

SOUTH AFRICA / JUDGMENT

Kagisano Molopo Local Municipality and Others v Gaborone and Others (1622/2024)

[2024] ZANWHC 222 (23 August 2024)

[2024] ZANWHC 222**COURT**

North West High Court, Mafikeng

BEFORE

J T Djaje

CASE / FILE NUMBER

1622/2024

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**IN THE HIGH COURT OF
SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG
CASE
NUMBER: 1622/2024**

Reportable:	YES/NO
	Circulate
	to Judges: YES/NO
	Circulate
	to Magistrates: YES/NO
	Circulate
	to Regional Magistrates: YES/NO
	In
the matter between:	KAGISANO
	MOLOPO LOCAL MUNICIPALITY
	1ST
	APPLICANT
	KAGISANO
	MOLOPO LOCAL MUNICIPALITY
	COUNCIL
	2ND
	APPLICANT
	CLLR
	PRETTY MOIRWAGALE
	THE
	SPEAKER OF KAGISANO MOLOPO

LOCAL
MUNICIPALITY COUNCIL
3RD
APPLICANT
CLLR
TSHIRELETSO MARABUTE
MAYOR
OF KAGISANO MOLOPO LOCAL
MUNICIPALITY
4TH
APPLICANT
And
ERIC
ATLHOLANG GABORONE
1ST
RESPONDENT
KAGISO
MORAPEDI
2ND
RESPONDENT
MEMBER
OF THE EXECUTIVE COUNCIL
COOPERATIVE
GOVERNANCE AND
TRADITIONAL
AFFAIRS, NORTH WEST PROVINCE
3RD
RESPONDENT

JUDGMENT

DJAJE AJP

- [1] This is a leave to appeal against the judgment and order granted in favour of the first respondent on 12 April 2024. The order of 12 April 2024 was as follows:

“1. The rules relating to forms, services and time periods as prescribed by the Uniform Rules of Court are dispensed with and this matter is heard as an urgent application.

2. The resolution CO/67/2023/24 taken by the second respondent on the 15th of March 2024 is hereby declared to be invalid and unlawful and is accordingly set aside for non-compliance with Regulation 6 of the Disciplinary Regulations of Senior Managers, 2010 Act 32 of 2000.
3. The Applicant’s suspension by the second respondent is lifted with immediate effect and he shall duly perform his duties until the final determination of the review application instituted under case No. 602/2024 which seeks to review and set aside his appointment.

4. The resolution by the second respondent taken to appoint the fifth respondent as Acting Municipal Manager is declared invalid and unlawful and is accordingly set aside.
5. The appointment of the fifth respondent as Acting Municipal Manager pursuant to the suspension of the applicant is declared unlawful, invalid and set aside.
6. The 1st and 2nd respondents are ordered to pay the costs of this application on attorney and client scale jointly and severally, the one paying the other to be absolved which costs shall include costs of two counsel.”

[2] The applicants have raised the following grounds of appeal:

“1. The learned judge erred in law in that she ordered that:

“[1] ...

- [2] That the resolution CO/67/2023/24 taken by the Second Respondent on the 15th of March 2024 be and is hereby declared to be invalid and unlawful, and is accordingly set aside for non-compliance with Regulation 6 of the Disciplinary Regulations of Senior Managers, 2010; Act 32 of 2000.
- [3] The Applicants’ suspension by the second respondent is lifted with immediate effect and he shall duly perform his duties until the final determination of the review application instituted under case number 602/2024 which seeks to review and set aside his appointment ...” (Emphasis)
2. Paragraphs [2] and [3] of the above order effectively constitute a mandatory interdict against the applicants in the sense that the municipality must allow the first respondent to perform his duties until the review application launched by Tshepo Bloom, who was one of the candidates applied for the position occupied by the first respondent, is finalised.
3. The learned judge failed to appreciate the fact that such order can only be granted by the Court in favour of the applicant (first respondent) in a matter after the requirements of an interim interdict have been established by the applicant (first respondent) in a matter.
4. The learned judge failed to have regard to the decision of *National Treasury and Others v Opposition to Urban Trolling Alliance* 2012
- (6) SA 223 (CC) wherein the Constitutional Court held as follows:

“The test requires that an applicant that claims an interim interdict must establish

 - (a) prima facie right even if it is open to some doubt; (b) a reasonable apprehension of irreparable and imminent harm to the right

if an interdict is not granted; (c) the balance of convenience must favour the grant of the interdict and (d) the applicant must have no other remedy.”

5. The learned judge granted an interim interdict in favour of the applicant despite the fact that the first respondent did not even attempt to establish the requirements for an interim interdict in his papers.
 6. The learned Judge erred in awarding a costs order against the applicants in favour of the first respondent.
 7. Kindly take notice that the applicants intend to file an application for condonation of the late filing of the application for leave to appeal.”
- [3] In *MEC for Health, Eastern Cape v Mkhita* 2016 JDR 2214 [SCA] the Supreme Court of Appeal emphasized the application for the test for leave to appeal and found as follows:
- “[16] once again it is necessary to say that leave to appeal, especially to this court must not be granted unless there truly is reasonable prospect of success. Section 17(1)(a) of the superior courts act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success, or there is some other compelling reason why it should be heard.*
- [17] an applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, and arguable case one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.”
- [4] The applicants brought an application for condonation of the late filing of the leave to appeal. In the main the applicants’ argument for condonation was that the leave to appeal was filed out of time as provided for in Rule 49 of the Uniform Rules of Court. The judgment and order of the court was granted on 12 April 2024 and the fifteen days for bringing a leave to appeal lapsed on 3 May 2024. According to the applicant the report on the judgment was only tabled before the municipal council on 3 May 2024. Thereafter the instructions to the Attorneys were furnished on 7 May 2024. The leave to appeal was only delivered on 13 May 2024. As such the leave to appeal was out of time by five court days.
- [5] It was argued that there are prospects of success and condonation should be granted. In the main it was argued that the order granted by the court was a mandatory interim interdict when the requirements thereof were not met. It was submitted that the first respondent’s appointment was based on fraudulent competency assessment report and as such could not be reinstated.
- [6] In contention the respondents argued that the application for condonation and leave to appeal should be dismissed. The submission was that the applicants seek leave to appeal to legitimise the first respondent’s suspension which is without legal basis. In addition, that the first applicant had launched a self-review application dealing with the appointment of the first respondent, which renders leave to appeal academic.

- [7] The first respondent was suspended in terms of Regulation 6 of the Disciplinary Regulations which provides that if a senior manager, in this case the first respondent, is suspended, a disciplinary hearing must commence within three months after the date of suspension failing which the suspension lapses automatically. In this matter, the first respondent was suspended on 27 March 2024. He brought an urgent application, and the suspension was set aside on 12 April 2024. As a result of the leave to appeal launched on 13 May 2024, the first respondent remains on suspension. The argument for the first respondent is that the suspension has lapsed as there are no disciplinary proceedings pending against him. The three months period has expired and therefore the suspension automatically lapses.
- [8] It was argued that the condonation application stands to fail on the basis that the applicants were always legally represented. In addition, after the order of 12 April 2024, they welcomed the first respondent back to work. However, they disregarded the court order and continued to place the first respondent on suspension without any disciplinary proceedings being initiated.
- [9] It is trite that condonation is not for the taking but the applicant must show good cause and prospects of success. In this matter the explanation given by the applicants was that the matter was only tabled before the municipal council on 3 May 2024 when the judgment was granted on 12 April 2024. At that time the first respondent had already gone back to his duties. There was no explanation why the matter only came before the council on 3 May 2024. The applicants were legally represented throughout the proceedings and there is no reason why they were not aware of the period prescribed in the Rules for bringing the leave to appeal. The explanation proffered is without merit and the condonation application should be dismissed.
- [10] The applicants take issue with the order that the council resolution to suspend the first respondent is unlawful and further that the suspension be lifted. As explained in the judgment of 12 April 2024, the suspension of the first respondent is not in accordance with Regulation 6 as there were no misconduct allegations against the first respondent. The position has not changed, and the suspension remains unlawful. On this basis there are no prospects of success on the appeal. There is no reason why the applicants should not be ordered to pay costs of this application.

Order

[11] Consequently, the following order is made:

1. Application for condonation is dismissed.
2. The application for leave to appeal is dismissed.
3. The applicants are ordered to pay costs which shall include costs of two counsel on scale B.

J T DJAJE

ACTING JUDGE PRESIDENT OF THE HIGH COURT

APPEARANCES

DATE OF HEARING

: 02 AUGUST 2024

DATE OF REASONS :

23 AUGUST 2024

COUNSEL FOR THE APPLICANTS : ADV J HLONGWANE

COUNSEL FOR THE RESPONDENTS : ADV C MUZA with

ADV NDULI

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