

SOUTH AFRICA / JUDGMENT

Democratic Alliance and Others v Municipal Manager of the Gamagara Local Municipality and Others (1492/2023; 1793/2023) [2024] ZANCHC 6 (26 January 2024)

[2024] ZANCHC 6

COURT

Northern Cape High Court, Kimberley

BEFORE

Lever, Olivier

CASE / FILE NUMBER

1492/2023; 1793/2023

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IN THE HIGH COURT OF
SOUTH AFRICA
(NORTHERN CAPE
DIVISION, KIMBERLEY)
CASE
NUMBER: 1492/2023
In

the application of:

DEMOCRATIC
ALLIANCE
1ST APPLICANT
HENRIETTE
DU
PLESSIS
2ND APPLICANT
SHEPHERD
MINES
3RD APPLICANT
and
MUNICIPAL
MANAGER OF THE GAMAGARA
1ST RESPONDENT
LOCAL
MUNICIPALITY
LEBOGANG
SEETILE
2ND RESPONDENT

JOHANNES
ROMAN
3RD RESPONDENT
GOITSEONE
SEKGOPI
4TH RESPONDENT
STEPHEN
MAGAGANE
5TH RESPONDENT
OPHAKETSE
HANTISE
6TH RESPONDENT
KELONEILWE
DITHUPE
7TH RESPONDENT
MOLUSI
JAFTA
8TH RESPONDENT
MICHAEL
MOTSOARE
9TH RESPONDENT
ERNEST
TIROYAME
10TH RESPONDENT
COUNCIL
OF THE GAMAGARA LOCAL MUNICIPALITY
11TH RESPONDENT
GAMAGARA
LOCAL MUNICIPALITY
12TH
RESPONDENT
NORTHERN
CAPE MEC FOR CO-OPERATIVE GOVERNANCE, 13TH
RESPONDENT
HUMAN
SETTLEMENT AND TRADITIONAL AFFAIRS

AND:

the Counter-Application
of:

In

JOHANNES
ROMAN
1ST APPLICANT
GOITSEONE
SEKGOPI
2ND APPLICANT
STEPHEN
MAGAGANE
3RD APPLICANT
OPHAKETSE
HANTISE
4TH APPLICANT
KELONEILWE

DITHUPE
5TH APPLICANT
MOLUSI
JAFTA
6TH APPLICANT
MICHAEL
MOTSOARE
7TH APPLICANT
ERNEST
TIROYAME
8TH APPLICANT
DEMOCRATIC
ALLIANCE
1ST RESPONDENT
HENRIETTE
DU
PLESSIS
2ND RESPONDENT
SHEPHERD
MINES
3RD RESPONDENT
MUNICIPAL
MANAGER OF THE GAMAGARA
4TH RESPONDENT
LEBOGANG
SEETILE
5TH RESPONDENT
COUNCIL
OF THE GAMAGARA LOCAL MUNICIPALITY
6TH RESPONDENT
GAMAGARA
LOCAL MUNICIPALITY
7TH RESPONDENT
NORTHERN
CAPE MEC FOR CO-OPERATIVE GOVERNANCE,
8TH RESPONDENT
CASE
NUMBER: 1793/2023
DEMOCRATIC
ALLIANCE
1ST APPLICANT
SHEPHERD
MINES
3RD APPLICANT
MUNICIPAL
MANAGER OF THE GAMAGARA
1ST RESPONDENT
LEBOGANG
SEETILE
2ND RESPONDENT
JOHANNES

ROMAN
3RD RESPONDENT
ERNEST
TIROYAME
10TH RESPONDENT
COUNCIL
OF THE GAMAGARA LOCAL MUNICIPALITY
11TH RESPONDENT
NORTHERN
CAPE MEC FOR CO-OPERATIVE GOVERNANCE, 13TH
RESPONDENT
DATE
HEARD
: 2
November 2023
DATE
DELIVERED
:
26
January 2024
CORAM
:
Lever J et Olivier AJ

JUDGMENT

OLIVIER AJ

INTRODUCTION:

1. This Court was approached by the parties set out above (with the exception of the 13th Respondent to whom I will henceforth, if and where necessary, refer to as “the MEC”) for the determination of effectively three applications namely:

1.1 An application brought on an urgent basis under case number 1492/23 on or about 14 August 2023 (herein after referred to as “the 1st Main Application”);

1.2 A Counter-Application brought, also on an urgent basis, under the same case number (1492/23) on or about 29 August 2023 (herein after referred to as “the Counter-Application”); and

1.3 An application brought on an urgent basis under case number 1793/23 on or about 20 September 2023 (herein after referred to as “the 2nd Main Application”).

I will henceforth, if and where necessary, refer to the above three applications jointly as “the Applications”.

2. The main protagonists in the Applications are:

2.1 Ms. Henriette du Plessis who is the Second Applicant in both the 1st and 2nd Main Applications and who is also the Second Respondent in the Counter-Application (herein after referred to as “Du Plessis”);

2.2 Mr. Shepherd Mines who is the Third Applicant in both the 1st and 2nd Main Applications and the Third Respondent in the Counter-Application (herein after referred to as “Mines”);

2.3 Mr. Lebogang Seetile (herein after “Seetile”) who is the Second Respondent in both the 1st and 2nd Main Applications and the Fifth Respondent in the Counter-Application;

2.4 Mr. Johannes Roman (“Roman”) who is the Third Respondent in both the 1st and 2nd Main Applications and the First Applicant in the Counter-Application;

2.5 Ms. Goitseone Sekgopi (“Sekgopi”) who is the Fourth Respondent in both the 1st and 2nd Main Applications and the Second Applicant in the Counter-Application; and

2.6 Mr. Ophaketse Hantise (“Hantise”) who is the Sixth Respondent in both the 1st and 2nd Main Applications and the Fourth Applicant in the Counter-Application.

It is common cause that Seetile is the current Municipal Manager of the Gamagara Local Municipality (herein after referred to only as “the Municipality”).

I will furthermore, for purposes hereof and in an attempt to avoid confusion, refer to the First to Third Applicants (the First to Third Respondents in the Counter-Application) jointly as “the Applicants” and to the Third to Tenth Respondents (the First to Eighth Applicants in the Counter-Application) as “the Respondent Councillors”.

3. It was common cause between the parties that the legislative provisions against which this matter was to be decided, were to be found in:

3.1 The Constitution of the Republic of South Africa, 1996 (herein after “the Constitution”);

3.2 The Local Government: Municipal Structures Act, Act 117 of 1998 (herein after referred to as “the Structures Act”); and

3.3 The Standing Rules and Orders for the Meetings of the Council and its Committees of the Municipality (herein after referred to as “the SR&O”).

BACKGROUND:

4. This saga played itself out over a period of approximately five months commencing on or about 29 May 2023 and eventually concluding during or about October 2023.

Because of the fact that one can easily be drawn into a morass of details and eventualities that are not central to the issues at hand, I will summarise the relevant facts as succinctly as possible.

5. The Applications revolved around three meetings of the Council of the Municipality namely:

5.1 A meeting of Council held on 7 August 2023 (herein after referred to as “the August 2023 Meeting”) which formed the subject of the 1st Main Application and which effectively set the ball in motion in as far as the lodging of the Applications are concerned;

5.2 A meeting of Council which took place on 29 May 2023 (“herein after “the May 2023 Meeting”) which formed the subject of the Counter-Application; and

5.3 A meeting of Council which took place on 13 September 2023 (“herein after “the September 2023 Meeting”) which formed the subject of the 2nd Main Application.

6. The Applications furthermore specifically revolved around what were alleged to be unlawful decisions taken by the Council of the Municipality during the above-mentioned three meetings which decisions were, in summary, the following:

6.1 A decision taken during the May 2023 Meeting in terms whereof Hantise was removed from his position as Executive Mayor of the Municipality and in terms whereof Du Plessis was appointed as Executive Mayor in his stead (herein after referred to as “the May Decision”);

6.2 Two decisions taken during the August 2023 Meeting in terms whereof, essentially, Du Plessis and Mines were removed as Executive Mayor of the Municipality and as Speaker of the Council respectively and in terms whereof Roman and Sekgopi were appointed in their stead (herein after “the August Decisions”); and

6.3 Two decisions taken during the September 2023 Meeting in terms whereof, essentially, Du Plessis and Mines were removed as Executive Mayor of the Municipality and as Speaker of the Council respectively

and in terms whereof Roman and Sekgopi were appointed in their stead (herein after “the September Decisions”).

The Events of October 2023:

7. Shortly before argument of the Applications was to be heard on 2 November 2023, this Court was alerted to the fact that certain events transpired during the course of October 2023 (herein after referred to as “the October 2023 Events”) which might prove to be the final chapter in the ongoing saga.

8. The October 2023 Events were set out in an affidavit that was deposed to by the Tenth Respondent and which may be summarized as follows:

8.1 On 5 October 2023 the Tenth Respondent in the 1st and 2nd Main Applications (the Eighth Applicant in the Counter-Application) submitted motions of no confidence in Du Plessis and Mines for

consideration by the Council of the Municipality;

8.2 Mines however resigned as Speaker of the above Council on or about 11 October 2023;

8.3 During a meeting of Council on 11 October 2023, Mines' resignation as Speaker was accepted by Council and the motion of no confidence in Du Plessis as Executive Mayor was carried by what appears to be a majority vote;

8.4 During the same meeting and also by way of what appears to be majority vote, Hantise was elected as Executive Mayor of the Municipality and Sekgopi as the Speaker of Council;

8.5 Hantise however subsequently resigned as Executive Mayor and Roman was elected in his stead during a Council meeting held on 18 October 2023.

9. The nett result of the October 2023 Events as set out in the above affidavit of the Tenth Respondent and as was submitted by Mr. Louw, who appeared for the Respondent Councillors, is therefore that Roman currently holds office as Executive Mayor of the Municipality and that Sekgopi holds the position of the Speaker of the Council of the Municipality.
10. It was not argued on behalf of any of the other parties to this matter that the above October 2023 Events were in any way improper and it appears to be generally accepted that Roman and Sekgopi have been properly elected as Executive Mayor and Speaker respectively.

URGENCY OF THE COUNTER-APPLICATION:

11. Mr. van Niekerk SC who took primary responsibility for submitting arguments on behalf of the Applicants in the 1st Main Application, submitted that the Court should strike the Counter-Application from the roll with costs due to the fact that the Counter-Application was in fact not urgent.

The argument by Mr. van Niekerk was primarily that the Respondent Councillors did not deem it necessary to take any steps to set aside the May 2023 decision for a period of approximately 3 months prior to the institution of the 1st Main Application and that the Respondent Councillors were only prompted to lodge the Counter-Application by the fact that the 1st Main Application was lodged.

Mr. van Niekerk in essence argued that the Respondent Councillors initially seemed to accept the May 2023 Decision.

It was only after the 1st Main Application was lodged in terms whereof the Court was asked to set aside the August 2023 Decisions, so Mr. van Niekerk argued, that the Respondent Counsellors decided to take issue with the May 2023 Decision and to have same reviewed and possibly set aside.

12. I have to agree with Mr. van Niekerk in this regard as it does seem that the Counter-Application was lodged in a "knee-jerk" reaction to the 1st Main Application.

13. This Court was not provided with any proper explanation as to why the Respondent Councillors did not act earlier in bringing an application to have the May 2023 Decision reviewed and set aside and I cannot accept the argument on behalf of the Respondent Councillors that it is essentially the Applicants who wished to close the doors of the Court to the Respondent Councillors, especially having regard to the fact that the May 2023 Meeting essentially violates the same principles complained about in the 1st Main Application.

The argument on behalf of the Respondent Councillors that they attempted to have the May Decision rectified by way of motions of no-confidence in Du Plessis and Mines but that they were thwarted in these attempts by the recalcitrant Applicants, also does not hold water as an explanation as to why the Court was not approached for assistance in this regard, was not given.

On the face of it, the Respondent Councillors seemed to have acquiesced themselves to the May decision and it is only when nothing came as a result of their chosen course of action, that they attempt to reverse their earlier decision and now approach the Court for assistance.

This attempt to reverse their earlier decision is not adequately explained.

14. On the above premise the Counter-Application could be struck from the roll.
15. It has however recently been held in the Eastern Cape High Court that a matter may be entertained, even in a case of material non-compliance

with the Uniform Rules of Court and depending on the facts of each case, if it would be in the interest of expediency and with due consideration to practicalities such as the unnecessary duplication in case preparation (with the consequent increase in legal costs) as well as the resultant duplication in as far as the attention and preparation of more than one Court is concerned.[1]

16. I align myself with the above-mentioned decision of the Eastern Cape High Court for the simple reason that in the present matter and at the time of argument of the Applications, all parties had the opportunity to place their respective cases before Court and their cases were also properly and fully argued on their behalf.
17. In the circumstances it would be unnecessary to burden another Court with having to prepare for, hear and determine the Counter-Application in due course, where this Court is in fact in a position to do so.

In the circumstances there can be no prejudice to any of the parties concerned.

I will however return to the issue of the Counter-Application not being urgent later.

MOOTNESS:

18. At the commencement of argument before us on 2 November 2023, Mr. Louw, who appeared for the Respondent Councilors, submitted that, by virtue of the October 2023 Events, the 1st and 2nd Main Applications as well as the Counter-Application had effectively become moot and that this Court need not waste any further time deciding the merits of these applications apart from where it may possibly have a bearing on the issue of costs.

Mr. Louw submitted that, in the circumstances, a proper order in as far as costs are concerned would be to order each party to pay their own costs.

19. In view of the October 2023 Events and Mr. Louw's arguments in respect of the possible mootness of the Applications, it is prudent to deal with the question of mootness first before delving into the merits of the respective Applications and the issue of costs.
20. Mr. Louw primarily relied on the matter of *Tlouamma & Others v Mbete*, Speaker of the National Assembly of the Parliament of the Republic of South Africa & Another[2] in making his submissions on the present applications.

Mr Louw argued that in the present applications, there is no discreet legal issue of public importance which requires adjudication and further that there exists no live controversial issue between the parties any longer, given the October 2023 Events.[3]

Mr. Louw furthermore argued that by virtue of the October 2023 Events, the substantive relief sought by the respective parties by way of the Applications has become moot and ought not to be considered by this Court.

21. Mr. van Niekerk argued on the other hand that the matter is not as simple as it was made out to be by Mr. Louw (on behalf of the Respondent Councillors) in that this Court in effect had the obligation to consider the events during the May 2023 Meeting, the August 2023 Meeting as well as the September 2023 Meeting (herein after referred to jointly and if necessary as "the Impugned Meetings") and to declare these events unlawful if same is in fact found to be unlawful.
22. During his argument, Mr. van Niekerk relied primarily on the provisions of Section 172 of the Constitution which state as follows:

"(1) When deciding a constitutional matter within its power, a court-

- (a) must declare that any ... conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency..." (My underlining and omissions)

23. Mr van Niekerk argued that due to the prescriptive language used by the Legislature in the above Section 172(1)(a) of the Constitution, this Court does not have a discretion other than to investigate the merits of the events that took place during the Impugned Meetings and to declare same invalid if need be.

24. Mr. van Niekerk furthermore referred us to the matter of Buffalo City Metropolitan Municipality v ASLA Construction (Pty) Limited^[4] where the learned Theron J confirmed as follows:

“... the court may nevertheless be constitutionally compelled to declare the State’s conduct unlawful. This is so because [s]ection

172(1)(a) of the Constitution enjoins a Court to declare invalid any law or conduct that it finds to be inconsistent with the Constitution.”^[5]

Mr. van Niekerk was supported in his above arguments by Mr. Sive who took responsibility for submitting arguments on behalf of the Applicants in the 2nd Main Application.

25. Mr. van Niekerk and Mr. Sive requested and were afforded leave to hand up a draft order which they requested this Court to make an order of Court and in terms whereof the Applicants essentially sought an order:

25.1 Declaring unlawful the decision(s) by Seetile and the Council of the Municipality to call, alternatively to continue with the August 2023 Meeting and to further preside and dispose of business during the said August 2023 Meeting and to allow and put to a vote motions for:

25.1.1 The removal of Du Plessis and Mines as Executive Mayor and Speaker respectively; and

25.1.2 The appointment of Roman and Sekgopi as Executive Mayor and Speaker respectively;

25.2 Setting aside the August Decisions;

25.3 Reviewing and setting aside all and any decisions or acts taken pursuant to the August 2023 Meeting and the August Decisions including:

25.3.1 The decisions by the Council of the Municipality taken at a special Council Meeting on 10 August 2023 to:

25.3.1.1 Approve the resignation of one Councillor Dithupa as a member of the Executive Committee;

25.3.1.2 Approve the appointment of Roman as member of the Executive Committee; and

25.3.1.3 Ratify the election of Roman as the Executive Mayor;

25.3.2 The decisions by the Council of the Municipality taken at a special Council Meeting on 17 August 2023 to:

25.3.2.1 Condone the decision taken by Seetile to instruct legal representatives to deliver a notice of intention to oppose the 1st Main Application;

25.3.2.2 Oppose the 1st Main Application;

25.3.2.3 Authorise Seetile to appoint legal representatives on behalf of the Council of the Municipality; and

25.3.2.4 Cover the travelling costs of Seetile and Councillors implicated in the 1st Main Application;

25.3.3 The decisions by the Council of the Municipality taken at a special Council Meeting on 30 August 2023 to approve:

25.3.3.1 The Annual Financial Statement;

25.3.3.2 The Draft Annual Report;

25.3.3.3 The Municipal Public Accounts Committee Report;

25.3.3.4 The IDP Process Plan;

25.3.3.5 The Annual Performance Plan; and

25.3.3.6 The upper limits for members of the Council;

25.4 Declaring unlawful the September 2023 Decisions;

25.5 Setting aside the September 2023 Decisions;

25.6 Dismissing the Counter-Application; and

25.7 Instructing the Second to Tenth Respondents in the 1st Main Application to pay the costs of the Applications in their personal capacity on a scale as between Attorney and Client and jointly and severally by the Municipality.

27. In this instance I might “be guilty of walking where constitutional angels fear to tread”[6] when I hold the view that I cannot believe that the Legislature, when penning Section 172(1) (a) of the Constitution, intended that a Court should spend time and resources in merely “going through the motions” by declaring conduct invalid in circumstances where it serves no or very little purpose to do so.
28. It has been held recently that the general principle in as far as mootness is concerned, is that a matter is deemed to be moot when the Court’s judgment will have no practical effect on the parties in, for example, instances where a live or existing controversy no longer exists between the parties and further that a Court should refrain from making rulings on such matters.[7]

The same goes for a matter where the decision of the Court will be of academic interest only.[8]

29. It appears that one of the primary reasons as to why a Court should refrain from making rulings in instances that have become moot is that the Court should follow its purpose namely to adjudicate existing legal disputes and that scarce resources should not be wasted away on abstract questions of law.[9]

The Constitutional Court has stressed the above in the matter of President of the Republic of South Africa v Democratic Alliance & Others[10] where the Court held in paragraph [35] of the judgment as follows:

“... courts should be loath to fulfil an advisory role ... in circumstances where no actual purpose would be served by that decision, now. Entertaining this application requires that we expend judicial resources that are already in short supply especially at this level. Frugality is therefore called for here.”(My omissions)

30. It is indeed true and Mr. van Niekerk was correct in arguing as much, that Courts have previously dealt with the merits of matters that have become moot, but those cases primarily involved issues of public importance that would have had an effect on matters in the future and on which the adjudication of the Court was required.[11]

From the current authorities on the subject however, it is clear that mootness will be a possible bar against relief sought where the constitutional issue is not only moot as between the parties, but is also moot relative to society at large and no considerations of compelling public interest require the Court to reach a decision.[12]

31. It is also true that Section 16(2)(a)(i) of the Superior Courts Act[13] apparently affords a Court of Appeal a discretion to hear an appeal notwithstanding the mootness of the matter[14], but in the matter of Minister of Justice and Correctional Services & Others v Estate Late Stransham-Ford (Doctors for Life International NPC & Others as amici curiae)[15] it was held:

“The high court is not vested with similar powers. Its function is to determine cases that present live issues for determination.”

32. It warrants little or no discussion that the above Section 16(2)(a)(i) of the Superior Courts Act finds no application in the present matter as this Court did not sit as a Court of appeal.
33. In the present matter I hold the view that by virtue of the October 2023 Events, the disputes between the various parties have been settled by what purports to be a fair and democratic election process in October 2023 which resulted in Roman and Sekgopi being elected to the critical positions of Executive Mayor of the Municipality and Speaker of the Council of the Municipality respectively.
34. The defining feature behind the idea of democracy is the notion that all interested parties have a say in who eventually “gets the keys to the corner office” and that this question, in the end, is decided by way of a majority vote.

This is exactly what in my view happened in the present matter and it seems that all parties, especially the Applicants, have made their peace with the fact that Roman and Sekgopi were properly elected in their current positions.

I am fortified in my view by the fact that Du Plessis, in all affidavits deposed to by her in the Applications prior to the October 2023 Events, referred to herself as a Councillor of the Municipality and “the lawfully elected Executive Mayor of the Municipality” whereas in the final affidavit that she deposes to for purposes of the Applications and which was deposed to subsequent to the October 2023 Events, Du Plessis refers to herself simply as “a Councillor within the Gamagara Local Municipality”.

35. I consequently hold the view that there are no live and/or existing controversy between the parties that needs further scrutiny by this Court and I consequently find that the Applications have become moot and need not be considered any further.
36. I furthermore hold the view that it is in the public interest that stability be established and confirmed in the Municipality in as far as its leadership is concerned in order for the Municipality to move forward and manage its affairs in a proper manner.

I hold this view especially in view thereof that municipalities in South Africa, currently and in general, are notorious for below-standard management and service delivery and one can only hope that the Municipality will be the exception to the general rule.

COSTS:

37. Mr Louw argued that a proper costs order in the present matter, in view of the October 2023 Events, would be to order each party to pay its own costs, alternatively to make no order as to costs.
38. Mr van Niekerk and Mr Sive persisted therein that the Court should grant an order as set out in paragraph 25.7 herein above.
39. In order to properly decide the issue of costs, it is unfortunately necessary to look into the merits of the Applications, albeit very cursory.
40. The SR&O is clear as to the procedures to be followed in calling and/or setting up of meetings of the Council of the Municipality as well as the procedures to be followed during such meetings.

The relevant provisions of the SR&O for purposes hereof, are as follows:

40.1 Rule 5.1 which states:

“The Speaker may at any time of own accord and shall, upon request in writing of a majority of the councillors of the municipality, call a special of the council, provided that no such special meeting shall take place unless all councillors were given at least 48 hours’ notice prior to the date and time set for the meeting.”

40.2 Rule 6 which states:

“At least 7 days before any ordinary meeting of the council and at least forty eight hours before any special meeting of the council, a notice to attend the meeting ... shall be left or delivered to an accessible distribution point within the municipality as determined by the council from time to time / sent by electronic mail to an address provided by the councillor as his/her official address / mail address.” (My omissions)

40.3 Rule 8.1 which states:

“No business shall be transacted at a meeting of the council or any committee other than that specified in the agenda relating thereto,

except any matters which the relevant chairperson considers urgent and the said chairperson has ruled the matter to be urgent.”

40.4 Rule 9 which deals with conduct during meetings and which specifically sets out the powers of the Speaker or the chairperson of the meeting which powers inter alia includes:

40.4.1 The maintaining of order during meetings; and

40.4.2 The ensuring of compliance with the Code of Conduct for Councillors and the SR&O.

40.5 Rule 14 which deals with walk-outs and which states:

“If a councillor or group of councillors leave any meeting in protest, and the remainder of the councillors constitute a quorum the business of the meeting shall be proceeded with.”

40.6 Rule 16 which deals with adjourned meetings and which states:

“The council or a committee may adjourn a meeting to any date or hour ...” (My omissions)

40.7 Rule 18.1 which states:

“At every meeting of the council the Speaker, or if he/she is not present, an Acting Speaker shall be the chairperson...” (My omissions)

40.8 Rule 28.1 which states:

“No matter shall be brought before the council or a committee by any member of the council except upon a notice of motion, which shall be in writing and signed by the member giving the notice as well as the member seconding it...” (My omissions)

40.9 Rule 28.2 which states:

“Any notice of motion shall be submitted to the Speaker or the chairperson before 12:00, ten days prior to the meeting of the council or committee.”

40.10 Rule 28.3 which states:

“A motion shall lapse if the member who submitted the motion is not present at the meeting where the motion is to be debated.”

40.11 Rule 28.5 which states:

“When a member introduces a motion which is intended to rescind or amend a resolution passed by the council in the preceding three months or which has the purport as a motion that was not supported within the three preceding months shall not be entertained.”

40.12 Rule 35 which deals with the disruption of meetings of Council by persons other than Councillors and which inter alia provides that such person shall be removed from the Council chambers or meeting venue at the direction of the Speaker or chairperson and if such person refuses such direction, the Sergeant-at-Arms may be called upon to remove the disruptor.

41. It should be stated at this point that the lawfulness or not of the August 2023 Meeting and the August Decisions warrant no further mention and/or discussion because of the fact that the Respondent Councillors conceded that the meeting during which the August Decisions were taken was not properly constituted and that the August Decisions were therefore unlawful.
42. I have also already made a ruling as to the urgency of the Counter-Application and this issue also warrants no further mention.
43. In respect of the May 2023 Meeting and the resultant May Decision, it appears from the Respondent Councillors' papers that their primary ground of concern was the fact that short notice of the motion of no-confidence in the 6th Respondent in the 1st Main Application was given.

It appears from the papers that the particular motion of no-confidence was given only on 27 May 2023 and the argument of the Respondent Councillors was that this was in contradiction of the provisions of Rules 28.1 and 28.2 of the SR&O, seeing that the May 2023 Meeting took place on 29 May 2023.

44. The Respondent Councillors furthermore also took umbrage with the fact that notice of the May 2023 Meeting was given on 26 May 2023 which violated the provisions of Rule 6 of the SR&O in terms whereof notice of at least 7 (seven) days is required.
45. The Applicants did not deny the fact that the motion of no-confidence in the 6th Respondent was only given on 27 May 2023, but then argued that it was submitted as an urgent motion.

This argument was also advanced as reason why short notice of the May 2023 Meeting was given.

46. The relevant record of the proceedings during the May 2023 Meeting however did not support the above contentions as it did not show that the chairperson of the particular meeting did in fact rule either the May 2023 Meeting or the motion of no-confidence in the 6th Respondent as urgent.[16]

47. It consequently appears prima facie from the papers that the Respondent Councillors may have had grounds on which to challenge the validity of the May 2023 Meeting and the May Decision.
48. Mr. Louw argued that if the Court finds that the May 2023 Meeting and the May Decision were unlawful and that the May Decision, as a consequence, should be set aside, the Court should also consider that it was in fact the May 2023 Meeting and the May Decision that set the ball in motion in as far as the Applications were concerned.

I must be honest when I say that I failed to fully comprehend the reasoning behind Mr. Louw's argument in the above regard, since the flipside of the coin is that the Respondent Councillors only took issue with the May 2023 Meeting and the May Decision after the lodging of the 1st Main Application.

I repeat that I hold the view that the setting aside of the May Decision appears not to be as urgent to the Respondent Councillors as it was made out to be.

49. The primary concerns of the Applicants with the events during the September 2023 Meeting, were that the September 2023 Meeting initially commenced lawfully but that, after the said September 2023 Meeting was lawfully adjourned by Mines (the Speaker at the time), the Respondent Councillors proceeded with the meeting unlawfully.
50. The Applicants furthermore contended that the actions of Seetile and the Respondent Councillors to proceed with the meeting after the adjournment thereof were unlawful and that the September 2023 Decisions, which were taken during this continuation of the September 2023 Meeting, were therefore also unlawful and that same therefore stood to be set aside.

The reason for the adjournment of the September 2023 Meeting, so it was submitted on behalf of the Applicants, was the fact that the meeting was disrupted by members of the community.

51. The Respondent Councillors simply argued that the adjournment of the September 2023 Meeting was unlawful and of no force and effect as Mines (as Chairperson) adjourned the meeting under circumstances where it was not necessary to do so.

The above argument was based on the submissions that the disruption of the meeting by the community members was not as serious as it was made out to be and that the disruption, at the time of the adjournment of the meeting, was effectively a thing of the past.

52. The Respondent Councillors furthermore argued that Mines did not, before adjourning the September 2023 Meeting, follow due process in terms of Rule 35 of the SR&O and that they (the Respondent Councillors) were therefore in fact entitled to proceed with the September 2023 Meeting.

The reason for Mines' actions, so it was submitted by the Respondent Councillors, was to avoid having to deal with the motions of no-confidence in himself and Du Plessis that were tabled for discussion during the meeting.

This was obviously denied by the Applicants.

53. If regards are to be had to the contents of Rule 35 of the SR&O as well as the record of the proceedings during the September 2023 Meeting, it appears *prima facie* as if the Respondent Councillors may have grounds for the objection to the relief sought by way of the 2nd Main Application.

It should be mentioned, for the sake of completeness that argument was also raised to the effect that Mines did not have the authority to adjourn the September 2023 Meeting in any event, as this power rests with the Council in terms of the provisions of Rule 16 of the SR&O.

Although it is difficult to fathom how Mines, as chairperson of the meeting, has the authority to regulate and manage the whole of the meeting in terms of Rule 9 of the SR&O, but does not have the authority to adjourn the meeting, it appears *prima facie* that the above argument may also have merits.

54. On the other hand; no reasonable explanation was offered by the Respondent Councillors as to why they proceeded with the September 2023 Meeting without affording the Applicants and the remainder of the Councillors at least an opportunity to return to the meeting.

It appears *prima facie* that the conduct of Du Plessis, Mines and other members of the Council who left the September 2023 Meeting after the adjournment

thereof, did not boil down to a walk-out as defined in terms of Rule 14 of the SR&O as it was not done in protest and there is therefore no reason why, at the very least, an attempt could not have been made to persuade them to return to the meeting.

The above creates the impression that the Respondent Councillors might have been more keen than was necessary to get the motions of no-confidence in Mines and Du Plessis approved and that they might have been worried that the said motions might not be carried if the September 2023 Meeting was attended (up and until its conclusion) by all of the Councillors entitled to attend.

55. The question may very well also be raised as to why, if the Respondent Councillors were supremely confident in the lawfulness of their actions during the September 2023 Meeting, was it necessary to table motions of no-confidence in Mines and Du Plessis again during the October 2023 Events.
56. I hold the view that, if all of the above is taken into consideration, it is evident that all parties concerned used, misused, bent, negated and interpreted the SR&O as it suited them, when it suited them.

In these circumstances, none of the parties involved can claim to have been acting in the best interests of the residents of the area covered by the relevant municipality.

None of them can claim to have been championing democracy.

57. I am furthermore of the view that this conduct of the parties concerned should be frowned upon because it could definitely not have contributed to the creation of any sense of certainty and/or confidence amongst the general community which consists (largely) of people who, by way of their votes, have put the parties in power.

I do however also hold the view that to attempt to point out the main culprit in the present matter would serve no purpose.

I am not going to allow a costs order to fuel the fire.

It is also undesirable to create a situation where any of the parties to this saga can use an order in relation to costs as an opportunity for political grandstanding.

58. I am therefore of the view that no order as to costs in this instance would be the most appropriate order to make.

ORDER:

59. In view of all of the above, I make the following order:

59.1 The application under case number 1492/2023 is dismissed;

59.2 The counter-application under case number 1492/2023 is dismissed;

59.3 The application under case number 1793/2023 is dismissed; and

59.4 No order as to costs is made in respect of any of the said applications.

DATED AT KIMBERLEY ON THIS THE _ DAY OF _____ 2024.

I agree.

LEVER J

For 1st to 3rd Applicants: Adv. J.G. van Niekerk SC Adv. D. Sive o.i.o Minde Schapiro & Smith Inc. BELLVILLE c/o Engelsman Magabane Inc. KIMBERLEY For 1st, 2nd & 12th Adv. L.A. Roux Respondents o.i.o Peyper Attorneys BLOEMFONTEIN c/o Van De Wall Inc. KIMBERLEY For 3rd to 10th Respondents: Adv. M.C. Louw o.i.o Peyper Attorneys BLOEMFONTEIN c/o Van De Wall Inc. KIMBERLEY

[1] See *Magricor (Pty) Ltd v Border Seed Distributors CC: In re: Border Seed Distributors CC v Magricor (Pty) Ltd* [2020] ZAECGHC 103 (SAFLII Reference) at paragraph [38]. Also see the matter of *Windsor Hotel (Pty) Ltd v New Windsor Properties (Pty) Ltd & Others* [2013] ZAECMCH 14 (SAFLII Reference) at paragraph [10].

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[2] [2016] 1 All SA 235 (WCC).

[3] It should be mentioned, for the sake of completeness, that the decision of the Court in Tlouamma was criticized by the Constitutional Court in the matter of United Democratic Movement v Speaker of the National Assembly & Others (Council for the Advancement of the South African Constitution & Others as amici curiae) 2017

(8) BCLR 1061 (CC), but it should also be stated that the said criticism by the Constitutional Court was levelled at the decision made in Tlouamma in respect of the constitutionality of a secret ballot procedure and that the Constitutional Court in the United Democratic Movement matter did not express itself with regards to the issue of mootness and the decisions in Tlouamma in this respect. Reference is specifically made to paragraphs [89] to

[91] of the United Democratic Movement matter.

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[91] of the United Democratic Movement matter.

[4] [2019] JOL 41747 (CC).

[5] See Buffalo City, supra at paragraph [63]. See also State Information Technology Agency SOC Limited v Gijima Holdings (Pty) Ltd [2017] ZACC 40 (SAFLII Reference) at paragraph [52].

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[6] I am shamelessly quoting Comrie J in the matter of S v Mohammed 1999

(2) SACR 507 (CPD) at page 514.

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- (2) SACR 507 (CPD) at page 514.
- [7] *Solidariteit Helpende Hand NPC & Others v Minister of Cooperative Governance & Traditional Affairs* [2023] ZASCA 35 (SAFLII Reference) at paragraph [12]. Also see the matter of *National Coalition for Gay & Lesbian Equality v Minister of Home Affairs & Others* [1999] ZACC 17 (SAFLII Reference) at footnote 18 as well as the authorities cited there.
- [7] *Solidariteit Helpende Hand NPC & Others v Minister of Cooperative Governance & Traditional Affairs* [2023] ZASCA 35 (SAFLII Reference) at paragraph [12]. Also see the matter of *National Coalition for Gay & Lesbian Equality v Minister of Home Affairs & Others* [1999] ZACC 17 (SAFLII Reference) at footnote 18 as well as the authorities cited there.
- [8] *Minister of Tourism & Others v Afriforum NPC & Another* [2023] ZACC 7 (SAFLII Reference) at paragraph [23].
- [8] *Minister of Tourism & Others v Afriforum NPC & Another* [2023] ZACC 7 (SAFLII Reference) at paragraph [23].
- [9] See *Police and Prison Civil Rights Union v South African Correctional Services Workers' Union* [2018] ZACC 24 (SAFLII Reference) at paragraph [43]. Also see *Geldenhuys & Neethling v Beuthin* 1918 AD 426 at page 441.
- [9] See *Police and Prison Civil Rights Union v South African Correctional Services Workers' Union* [2018] ZACC 24 (SAFLII Reference) at paragraph [43]. Also see *Geldenhuys & Neethling v Beuthin* 1918 AD 426 at page 441.
- [10] [2019] ZACC 35 (SAFLII Reference).
- [11] See *inter alia* *Centre for Child Law v The Governing Body of the Hoërskool Fochville & Another* [2015] 4 All SA 571 (SCA) at paragraph [14].
- [11] See *inter alia* *Centre for Child Law v The Governing Body of the Hoërskool Fochville & Another* [2015] 4 All SA 571 (SCA) at paragraph [14].
- [12] See *Tlouamma*, *supra* at paragraph [101].
- [13] Act 10 of 2013.
- [14] See *Solidariteit Helpende Hand*, *supra* at paragraph [18].
- [15] [2017] 1 All SA 354 (SCA) at paragraph [25].
- [16] I refer to Rule 8.1 of the SR&O.

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