

SOUTH AFRICA / JUDGMENT

Appolus and Others v Naledi Local Municipality and Others (UM199/2023) [2025] ZANWHC 97 (6 June 2025)

[2025] ZANWHC 97

COURT

North West High Court, Mafikeng

BEFORE

J.T. Djaje

CASE / FILE NUMBER

UM199/2023

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION –

MAHIKENG

CASE

NO: UM199/2023

Reportable: YES / NO

Circulate to Judges: YES

/ NO

Circulate to Magistrates: YES / NO
Circulate
to Regional Magistrates: YES / NO
In

the matter between: THABO
APPOLUS
1ST
APPLICANT
CLLR
LORATO SETLHAKE
2ND
APPLICANT
CLLR
LEBOGANG JACOBS
3RD
APPLICANT
CLLR
VUYISWA MORAKILE

4TH
APPLICANT
NELSON
MONGALE N.O
5TH
APPLICANT
And
NALEDI
LOCAL MUNICIPALITY
1ST
RESPONDENT
NALEDI
LOCAL MUNICIPALITY COUNCIL
2ND
RESPONDENT
CLLR
PGC GULANE (Speaker of Council)
3RD
RESPONDENT
CLLR
J GROEP N.O (Mayor)
4TH
RESPONDENT
MR
MODISENYANE SEGAPO N.O
(Newly
appointed Municipal Manager)
5TH
RESPONDENT
MS
EXCINIA MAKGAHLELA
6TH
RESPONDENT
THE
MEC FOR COOPERATIVE GOVERNANCE
HUMAN
SETTLEMENT AND TRADITIONAL
AFFAIRS,
NORTHWEST PROVINCE
7TH
RESPONDENT
SOUTH
AFRICAN LOCAL GOVERNMENT
ASSOCIATION
(SALGA)
8TH
RESPONDENT
PROVINCIAL

TREASURY:
NORTHWEST
PROVINCE
9TH
RESPONDENT

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses.
The date for the hand-down is deemed to be on 6 JUNE 2025
ORDER
1. The application is dismissed
2. The applicants are ordered to pay the costs of the 1st to 6th respondent which shall include costs of two counsel.

JUDGMENT

DJAJE DJP

[1] This matter first came before this court as an urgent application on 6 December 2024 with the applicants seeking the orders set out in the notice of motion as follows:

“1. Dispensing with the Rules relating to forms, services and time periods as prescribed by the Uniform Rules of this court and directing that the matter be enrolled and heard as an urgent application in terms of Rule 6(12).

2. That Ms E. Makgahlela be hereby joined as the 6th Respondent in this matter.

3. The First to Sixth Respondents are hereby declared to be in contempt of the court order and judgment of this Honourable Court dated the 15th of July 2024 under case number UM199/2023; UM53/2023.

4. The Third and Fourth Respondents are directed to immediately remedy the contempt by:-

3.1 Convening a Special Council meeting to appoint an acting Municipal Manager within 3 days of granting of this order.

3.2 In the absence of a suitable person to act as a Municipal Manager, the First Respondent is ordered request a secondment as from the office of the MEC (COGHSTA) (the 7th Respondent).

3.3 Advertise the position of the Municipal Manager in accordance with the Regulation and the Act.

3.4 Commence the recruitment process through an independent panel to be appointed by the MEC (COGHSTA) in accordance with Regulation 10 of Regulations on appointment and conditions of employment of Senior Managers.

4. The Seventh Respondent be and is hereby ordered to ensure that the Municipality and its officials comply with this order read together with the Judgment dated 19th of September 2023, 17 November 2023, the 18th March 2024 and the 15th of July 2024 under case numbers UM199/2023; UM53/2023.
5. The Third, Fourth and Sixth Respondent be and are hereby ordered to pay the salary and benefits paid to the Fifth Respondent since granting of the judgment under case number(s) UM199/2023; UM53/2023 on the 15th of July 2024;
6. Should the Second, Third and Fourth Respondents fail to remedy the contempt within twenty-four hours (24hrs) of the granting of this order, the Applicants are hereby granted leave to approach the court on the same papers duly supplemented for an order of the Third, Fourth and the Fifth Respondents' committal to imprisonment for a period to be determined by the court.
7. It be and is hereby declared that the Applicant is a whistle blower as contemplated in section 1 (1)(a)-(c) of the Protected Disclosures Act, No 26 of 2000.
8. Declaring that the special leave, Resolution to dismiss the First Applicant, the Applicant's suspension and disciplinary proceedings instituted against the 1st Applicant by the 1st Respondent at the instance of the 5th Respondent constitutes an occupational detriment as contemplated in section 1 (vi) and section 3 of the Protected Disclosure Act, No 26 of 2000.
9. That the First Respondent be and is hereby interdicted from suspending or placing the Applicant on special leave, instituting and or proceed with disciplinary action against the First Applicant.
10. Declaring that the First Applicant's suspension lapsed ex lege in terms of Regulation 6(6) (a) of the Disciplinary Regulations of Senior Managers; 2014.
11. It be and is hereby ordered that the First Applicant's suspension is lifted with immediate effect.
12. That the 1st Respondent be and is hereby ordered to pay the First Applicant's outstanding salary for the period spanning from the 1st November 2023, 1st of May 2024 within seven (7) days of the order together with interest at 12 percent per anum calculated from the 1st November 2023 to the date of payment.
13. The 1st – 5th Respondents be and are hereby ordered to pay the costs of this application on attorney and own client scale which costs must include the costs of employing two counsels jointly and severally the one paying the other to be absolved.”
- [2] The matter was struck from the roll for lack of urgency and was enrolled on the normal motion roll of 7 March 2025 for the same relief excluding the relief for urgency. Reference to the respondents herein, is the first to sixth respondents. The seventh to ninth respondents only made submissions as far as the action taken by the MEC by addressing a letter to the Mayor of the first respondent to the effect that pending the outcome of the Supreme Court of

Appeal ruling, the fifth respondent will not be recognised as a Municipal Manager. This is in essence a contempt of court application. This matter has a history which goes back to March 2023 when the applicants brought an application challenging the appointment of Mr Segapo (fifth respondent) as a Municipal Manager for the first respondent. On 19 September 2023 a judgment was handed down in terms of which the appointment of the fifth respondent as a Municipal Manager of the first respondent was declared unlawful and set aside. An order was also made that the first respondent should commence with recruitment processes de novo. The respondents in particular the mayor, speaker and the fifth respondent brought a leave to appeal the judgment of 19 September which the suspended the order of the judgment. In response the applicants brought an application in terms of section 18(3) of the Superior Courts Act 10 of 2013 to have the judgment of 19 September 2023 enforced.

- [3] The court on 17 November 2023 ordered that the judgment of 19 September 2023 should be enforced pending the appeal processes. In response the respondents on 20 November 2023 launched an application in terms of section 18(4) of the Superior Courts Act to appeal the judgment of 17 November 2023. The appeal had not been prosecuted. The respondents were granted leave to appeal the judgment of 19 September 2023 to the Supreme Court of Appeal on 23 January 2024. That appeal to the SCA was lodged on 20 February 2024. The applicants launched an urgent application on 22 February 2024 to declare the section 18(4) appeal to have lapsed. The court on 18 March 2024 made the following order:

“i) The non-compliance of the Uniform Rules of Court is condoned in terms of Rule 6(12) and the matter is heard on an urgent basis.

ii) The applications under case numbers UM53/2023 and UM199/2023 are to be heard together.

iii) Leave to appeal to the Supreme Court of Appeal has already been granted by this Court on 23 January 2024 under case number UM53/2023 and this order remains in force.

iv) The notice of appeal in terms of section 18(4) of the Superior Courts Act 10 of 2013 instituted on 20 November 2023 under case number UM199/2023 for leave to appeal to the full court of this Division, follows the outcome of the leave to appeal to the Supreme Court of Appeal that was already granted on 23 January 2024 under case number UM53/2023.

v) The judgment granted on 19 September 2023 by Reid J is enforced in terms of section 18(3) of the Superior Courts Act 10 of 2013 pending the outcome and finalisation of the appeal process.

vi) The respondents who opposed the application (namely the 1st to 5th respondents in case number UM199/2023 and 1st to 6th respondents in case number UM53/2023) is ordered to pay the costs of the application, jointly and severally, the one paying the other to be absolved, on a scale of party and party, to be taxed which costs is to include the instruction of two (2) counsel.”

- [4] Following the judgment on 18 March 2024 the respondents on 26 March 2024 launched an application for leave to appeal which has not been heard. After that the applicants on 28 May 2024, caused a writ of execution to be issued by the Registrar for the sheriff to remove the fifth respondent from the office. Another

urgent application was brought on 3 June 2024 by the respondent to stay the writ of execution. The application was struck off the roll for lack of urgency. Upon the matter being struck from the roll, there was a special council meeting convened to appoint an acting Municipal Manager. The respondents on 11 July 2024 brought another urgent application to challenge the writ of execution and on 15 July 2024 the said application was dismissed. The respondents have once again delivered an application for leave to appeal the 15 July 2024 judgment.

Contempt of Court

- [5] This application is for the contempt of the judgment of 15 July 2024 in that the fifth respondent continues to remain in office. The applicants argued that the judgment of 19 September still stands

as there is no order setting it aside. Further that the respondents have not been able to prosecute the section 18(4) appeal against the order enforcing the judgment. It was submitted that the writ of execution emanates from the enforcement of the judgment of 19 September 2023.

- [6] In contention the respondents argued that the judgment of 15 July 2024 is a subject of a leave to appeal and cannot be enforced. On the prosecution of the section 18(4) appeal, the submission made was that the respondents have complied and addressed correspondence to the office of the Judge President as required and await his directive. It was submitted that some of the prayers sought in this application relate to the matter that is before the Supreme Court of Appeal and therefore cannot be granted herein.
- [7] This matter between the parties has a long history of litigation and it still pending before the Supreme Court of Appeal. Various applications have been brought before court, and all relate to the employment of the fifth respondent as a Municipal Manager of the first respondent. Although that matter is not before this court, the contempt of court application brought by the applicants in a way relate to that issue which is a subject of appeal in the Supreme Court of Appeal. It is the applicants' case that the fifth respondent, despite the order enforcing that his appointment is unlawful, he remains in office in contempt of court. The respondents argued that there can be no contempt of court when there is a leave to appeal pending.
- [8] It is important to first consider the procedure provided in section 18 of the Superior Courts Act in relation to appeals. Section 18(1) deals with the suspension of an order to be appealed. The Supreme Court of Appeal in *Ntlemeza v Helen Suzman Foundation* 2017 (5) SA 402 (SCA) at par 28 held that:

“[28] The primary purpose of s18(1) is to reiterate the common law position in relation to the ordinary effect of appeal processes- the suspension of the order being appealed, not to nullify it. It was designed to protect the rights of litigants who find themselves in the position of General Ntlemenza, by ensuring that, in the ordinary course, the orders granted against them are suspended while they are in the process of attempting, by way of the appeal process, to have them overturned. The suspension contemplated in s18(1) would thus continue to operate in the event of a further application for leave to appeal to this court and, in the event of that being successful, in relation to the outcome of a decision by this court in respect of the principal order. Section 18(1) also sets the basis for when the power to depart from the default position comes into play, namely, exceptional circumstances which must be read in conjunction with the further requirements set by s18(3). As already stated, and as will become clear later, the legislation has set the bar fairly high.”

- [9] The leave to appeal the judgment of 19 September 2023 had the effect of suspending the execution thereof. However, the applicants brought an application in terms of section 18(3). The SCA in *Ntlemenza* at par [35] held that:

“[35] Section 18(1) entitles a court to order otherwise ‘under exceptional circumstances’. Section 18(3) provides a further controlling measure, namely, a party seeking an order in terms of s18(1) is required ‘in addition’ to prove on a balance of probabilities that he or she will suffer irreparable harm if the

court does not so order and that the other party will not suffer irreparable harm if the court so orders.”

- [10] The applicants were successful in their application and there was an order that the exceptional circumstances existed for the order of 19 September 2023 to be enforced. The next available remedy for the respondents was now to invoke the provisions of section 18(4). Section 18(4) provides that:

“(4) If a court orders otherwise, as contemplated in subsection (1)-

- (i) the court must immediately record its reasons for doing so;
- (ii) the aggrieved party has an automatic right of appeal to the next highest court;
- (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and
- (iv) such order will be automatically suspended, pending the outcome of such appeal.”

- [11] Section 18(4) does not prescribe the procedure to be followed by the aggrieved party in ensuring that the matter is before court. In this matter the respondents argued that the notice of appeal was served and filed together with the record. They sent correspondence to the

office of the Judge President for a date to be allocated for the hearing of the appeal and have not received any allocation. The court in *Jai Hind EMCC CC T/A Emmerentia Convenience Centre v Engen Petroleum Limited South Africa: In re: Engen Petroleum Limited South Africa v Jai Hind EMCC CC T/A Emmerentia Convenience Centre* (A5030/2022;11752/2020 [2022] ZAGPJHC 551; 2023 (2) SA252 (GJ) (4 August

2022) at para 25 - 27 that:

“[25] When the section 18(4) appeal was commenced by Jai Hind, its attorney set about following the prescripts of rule 49. This was construed by Engen as a deliberate piece of gamesmanship designed to spin out the process and delay the appeal. That approach certainly had precisely that effect. It not necessary to decide whether mala fides motivated the attorney because it is plain the process that ought to be followed is obscure. Section 18 does not prescribe a procedure. What is an attorney expected to do?

[26] In our view, it is plain that to prosecute an appeal under the conditions prescribed by section 18(4)(iii), ie, as a matter of extreme urgency, the provisions of rule 49 are inapplicable. Rule 49 is about setting time periods for obvious steps to be taken, of which, as one example, 60 days is prescribed to file a record. The procedure in rule 49(6)-(10) is incompatible with urgency.

[27] Extreme urgency means just that. The rationale is imbedded in the premise of section 18; ie, the immediate implementation of an order to ensure its efficacy and concomitantly, the need to resolve any dispute about whether that should happen extremely quickly.”

[12] The court went on to state that:

“[29] The default procedure when section 18(4) is invoked must be to approach the head of court once. In the Gauteng Division, because of the use of a digital platform for all civil cases, it is very simple to expedite a section 18(4) appeal with extreme urgency in any case where oral evidence was not received. A record for the appeal can be produced by doing no more than adding an additional index to the case file pf all the documentation relevant for the appeal. That can be done on the same day the notice of appeal is filed. No compiling and printing of a record is needed. All that remains to make the matter ripe to be heard is heads of argument, if needed. A further ad hoc directive, after a meeting with the Deputy Judge President to set a date, completes the process. It is conceivable that a hearing can take place within no more than 20-25 court days at most.

[30] What is appropriate is that a directive be issued by the Judge President to cater for the absence of rules. Until that occurs, the procedure to follow is as follows:

- a. File a notice of appeal and appeal index in the same digital file as soon as reasonably possible after the section 18(3) order was made.
- b. Simultaneously approach the Deputy Judge President for directions about heads of argument and a date for a hearing.”

- [13] Even though the procedure in stated in Jai Hind case applies to matters that are uploaded on the digital system, that serves as a guide that the procedure to follow would be to have a notice of appeal delivered together with the appeal index and approach the office of the Judge President for a date and filing of heads of argument. In this matter the respondents submitted that they have delivered the notice of appeal in terms of section 18(4) and addressed a letter to the office of the Judge President on 20 November 2023. As at the time the matter was argued the respondents had not received a date for hearing of the appeal. The applicant argued that the section 18(4) appeal has lapsed and not pending before this court as no date was allocated.
- [14] As stated in the Jai Hind matter, section 18 does not prescribe the procedure to be followed in prosecuting a section 18(4) appeal except that the appeal must be dealt with as a matter of extreme urgency. The respondents acted with extreme urgency by filing a notice of appeal on 20 November 2023 after receiving the judgment on 17 November 2023 and addressed correspondence to the office of the Judge President. In my view there was compliance with the requirement of urgency as prescribed in the section by the respondents. The result of all this is that the judgment of 19 September 2023 is pending before the Supreme Court of Appeal and the judgment of 17 November 2023 to enforce it is also a subject of a pending appeal in terms of section 18(4). In addition, the judgment of 15 July 2024 is a subject of a pending application for leave to appeal. In terms of section 18(1) the execution of these judgments is suspended and the relief sought by the applicants cannot stand.

PROTECTED DISCLOSURE

- [15] It was argued that the first applicant be declared a whistle blower as contemplated in section 1(1)(a) –(c) of the Protected Disclosure Act 26 of 2000 due to the disclosures he made in the application brought in March 2023. The first applicant stated that he disclosed the nepotism and financial misconduct committed by the Speaker, Mayor and the fifth respondent in his capacity as a Municipal Manager. It was submitted that after the judgment of 19 September 2023, the first applicant was barred from entering the premises of the first respondent. It was only in May 2024 that the received his salary after eight months of not going to work and not being remunerated. Thereafter his contract of employment as Director Corporate Service and Administration was terminated on 4 June 2024 at a council meeting. On 10 June 2024 he received a notice of suspension pending disciplinary steps allegations of misconduct and non-compliance with contract of employment.
- [16] The suspension took effect on 19 July 2024 with the disciplinary hearing supposed to take place within 90 days on 20 October 2024. The hearing did not take place and on 25 October 2024 the first applicant attempted to get back to work but prevented from doing so by the fifth respondent. On 4 November 2024 the first applicant received an amount of R100 000.00 from the first respondent without any reference to any transaction. The disciplinary process is still pending.

[17] It is the first applicant's case that the disciplinary process was initiated against him for having made the disclosures against the officials of the first respondent. The disclosure was made in the form of an affidavit in the application that was brought challenging the appointment of the fifth respondent.

[18] The respondents argued that the first applicant did not make a protected disclosure as envisaged in the Act as the disclosure was made in an affidavit filed in court and not in accordance with section 5 of the Protection of Disclosure Act.

[19] The object of the Protected Disclosure Act is stated as follows:

“(1) The object of this Act are-

- (a) to protect an employee or worker, whether in the private or the public sector, from being subjected to an occupational detriment on account of having made a protected disclosure;
- (b) to provide for certain remedies in connection with any occupational detriment suffered on account of having made a protected disclosure;

and

- (c) to provide for procedures in terms of which an employee or worker can, in a responsible manner, disclose information regarding impropriety

by his or her employer.”

[20] It is clear from the Act that there should be a link between the disclosure and the disciplinary charges the applicant faces. If there is no link the provisions of the Act are not applicable. The first applicant was charged with absenteeism from work in October 2023 despite the alleged disclosure being made in March 2023. The disciplinary hearing has not commenced and will no longer take place as the first applicant has since resigned from his employment. As a result of the resignation, the first applicant is no longer facing any disciplinary charges and was not dismissed. The first applicant has not made out a case that there is a link between the disclosure and the disciplinary charges which are no longer pending against him. In my view this application stands to be dismissed with costs.

Order

[21] Consequently, I make the following order

J.T. DJAJE

DEPUTY JUDGE PRESIDENT

NORTH WEST DIVISION

APPEARANCES

DATE OF HEARING

: 7 MARCH 2025

DATE OF JUDGMENT

: 6 JUNE 2025

COUNSEL FOR APPLICANT

: ADV MUZA with ADV MPYA

COUNSEL FOR RESPONDENTS : ADV MOKUTU SC with
ADV MOLLENTZE

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