is thus a duty on the AIC to act lawfully and in compliance with the provisions of its own constitution.[6]
- [31] When it is necessary to interpret a constitution, it must be interpreted in accordance with the ordinary rules of construction that apply to contracts in general.[7] This requires giving effect to the plain language of the document, objectively ascertained within its context.[8] In the course of interpretation, preference should be given to a sensible meaning over ‘one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document’.[9]
- [32] There simply is no provision in the constitution of the AIC for the reconvening of an NEC or the revival of an NEC whose term of office has already expired. Nor is there any provision for the appointment of members of an NEC other than through election at a National Congress. There is consequently nothing in the constitution to interpret. The constitution makes it perfectly plain that the NEC is elected at the National Congress. Absent a validly convened National Congress, there can be no validly elected NEC. The second to seventh applicants in the main application, who purport to be members of the NEC, were not placed in the position that they presently claim to occupy by a vote of the National Congress.
- [33] It is, moreover, acknowledged in the applicants’ heads of argument in the main application, that it is common cause that the term of the first NEC has expired and that it has not been possible to convene an elective conference to elect a new NEC. This concession is the death knell for the applicants’ application where the only method of electing a new NEC is by way of a National Conference.

- [34] Absent any other power to re-establish, re-extend, reconvene or put in place an acting NEC, and no such power has been referenced in the founding affidavit, I am simply unable to conclude that the NEC allegedly presently populated by the second to seventh applicants is a body countenanced or permitted by the constitution of the AIC. Mr Ntshayisa's contention that the NEC that purports to bring the main application lacks legitimacy must thus be upheld.
- [35] In the applicants' heads of argument in the main application, my attention was drawn to *Mcoyi and others v Inkatha Freedom Party; Magwaza-Msibi v Inkatha Freedom Party*.^[10] That judgment involved internal disputes within the Inkatha Freedom Party. In the judgment of Patel DJP, he made reference to the dicta of Lord Ormrod in *Lewis v Heffer and others*,^[11] and the applicants have likewise relied upon Lord Ormrod's words in this matter. Lord Ormrod made reference to the situation in a political party where an established, well-known, and unquestioned practice in use in the party has been established and that such practice has become part of the terms and conditions which are accepted by persons joining the party.^[12]
- [36] I assume that this particular case was referred to by the applicants in an attempt to press home the argument that the strict wording of the constitution could in some way be modified by conduct and general acceptance. In certain circumstances that may well be true. The difficulty that I have with that proposition is that the failure to abide by the terms of the constitution does not establish a practice that should be endorsed or that, indeed, a practice has been established. A practice would tend to suggest that the conduct has been repeated with general acceptance, or without objection, on a number of occasions. That is not the case in this instance. In a party riven with internal conflict, it would be impossible for consensus to exist on an issue that favours one faction to the exclusion of the other. I cannot therefore find that what the applicants in the main application contend for, namely the re-establishment of the NEC, is a well-known, unquestioned practice.
- [37] Whilst there has been a great emphasis on the existence of the two warring factions, it seems likely to me that there may be members of the AIC who prefer to regard themselves as not being aligned to either the Galo faction or the Ntshayisa faction. There is no evidence before me that all the members of the party fall into one or the other faction. Those unaligned members, as are all members, are entitled to insist that proceedings of the AIC be conducted in terms of the constitution to which all members have subscribed. They are entitled to the protection of their constitutional rights, embodied in section 19(1)(b) of the Constitution. That section provides that: '(1) Every citizen is free to make political choices, which includes the right —
- (b) to participate in the activities of, or recruit members for, a political party.'
- [38] The rights in section 19 of the Constitution are enjoyed through the membership of, and participation in, political parties. In *Ramakatsa and others v Magashule and others*,^[13] the Constitutional Court held that:

'In relevant part section 19(1) proclaims that every citizen of our country is free to make political choices which include the right to participate in the activities of a political party. This right is conferred in unqualified terms. Consistent with the generous reading of provisions of this kind, the section means what it says and says what it means. It guarantees freedom to make political choices and once a choice on a political party is made, the section safeguards a member's participation in the activities of the party concerned. In this case the appellants and other members of the ANC enjoy a constitutional guarantee that entitles them to participate in its activities. It protects the exercise of the right not only against external interference but also against interference arising from within the party.'

[39] Such members are entitled to expect that the affairs of the AIC will not be interfered with by factions within the party that seek solely to advance their own interests.

The second interim structure

[40] Turning now to consider the second application and the position of the 'second interim structure', being the body that Mr Ntshayisa represented in bringing the second application, the same reasoning that was applied when considering the legitimacy of the NEC finds application. It was pointed out during argument to Mr Combrink that any argument criticising the legitimacy of the NEC may well be a two-edged sword and may also apply to the legitimacy of the 'second interim structure'. He acknowledged that this may be the case.

[41] Whilst there is nothing in the constitution to indicate that an NEC may be reconvened or revived or elected other than through a National Congress, there is also nothing to indicate that a 'second interim structure' could exist or have any standing in the AIC.

[42] The body supported by the late Mr Ntshayisa is called the 'second interim structure' presumably by virtue of the fact that an entity known as 'the first interim structure' was brought into existence at the time when the AIC was initially founded. It was the first interim structure that would construct the skeleton of the party and breathe life into it before the first National Congress. This structure was established, and it carried out its mandate and then was dissolved and played no further

part in the life of the AIC.

[43] The 'second interim structure' was brought into existence after an invitation to 'all AIC members' was sent out by a Mr Tshosane Emmanuel Jafta (Mr Jafta) to attend an alleged general membership meeting. I point out that the only general

meetings that are referred to in the constitution are the National Congress and a mid-year congress. This meeting was neither.

[44] There was no attempt in the papers to define to whom this invitation was actually extended by Mr Jafta other than that it was sent to 'all AIC members'. It follows that there is no evidence on record as to how many members of the AIC the invitation was extended to and was ultimately delivered to. Significantly, the invitation did not disclose precisely where the

meeting was to be held: it simply said that the venue would be in Durban and would be disclosed later. Ultimately, it appears that part of the meeting was held in Durban and part in Pinetown. Whether all addressees were aware of this is not clear. Mr Ntshayisa states in his answering affidavit in the main application that the meeting was held at Pinetown. There is no evidence that any notification changing the venue to Pinetown was sent out to the general membership of the AIC.

[45] Apparently, only some 73 persons attended the meeting called by Mr Jafta, which was held on 31 October 2020. There is thus considerable doubt that this was indeed an invitation extended to all members of the AIC. This is rendered more uncertain by virtue of the fact that it is contended by Mr Ntshayisa in his answering affidavit in the main application that there are no proper, reliable records of membership kept by the AIC. If that is accepted, it strikes at Mr Ntshayisa's assertion that the invitation to attend the meeting was sent to all members: if it is not known how many members there were, or who they were, how can it be said that they all received notice?

[46] There is thus no evidence that the 'second interim structure' was created at a meeting by the majority of the members of the party or a group that reflects a substantial portion of the membership of the AIC.

[47] In my view, the second interim structure cannot claim any constitutional legitimacy and it has no more authority than the NEC to claim the relief that it claims.

[48] In a further argument advanced in the second application, the applicants in the main application argued that the second application had to fail because Mr Ntshayisa had been expelled from the AIC by the NEC and accordingly had no legal standing to bring the second application. I agree that the second application must fail, but not for that reason. The NEC, as presently constituted and as already found earlier in this judgment, lacks legitimacy itself and is not the NEC of the AIC. It accordingly lacks the power to do anything on behalf of the AIC and it consequently lacked the power to expel Mr Ntshayisa.

Summation

[49] Both applications thus are brought by bodies not countenanced by the AIC's constitution. In my opinion, neither faction has the legal standing to claim that it, to the

exclusion of the other, is the true representative of the AIC. The meeting of 31 October 2020 convened by the 'second interim structure' was not a meeting of the AIC. Both applications must thus fail.

[50] It appears that neither of the two opposing bodies on their own can, or will, of their own accord be able to convene a constitutionally valid meeting with a view to obtaining a mandate to revive the fortunes of the AIC and to elect a new NEC. Neither the Galo faction nor the Ntshayisa faction represents the party. They each represent their own self-interests and convene meetings to further their own needs.[14]

[51] The only way in which the AIC can hope to regain its former glory is through the two factions setting aside their differences and

co-operating for the greater good of the party. If this is not done, the AIC will perish. This court is simply not able to solve what is, in essence, a political conundrum. Indeed, in *Mcoyi*, Patel DJP stated that a court should be reluctant to interfere in what are essentially political issues.[15] I agree with this statement.

Urgency

[52] Both applications were brought as urgent applications. It is trite that urgent applications are governed by the provisions of Uniform rule 6(12).[16] A party claiming urgency needs to set out objective grounds why the matter is urgent. Of critical importance is whether such an applicant has explained why substantial redress could not be obtained at a hearing in due course.[17] By alleging urgency, and not complying with the prescribed rules relating to service, a party is able to jump the queue of matters

awaiting the attention of the court. If there is no urgency, despite what is said in the founding affidavit, that party obtains an unfair advantage in having its matter adjudicated before those parties patiently awaiting their turn. The burden is thus on the party claiming urgency to show in its papers that the matter deserves to be heard on an urgent basis.

[53] The basis for the allegations of urgency in the main application is that FNB placed a hold on the AIC's bank accounts held with it after the bank became uncertain as to which of the two factions legitimately claimed to represent the AIC. A letter from FNB to this effect was received by the AIC on 13 January

2021. Nothing was done until the main application was launched on 10 February 2021. Nearly a month lapsed before any positive steps were taken and the main application was launched. There is simply no explanation from the applicants in the main application for this lethargy. In addition, there are no submissions made as to why substantial redress could not be obtained at a hearing in due course.

[54] In the second application, the urgency is alleged to be the fact that local elections were to be held sometime between 3 August 2021 and 3 November 2021. The source of this prediction was an article emanating from the *Daily Maverick*, an online free daily news site. In terms of the Constitution, local elections are held every five years. This is a generally known fact. No explanation has been provided as to why this was not appreciated by the applicant in the second application and why the second application was not brought earlier.

[55] In my view, neither of the applications is urgent. Even if my reasoning in refusing the applications as already indicated is incorrect, I would, in the exercise of my discretion, have refused them for want of urgency.

Practice directives

- [56] Finally, something needs to be said about compliance with the practice directives of this division relating to opposed matters. The specific directives are succinctly set out in practice directive 9.4. Only the applicant in the second application ensured that his heads of argument were filed by the prescribed date. The applicant in the main application, with my leave, handed up its heads of argument on the day. Those heads did not comply with the practice directive, which provides that heads of argument should not exceed five pages in length. The applicants in the main application submitted no practice note. The applicant in the second application did deliver a practice note but it did not conform with the practice note required in this division. Neither party notified the registrar in writing three days before the date of hearing that its application would be argued. Neither party broke down the documents in their respective applications into volumes of 100 pages, as required: in the main application I was faced, inter alia, with a single volume of 521 pages and in the second application, one volume was 171 pages in length. Perusing these enormous volumes was difficult as a consequence.
- [57] Practice directives are crafted and put in place in order to help regulate and streamline the preparation for, and the hearing of, opposed motions. They are not discretionary measures that the parties can choose to comply with or to disregard as they deem fit. Indeed, practice directive 9.4.3 of this division specifically cautions practitioners that if the practice directives are not complied with, the matter may be dismissed or struck from the roll with an appropriate order as to costs. By rights, I ought not to have permitted the hearing of the matter. That I did so was purely because of the fact that all the parties' legal representatives were from Gauteng and it may well have occasioned further expense to adjourn the matter to another date. When discussing these issues of non-compliance with the respective counsel on the day that the matter was argued, I pointed out that I took a very dim view of the attitude of the attorneys in this matter and that there may well be consequences at the end of the hearing. Those consequences will be reflected in the cost orders that will be made.

Conclusion

- [58] Both applications are to be refused. Whilst each respondent in each matter may hold the view that they were successful in resisting the relief claimed against them in the application where they were cited as a respondent, because of their egregious failure to comply with the practice directives of this division, I decline to grant any costs in both matters.

Order

- [59] I accordingly make the following order:

1. The application is dismissed; and
2. There shall be no order as to costs.

Mossop AJ

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Date of Hearing

: 23 July 2021

Date of Judgment

: 9 May 2022

[1] Thebe Ya Bophelo Healthcare Administrators (Pty) Ltd and Others v National Bargaining Council for the Road Freight Industry and Another 2009 (3) SA 187 (W) para 19.

[2] Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A).

[3] Minister of Rural Development and Land Reform v Tsuputse and others 2015

(5) SA 537 (KZD).

[4] Ntshayisa NO v African Independent Congress National Executive Committee and others [2019] ZAKZPHC 12.

- [5] Turner v Jockey Club of South Africa 1974 (3) SA 633 (A) at 645B-C; Natal Rugby Union v Gould
- [1998] ZASCA 62; 1999 (1) SA 432 (SCA) at 440F-G.
- [6] Ramakatsa and others v Magashule and others [2012] ZACC 31; 2013 (2) BCLR 202 (CC) para 16.
- [7] Wilken v Brebner and others 1935 AD 175 at 187.
- [8] Natal Joint Municipal Pension Fund v Endumeni Municipality
- [2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18.
- [9] Ibid; see also National African Federated Chamber of Commerce and Industry and others v Mkhize and others
- [2014] ZASCA 177; [2015] 1 All SA 393 para 21.
- [10] Mcoyi and others v Inkatha Freedom Party; Magwaza-Msibi v Inkatha Freedom Party 2011 (4) SA 298 (KZP).
- [11] Lewis v Heffer and others [1978] 3 All ER 354 (CA).
- [12] Ibid at 367.
- [13] Ramakatsa and others v Magashule and others [2012] ZACC 31; 2013 (2) BCLR 202 (CC) para 71.
- [14] Agang-South Africa and another v Mayoli and others
- [2015] ZAGPJHC 24 at 49.
- [15] Mcoyi and others v Inkatha Freedom Party; Magwaza-Msibi v Inkatha Freedom Party 2011 (4) SA 298 (KZP) para 23.
- [16] Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk 1972 (1) SA 773 (A) at 782A-G.
- [17] East Rock Trading 7 (Pty) Ltd and another v Eagle Valley Granite (Pty) Ltd and others [2011] ZAGPJHC 196 paras 6-7.

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