

SOUTH AFRICA / JUDGMENT

Macingwane v Masekwameng and Others (626/2021) [2022] ZASCA 174 (7 December 2022) [2022] ZASCA 174

COURT

Supreme Court of Appeal

BEFORE

Zondi, Van der Merwe, Molemela, Windell, Chetty

CASE / FILE NUMBER

626/2021

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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 626/2021

In the matter between:

SABELO VUSUMZI MACINGWANE

Appellant

and

ISAAC NTSHIRELE TSA MASEKWAMENG

First Respondent

SONYOSI STEPHENS SIKHOSANA

Second Respondent

SEKWAMO GILBERT MOSENA

Third Respondent

TEME EMMANUAL LETSOELA

Fourth Respondent

MOTSEPE RAMOTSE DONALD MATLALA

Fifth Respondent

PERSONS APPEARING ON ANNEXURE SMV1

Sixth Respondent

NATIONAL AFRICAN FEDERATED CHAMBER OF
COMMERCE AND INDUSTRY

Seventh Respondent

Neutral citation: Macingwane v Masekwameng and Others (Case no 626/2021) [2022] ZASCA 174 (7 December 2022)

Coram: ZONDI, VAN DER MERWE and MOLEMELA JJA and WINDELL and CHETTY AJJA

Heard: 2 November 2022

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 15:00 am on 7 December 2022.

Summary: Voluntary association – interpretation of its constitution – no reason to deviate from ordinary grammatical meaning of the words used – appellant's proposed construction would lead to absurdity and is unbusinesslike and unworkable.

Practice – appeal – when leave to appeal should be granted to Supreme Court of Appeal.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Farber AJ, sitting as court of first instance):

The appeal is dismissed with costs.

Zondi JA (Van der Merwe and Molemela JJA and Windell and Chetty AJJA concurring)

Introduction

- [1] On 31 July 2019 the seventh respondent, the National African Federated Chamber of Commerce and Industry (NAFCOC), at a meeting of its Council held at its head office at 13 Summer Street, Rivonia, Johannesburg (the head office meeting), passed a resolution in terms of which it adopted a motion of no confidence in the appellant, Mr Sabelo Vusumzi Macingwane, as its President. NAFCOC, acting pursuant to this resolution, dismissed the appellant. This meeting was convened by the first respondent, Mr Isaac Ntshireletsa Masakwameng, NAFCOC's National Chairperson of Provinces in terms of the notice dated 5 July 2019. Aggrieved by the decision to dismiss him, the appellant, on 8 August 2019 approached the Gauteng Division of

the High Court, Johannesburg (the high court), seeking among other things, an order in the following terms:

‘2. It is declared that the purported special meeting of the Council of the National African Federated Chamber of Commerce and Industry (“NAFCOC”), held on 31 July 2019, at 1st Floor, 13 Summer Street, Summer Place, Gauteng, was not lawfully called and convened, and that all the resolutions passed thereat are invalid and of no force and effect.

3. The first to sixth respondents are interdicted and restrained from obstructing and preventing the applicant from carrying out his duties or exercising any of his powers as the president of NAFCOC, which duties and powers are set out in NAFCOC’s (sic) constitution, dated 17 March 2011.
 4. The first to sixth respondents shall restore possession to the applicant of his access to NAFCOC’s offices situated at 1st Floor, 13 Summer Street, Summer Place, Gauteng.
 5. The first to sixth respondents are declared to be in contempt of the order of Madam Justice Wanless J, granted on 26 June 2019, under case no: 22114/2019.
 6. In the alternative to prayer 5, the first to sixth respondents are directed to show cause, within thirty (30) days of the grant of this order, why they should not be declared to be in contempt of the order of Madam Justice Wanless J, granted on 26 June 2019, under case no: 22114/2019, and imprisoned for a period of not less than six (6) months or such period as this Honorable Court deems appropriate.’
- [2] The appellant contended that the meeting was unlawful and that the resolution taken thereat, was invalid. This contention was based on two grounds. In the first instance, he alleged that the first respondent, in his capacity as a National Chairperson of Provinces (the NCP), did not have authority to convene a special meeting of the Council for the purposes of removing the President. He maintained that such removal could only be effected at the meeting that was scheduled to take place on 31 July 2019 as contemplated in Acting Judge Wanless’ order of 26 June 2019 (the order) and not at a special meeting. In the second instance, the appellant contended that the first respondent, in convening and presiding at the meeting concerned, acted in disobedience of the order. He stated that in terms of the order the parties undertook to act ‘within the confines of [NAFCOC’s] Constitution’.
- [3] The high court (per Farber AJ) rejected the appellant’s proposed interpretation of clause 28.4.4 and dismissed the application. It nevertheless granted the appellant leave to appeal to this Court. At the hearing, counsel for the appellant abandoned the contention, which was a second leg of his attack on the lawfulness of the meeting, that the NCP and those who attended the Head Office meeting, acted in contempt of the order. In my view, the abandonment of the contention was rightly made, having regard to the fact that there were no factual averments to support a case based on contempt of a court order.

The issue

- [4] The main issue, therefore, is whether the head office meeting at which the members of NAFCOC voted in support of a motion of no confidence in the appellant, was lawfully convened. If not, all resolutions passed at that meeting would be invalid and of no force and effect. The determination of this issue requires the interpretation of the NAFCOC Constitution, in particular clause 28.4.4, which regulates the convening of meetings and clause 23.3, which provides for the removal of the President from office.

The facts

- [5] Before setting out the facts which gave rise to the dispute, it is necessary to say something about the organic structure of NAFCOC and the manner in which it conducts its business through its various internal structures as set out in its Constitution. NAFCOC was formed with the objective of promoting the economic growth and development of its members, which included businesses operating as small, medium and micro-enterprises in the different economic sectors. One of its core functions is to engage and lobby government and other relevant stakeholders in the creation of an enabling business environment for its members.[1] NAFCOC has 20 constituent affiliated members. Representatives of these affiliates constitute the Federal Council (the Council) of NAFCOC.
- [6] The Council is NAFCOC's supreme decision-making body on matters of policy and strategy. Among other things, it determines policy for the attainment of the objects and fulfilment of the functions of NAFCOC. A quorum for a meeting of the Council is a simple majority of its members; a decision of the majority of Council members present at any meeting constitutes a decision of that meeting; and, in the event of an equality of votes, the Chairperson of the meeting shall have a casting vote in addition to his or her deliberative vote.
- [7] Ten members of the Council form the Executive Committee (EXCO). The President and the NCP form part of this 10-member EXCO. The powers and responsibilities of the President are set out in clause 29.8.4.1.1. He is the head and official spokesperson of NAFCOC and 'subject to the provisions of the Constitution', chairs all meetings of NAFCOC, Council, the EXCO and the Annual General Meetings. The Deputy President assumes 'all responsibilities of the President'

if the latter is absent or is unable to perform his functions. In terms of clause 23.3, the President ceases to hold office on a resolution adopted by a two thirds majority of all the Council members present at a meeting of the Council specially convened for that purpose.

- [8] The problem began when the third respondent, Mr Sekwamo Gilbert Mosena (Mr Mosena), the Deputy President,[2] on 19 June 2019 issued a notice calling for a meeting of the Council to be convened on 27 June 2019 for the purpose of tabling and debating a motion of no confidence in the appellant, as the President of NAFCOC. The appellant lodged an urgent application in the high court against NAFCOC and certain other respondents to interdict them from holding the meeting.

[9] The parties to the urgent application agreed to settle the matter in terms of the order (dated 26 June 2019). The order provides, inter alia, that:

‘2. The meeting scheduled for the 27 June 2019 is cancelled.

3. The scheduled meeting for the 31 July 2019 shall take place as planned. None of the parties shall cancel the said meeting.

4. Any party shall be entitled to place any issue on the agenda for the 27 June 2019 for discussion at the 31 July 2019 meeting.

5. All parties undertake to act within the confines of the Constitution.’

[10] On 5 July 2019, the NCP, in consultation with the EXCO, gave notice of a meeting to be held on 31 July 2019 at 11h00 and at NAFCOC Head Office. The purpose of this meeting was to discuss the following:

‘1. To consider and vote on a notice of no confidence and the removal from office of the president Mr Sabelo Macingwane in terms of clause 23.3 of the Constitution.

Please note that:

1. The National Chairperson has received a written expression of more than two thirds of the NAFCOC Council members, supported by the majority of EXCO members as well as overwhelming support from NAFCOC President’s Council calling for this motion as a result of the President having brought NAFCOC into disrepute. This motion is tabled after having consulted with the EXCO members;

2. Notice in respect of item 1 above is accordingly a special notice to members in terms of clauses 28.4.1 and 28.4.4 of the Constitution and in terms of a court order handed down in the High Court of South Africa Gauteng Local Division, Johannesburg on 26 June 2019 annexed hereto as Annexure “A”.

3. In terms of the provisions of clause 23.3 of the Constitution, the resolution proposed in 1 above has to be adopted by a two thirds majority of all the Council members present at the meeting to be adopted.

4. The president Mr Macingwane will be afforded a reasonable opportunity to make representation in the meeting before the resolution is put to a vote.

2. Consideration and ratification of DC Reports and/or the Implementation of Council Resolutions on the termination of NAFCOC membership by members who take NAFCOC to the Courts and/or the Media.’

The Agenda which accompanied the notice included the following:

‘4.1 To table a motion of no confidence and the removal from office against the President of NAFCOC Mr Sabelo Macingwane in terms of clause 23.3 of the Constitution.’

- [11] The attendees of the head office meeting constituted a quorum, and 50 affiliated representatives unanimously voted in favour of the acceptance of the proposed resolutions. Mr Mosena contends that the head office meeting was a planned and scheduled meeting. He states that at a meeting held on 5 December 2018, the NAFCOC EXCO, under the chairmanship of the appellant, had approved a schedule of dates proposed for the holding of meetings for the year 2019 and had resolved that all meetings be held at the NAFCOC head office to save costs. The venue could be changed if the budget permitted and with the approval of the President's Council. In this regard, Mr Mosena states that on 18 January 2019, during the EXCO meeting also chaired by the appellant, the EXCO approved a schedule of dates for the holding of the EXCO, the Council, President and Chairpersons and Annual General Meetings during 2019. It was envisaged that the Council meeting would be held on 31 July 2019. The appellant does not dispute any of this.
- [12] After receiving a notice of the head office meeting, the appellant, as the President of NAFCOC, on 22 July 2019, called a Federal Council meeting to be held on 31 July 2019 at 10h00 at Emperor's Palace in Johannesburg (Emperor's meeting). The appellant dispatched the notice for the meeting on 26 July 2019. The agenda for this meeting did not make provision for a debate and consideration of a motion of no confidence in the appellant as NAFCOC's President.
- [13] In response to the notice issued by the appellant, the third respondent issued a letter to the members of NAFCOC's Federal Council, warning them not to attend the meeting convened by the appellant on the ground that it '... is a parallel structure and can not be attended by NAFCOC loyal members who love this organization' and that '[a]ll members who will go to EMPERORS will be declared [a] parallel structure and will [lose] the benefits of NAFCOC should it happen'.
- [14] The appellant alleges that during the Emperor's meeting, the agenda initially circulated, was amended to include a debate and discussion on the notice of no confidence that had been raised against him. He states that the Council affirmed its confidence in him as the President and took a decision to suspend the first to fourth respondents as office bearers and members of the EXCO.
- [15] It is common cause that when the appellant reported for work on 1 August 2019, he was refused entry into the premises, and that on 2 August 2019 he received an email from the second respondent, the Secretary General of NAFCOC, informing him of his removal as President of NAFCOC. On his instruction, on 6 August 2019, his attorneys of record wrote a letter to NAFCOC demanding that it withdraw its resolution to remove him as President. NAFCOC refused to accede to the appellant's demand. In consequence, the appellant instituted these proceedings.
- [16] It is submitted by the appellant that the order, properly construed, cannot be read as providing the first respondent, in his capacity as a NCP, with authority to convene a special meeting of the Council for the purposes of removing the President. Such removal, so ran the

argument, could only be effected at the meeting which in terms of the order was scheduled to take place on 31 July 2019. The argument was that the meeting convened by the first respondent was not a 'scheduled meeting' and was therefore unlawful. In my view, the order read in its context was intended to create a mechanism for those Council members who wanted to bring a notice of no confidence in the appellant, but were prevented from doing so because the appellant would not call a Council meeting at which the issue could be raised. The order did not prescribe to them how such meeting was to be called. In terms of the order, any party was entitled to place on the agenda any issue that had been on the agenda of the meeting scheduled for 27 June 2019. The high court was correct therefore to dismiss the appellant's contention that the order granted precluded the NCP from convening the head office meeting.

- [17] The second ground on which the appellant attacks the lawfulness of the head office meeting and validity of the resolutions taken thereat, is based on the meaning he ascribes to clause 28.4.4 of the Constitution. Before considering in greater detail the appellant's contention, it is necessary to set out the provisions of clause 28.4.4 first. This clause regulates the holding of Council meetings and it provides the following:

'Council meetings shall be held at such times and places as the President or Chairperson of a Provincial Executive Committee or National Chairperson of Provinces in consultation with other members of Executive committee, may determine; provided that Council shall meet no less than 4 (four) times in each calendar year.' (Own emphasis.)

- [18] As already alluded to, the appellant contends that, properly interpreted, clause 28.4.4 does not vest authority in the first respondent in his capacity as the NCP to convene a special meeting of Council for the purpose of removing the President. That authority, he argues, is vested in the President, or in his or her absence, his or her Deputy. Based on this construction, the appellant argues that the head office meeting, which was convened by the NCP, was therefore unlawful and any resolution taken at that meeting, was invalid and of no effect. The appellant contends that a proper contextual, sensible

and businesslike interpretation of clause 28.4.4 indicates that the word 'or' appearing in the clause must be read to mean as 'failing which' or 'failing whom' and that any alternative interpretation would undermine the purpose of the Constitution. It is significant to note that the appellant does not state what the purpose of the Constitution is that would be undermined by an interpretation which is contrary to his proposed interpretation.

- [19] The appellant's proposed construction is elaborated upon in paragraphs 22.3 – 22.6 of his replying affidavit:

'On such an interpretation, the authority vests solely in the preserve of the president unless one of the following events transpires: (i) he is requested to convene a meeting and fails to do so (which was not the case); (ii)

he is unable to perform his functions; or (iii) he is absent.

The aforesaid interpretation is the most common sense and business-like approach. If either of the parties could convene a council meeting at any time they chose to do so, as the respondents suggest, absolute chaos and disorder would result.

If the respondents' interpretation is favoured, then the very situation which currently prevails shall be a common feature of NAFCOC's administration. This is surely not suitable or in the best interests of the administration of NAFCOC or its members.

The interpretation proposed by the respondents also begs the question of the role of a president and the need to delineate the functions and authority of each office bearer in relation to one another. Clause 29.8 of the constitution stipulates these functions. I draw attention to clause 29.8.4.2.2, which states that the Deputy President, "In the absence or inability of the president to perform his functions, assume all responsibilities of the President". This is indicative that the functions of the respective office-bearers are clearly defined. This accords with my proposed interpretation.'

[20] The first respondent disputes the appellant's contention that clause 28.4.4 does not provide him with authority to convene a special Council meeting for the purpose of removing the President. He contends that the language used in clause 28.4.4 must be given its ordinary grammatical meaning and that based on this approach the word 'or' in the clause should be interpreted to mean that the President or any one of the nine Chairpersons of Provincial Executive Committees or the NCP shall have the power to call a Council meeting in consultation with the EXCO. Essentially, anyone of the 11 officials has the power to call a Council meeting after having consulted the EXCO.

Interpretation

[21] The issue therefore revolves around the correct interpretation of clause 28.4.4 of the Constitution. The proper approach to statutory interpretation is well-known, following the judgment of this Court in *Natal Joint Municipal Pension Fund v Endumeni Municipality*,^[3] which was endorsed as follows in *Capitec Bank Holdings and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others*:^[4]

'Our analysis must commence with the provisions of the subscription agreement that have relevance for deciding whether Capitec Holdings'

consent was indeed required. The much-cited passages from *Natal Joint Municipal Pension Fund v Endumeni Municipality* (Endumeni) offer guidance as to how to approach the interpretation of the words used in a document. It is the language used, understood in the context in which it is used, and having regard to the purpose of the provision that constitutes the unitary exercise of interpretation. I would only add that the triad of text, context and purpose should not be used in a mechanical fashion. It is the relationship between the words used, the concepts expressed by those words and the place of the contested provision within the scheme of the agreement (or instrument) as a whole that constitutes the enterprise by recourse to which a coherent and salient interpretation is determined. As Endumeni emphasised, citing well-known cases, "[t]he

inevitable point of departure is the language of the provision itself.”

[22] What this means in the context of this case, is that one considers the language used, which must be given its ordinary grammatical meaning unless this results in absurdity, repugnancy, or inconsistency with the rest of the document. The language used must be understood in the context in which it is used and having regard to the purpose of the provision of the document.

[23] It is apparent from the appellant’s contention that he proposes that a hierarchical approach must be followed when determining who has the power[5] to determine the times and places of a meeting of Council. The appellant contends that the President, to the exclusion of the nine Chairpersons of Provincial Executive Committees and the NCP, is empowered to call for a Council meeting. If the President fails to call a Council meeting due to absence or inability to do so, a Chairperson[6] of a Provincial Executive Committee shall become empowered to call for a Council meeting. Should all of them fail, the NCP shall become entitled to call a Council meeting.

[24] The hierarchical approach propounded by the appellant does not find support in clause 28.4.4. Clause 28.4.4 should be compared with clause 29.8.4.1 dealing with the powers of the President, Deputy President, the Senior Vice President and the Second Vice President. For example, in clause 29.8.4.2.2 it is specifically provided that in the absence or inability of the President to perform his functions, the Deputy President assumes all responsibilities of the President. The point is that where NAFCOC wishes the hierarchy to be observed in determining who has the power to act, it says so, and specifies how it would happen.

[25] The construction of clause 28.4.4 contended for by the appellant must fail as it is neither supported by the text, the context of the clause nor the purpose for which it was introduced. As regards the text, the question really is about the meaning of the word ‘or’ appearing in clause 28.4.4. The appellant’s proposed meaning entails that the words ‘failing which’ or ‘failing whom’ must be read in the place of the word ‘or’ wherever it appears. There is no reason to deviate from the ordinary grammatical meaning of the word ‘or’. Counsel for the appellant was unable to explain why assigning the ordinary grammatical meaning to the word ‘or’ would result in absurdity, repugnancy, or inconsistency with the rest of the Constitution.[7] Properly interpreted the clause means that the President or any one (or more) of the nine Chairpersons of Provincial Executive Committees or the National Chairperson of Provinces shall have the power to call for a Council meeting in consultation with the EXCO. Moreover the appellant’s proposed interpretation of clause 28.4.4 does not address the problem of a President’s refusal to call a special meeting where the purpose of the meeting is to call into question his or her fitness to continue to be a face of the organisation.

[26] The President does not need to be absent or unable to call a meeting for the operation of clause 28.4.4 to be triggered. The suggestion by the appellant that giving the word ‘or’ its ordinary meaning would undermine the purpose sought to be achieved by the Constitution

by delineating the functions and authority of each office bearer in relation to one another, has no merit. The office bearers who are authorised to exercise powers to call for the meeting in clause 28.4.4 do not have a free hand to do so. They are required to exercise those powers in consultation with the members of the EXCO. This requirement acts as a control mechanism to prevent potential abuse of powers by either any one of the nine National Chairpersons of Provincial Executive Committees or the NCP. I agree with the interpretation of the respondents. It is more plausible than that advanced by the appellant. The appellant's proposed construction of clause 28.4.4, if accepted, would result in an insensible and unbusinesslike outcome. On the appellant's proposed interpretation, there is no time period or mechanism to determine a failure to call a meeting by any of the officials and all nine Provincial Executive Committee Chairpersons would have to fail

before the NCP would be empowered to call a Council meeting.

[27] It is thus implicit in the appellant's proposed interpretation that the NCP will only become empowered when the President and the nine Chairpersons of Provincial Executive Councils have failed to exercise their powers to call a Council meeting. But his supposed empowerment would, of course, be conditional upon the failures of this ten predecessors having occurred in the correct sequence, and the failures being demonstrable. It is apparent that the appellant's proposed interpretation would result in an absurdity and is unworkable.

[28] Furthermore, the appellant's proposed interpretation would undermine the purpose which NAFCOC sought to achieve by introducing clause 28.4.4 through the amendment of the Constitution in 2011. In this regard it is significant to note that prior to its amendment in 2011, clause 28.4.4 provided that 'Council meetings shall be held at such times and places as the President may determine; provided that Council shall meet no less than FOUR (4) times in each calendar year'.

[29] In paragraph 2.7 of the Commission Reports and Resolutions that served at the NAFCOC Bi-Annual Summit on 5-8 May 2010, it was reported that:

'Calling of Council Meetings: In the past there had been problems with the National President not calling the Council meetings as is required in terms of the Constitution. To obviate the re-occurrence of such problems the National Chairperson of Provinces in consultation with the other members of the Executive Committee shall determine the place and time where Council Meetings shall be held.'

[30] It is apparent from the contents of paragraph 2.7 quoted above that the decision makers at the time knew that there had been problems in the past relating to the National President not convening Council meetings. By amending clause 28.4.4 to empower persons other than the President to convene Council meetings, the decision makers at the time sought to obviate the reoccurrence of the said problem.

[31] The Summit resolved as follows:

‘RESOLUTION: CLAUSE 28.4.4 must be amended as follows: Council meetings shall be held at such times and places as the President or Chairperson of a Provincial Executive Committee (in the case of Provinces) or National Chairperson of Provinces in consultation with other members of the Executive Committee, may determine, provided that Council shall meet no less than 4 (four) times in each Calendar year.’

- [32] The amended version of clause 28.4.4[8] was adopted on 17 March 2011. Significantly, throughout the process preceding the adoption of the 2011 amendment to clause 28.4.4, no trace can be found of any hierarchy amongst the 11 officials empowered to call for Council meetings. The purpose of clause 28.4.4[9] was therefore to obviate the re-occurrence of a recalcitrant President by increasing to 11 the number of persons empowered to convene a Council meeting,[10] in order, among other things, to subject the continuation of the President’s office to a democratic motion of no confidence in terms of clause 23.3.
- [33] It is clear that in light of the text and context of the provision, the plain purpose of clause 28.4.4 is to obviate the problems that the members experienced in the past with the National President refusing to call Council meetings as required in terms of the Constitution. The appellant’s interpretation fails to fulfil this purpose and in fact undermines it. It must be rejected.
- [34] The high court was therefore correct to find that the meeting of 31 July 2019 of the Federal Council held at NAFCOC’s Head Office was properly convened and that the decisions taken thereat were validly taken. It follows therefore that the appellant was legitimately removed as the President of NAFCOC. His application was correctly dismissed by the high court.

Leave to appeal to SCA

- [35] Before proceeding to costs, I consider it necessary to express my disquiet about a practice which has developed recently in terms of which, it would seem that when leave is sought from the high court to appeal against the judgment of a single judge, it is invariably granted to this Court. An appeal from a judgment or order of a high court sitting as court of first instance lies either to the full court or this Court in terms of ss 16 and 17 of the Superior Court Act 10 of 2013. These sections make it clear that the primary court of appeal from a single judge of the high court is the full court of the relevant division of the high court, unless the questions of law or fact or other considerations dictate that the matter should be decided by this Court.[11] The convenience of the judges of any particular court is not a proper consideration.
- [36] Harms in Civil Procedure in the Superior Courts at C1.23 states:

‘In granting leave to appeal, it is essential to direct which court of appeal is to hear the appeal. The court granting leave to appeal – whether the court of first instance or the Supreme Court of Appeal – must, unless it is satisfied that the question of law or fact and the other considerations involved in the appeal are of such a nature that the appeal requires the attention of the Supreme Court, direct that the appeal be heard by the full court. The court must consider the issue irrespective of the wishes of the parties.’

In this matter the high court made an order granting leave to appeal to this Court. There is no reason why the full court could not have dealt with the present appeal, which essentially concerns an uncomplicated interpretation of the Constitution of a voluntary

association. Marais JA in his concurring judgment in *Shoprite Checkers (Pty) Ltd v Bumpers Schwarmas CC and Others*[12] was also concerned about the trend of invariably granting leave to this Court, even in circumstances where leave should not have been granted to this Court. He had this to say at para 6:

‘The inappropriate granting of leave to appeal to this court increases the litigants’ costs and results in cases involving greater difficulty and which are truly deserving of the attention of this court having to compete for a place on the court’s roll with a case which is not.’

[37] The remaining issue to determine is the question of costs. Counsel for the respondents asked for costs of two counsel to be awarded if the appeal should be dismissed. As I have said, the issues raised in this matter are not so complex as to warrant the services of two counsel.

The order

[38] In the result, the appeal is dismissed with costs.

D H ZONDI

JUDGE OF APPEAL

APPEARANCES

For appellant: T C Kwindu

Instructed by: Tube Attorneys, Pretoria

Maduba Attorneys, Bloemfontein

For respondents: C A C Korf with K Mashile

Instructed by: VFV Attorneys, Pretoria

Symington & De Kok Attorneys, Bloemfontein.

[1] Clause 3 of the Constitution.

[2] The deponent to the answering affidavit.

[3] Natal Joint Municipal Pension Fund v Endumeni Municipality

[2012] ZASCA 13; [2012] 2 All SA 262 (SCA).

[4] Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others

[2021] ZASCA 99; [2021] 3 All SA 647 (SCA) para 25.

[5] In consultation with the EXCO.

[6] One of nine such officials.

[7] Privest Employee Solutions (Pty) Ltd v Vital Distribution Solutions (Pty) Ltd [2006] 1 All SA 111 (SCA) para 21.

[8] With slight variations.

[9] As amended in 2011.

[10] In consultation with the EXCO.

[11] MTN Service Provider (Pty) Ltd v Afro Call (Pty) Ltd

[2007] ZASCA 97; 2007 (6) SA 620 (SCA) para 24.

[12] Shoprite Checkers (Pty) Ltd v Bumpers Schwarmas CC and Others 2003 (5) SA 354 (SCA).

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