

SOUTH AFRICA / JUDGMENT

Moqhaka Local Municipality and Another v Tshabalala (JA7/25) [2025] ZALAC 36 (11 June 2025)

[2025] ZALAC 36

COURT

Labour Appeal Court

BEFORE

Molahlehi, Tokota, Basson

CASE / FILE NUMBER

JA 07/25

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Source record**THE LABOUR APPEAL****COURT OF SOUTH AFRICA, JOHANNESBURG****Not reportable****Case No: JA 07/25**

In the matter:

MOQHAKA
LOCAL MUNICIPALITY
First Appellant
ME
MOKATSANE N.O.
Second Appellant
and
PORTIA
HALIO TSHABALALA
Respondent

Heard:

3 June 2025

Delivered:

11 June 2025

Coram:

Molahlehi JP, Tokota AJA et Basson AJA

Summary:

Urgent appeal. The Municipality and the mayor exercised their right to automatic appeal provided for in terms of section 18(4) of the Superior Courts Act. The Municipal Manager was suspended pending investigations into her alleged misconduct in terms of regulation 6(6)(a) of the Local Government Disciplinary Regulations for Senior Managers 2020. The employee challenged the suspension before the Labour Court, because the Municipality failed to finalise the investigation into the alleged misconduct within three months from the date of the suspension. The employee successfully appealed the decision of the Labour Court. The Labour Appeal Court overturned the decision of the Labour Court. The appeal distinguished the commencement of disciplinary proceedings and the disciplinary hearing. It held that disciplinary proceedings commenced when the charges were issued to the employee. Dissatisfied with the decision of the Labour Appeal Court, the Municipality applied for leave to appeal to the Constitutional Court. The employee applied to the Labour Court in terms of section 18(3) of the Superior Court Acts and requested an order directing the Municipality to comply with the order of the Labour Appeal Court. The Labour Court found that there are exceptional circumstances justifying the order that the Municipality should comply with the order of the Labour Appeal Court in terms of section 18 of the Superior Courts Act. The appellants sought the admission of further evidence on appeal. The principle governing the admission of new evidence on appeal restated. The application was dismissed. The Labour Appeal Court held that the employee had shown exceptional circumstances to justify the implementation of the order despite the pending appeal to the Constitutional Court.

JUDGMENT**BASSON, AJA**

- [1] This is an urgent appeal launched by the Moqhaka Local Municipality (first appellant – the Municipality) and Mr Motloheloa Elis Mokatsane (second appellant) exercising their right to an automatic appeal provided for in terms of section 18(4) of the Superior Courts Act (the Act).[1]

Facts

- [2] The background facts of this matter are not in dispute. The Municipality appointed the respondent (Ms Portia Halio Tshabalala – the respondent) as the Municipal Manager for a fixed five-year term, effective from 9 May 2023. The respondent was served with an intention to suspend her, effective from 1 March 2024, pending an investigation into alleged misconduct regarding financial

mismanagement, in accordance with the Local Government: Disciplinary Regulations for Senior Managers, 2020 (the regulations). Regulation

6(6)(a) provides for precautionary suspension and reads as follows:

‘If a senior manager is suspended, a disciplinary hearing must commence[2] within three months after the date of suspension, failing which the suspension will automatically lapse.’

- [3] On 31 May 2024—the final day of the three-month suspension period contemplated in regulation 6(6)(a)—the respondent was served with a notice, accompanied by the charges preferred against her, to attend a disciplinary hearing scheduled for 13 June

2024. The respondent reported for duty on 3 June 2024, claiming that the period during which the disciplinary hearing should have commenced according to regulation 6(6)(a) had expired. The Mayor disagreed and instructed the respondent to leave the premises. It is common cause that the disciplinary hearing did not commence on 13 June 2024 and was postponed to 1 and 2 August 2024.

Labour Court

- [4] On 13 June 2024, the respondent initiated urgent proceedings in the Labour Court (LC), seeking an order declaring that her suspension beyond three months contravened her employment contract and the applicable regulatory framework.
- [5] The entire matter turned on the interpretation of the word “commence” used in regulation 6(6)(a). The LC dismissed the application, holding that a disciplinary hearing is deemed to commence upon the service of the disciplinary charges and the notice thereof. The Court concluded that the suspension had therefore not lapsed. The LC granted leave to appeal the judgment.

Labour Appeal Court

[6] On 21 November 2024, the Labour Appeal Court (LAC) overturned the decision of the LC, concluding that, because the disciplinary hearing had not commenced within three months from the date of suspension (1 March 2024), the suspension had lapsed by operation of law on 31 May 2024. The LAC drew a distinction between the commencement of disciplinary proceedings and the commencement of the disciplinary hearing itself:

‘[7] What this construction contemplates is a disciplinary process that is commenced by the service of charges on the employee and which culminates in the conclusion of a disciplinary hearing. A disciplinary hearing is an integral part of the disciplinary process or proceedings; it does not constitute the proceedings in themselves. Read sequentially, the regulations contemplate that the disciplinary hearing is convened by the presiding officer and commenced by the reading of the charges to the senior manager accused of misconduct.’

[7] The LAC concluded that although the disciplinary process commenced on 31 May 2024, the disciplinary hearing only commenced when the charges were read to the employee, which occurred after 31 May 2024, thereby placing the commencement of the disciplinary hearing outside of the prescribed timeframe. Therefore, the respondent’s suspension automatically lapsed on 31 May 2024. The LAC, consequently, ordered the Municipality to reinstate the respondent to her position as the Municipal Manager.

Constitutional Court

[8] Dissatisfied with the judgment of the LAC, the Municipality filed an application for leave to appeal to the Constitutional Court on 11 December 2024. In terms of section 18(1) of the Act, the operation and execution of the order by the LAC is suspended pending the outcome of that application.

Section 18(3) application

[9] On 19 December 2024, the respondent filed an urgent application in the LC in terms of section 18(3) of the Act, seeking an order that the operation and execution of the LAC’s order not be suspended pending the outcome of the applicants’ application for leave to appeal to the Constitutional Court. The respondent further sought an order directing the applicants to comply with paragraph 14 of the LAC’s judgment and to reinstate her with immediate effect.

[10] On 23 December 2024, Prinsloo, J, granted the urgent application and ordered that the order of the LAC, which directed the reinstatement of the respondent, shall remain operative and enforceable pending the final determination of the application for leave to appeal to the Constitutional Court.

[11] In a well-reasoned judgment, the LC analysed the discretion afforded to a court under section 18(1) of the Act to depart from the ordinary consequence that the noting an application for leave to appeal suspends the operation and execution of an order. In terms of this section, a court may, in exceptional circumstances, grant an order allowing execution of

an order pending the outcome of an application for leave to appeal, provided the applicant demonstrates, on a balance of probabilities, that it will suffer irreparable harm if the order is not granted, and that the respondent will not suffer irreparable harm if it is.

- [12] In granting the section 18 order, the Labour Court primarily relied on the prejudice suffered by the respondent as a result of her prolonged and unlawful suspension, which deprived her of the opportunity to be fairly assessed and considered for a performance bonus in terms of her performance agreement and the applicable Conditions of Employment Regulations. In determining whether exceptional circumstances existed, the Court found the issues of exceptional circumstances and irreparable harm to be closely intertwined, given that the respondent's case rested largely on the loss of her entitlement to a performance-based assessment. Owing to her extended suspension, her work performance could not be evaluated, resulting in substantial and irreparable prejudice. The Court further noted that the relief granted was time-sensitive, and that the ordinary operation of the appeal process would effectively nullify the relief awarded by the LAC, thereby rendering it academic.
- [13] In respect of irreparable harm, the respondent had submitted that she would suffer irreparable harm if the relief sought is not granted and that it would be impossible to quantify a claim for damages related to a performance bonus, as the right to qualify for a performance bonus depends on her presence in the workplace. On the other hand, the Municipality argued that it would suffer irreparable harm if the respondent were permitted to return to the workplace, as her presence would likely discourage witnesses from participating in the disciplinary proceedings. The Municipality further submitted that it would be a travesty of justice for a Municipal Manager facing such serious charges to return to office.
- [14] Although the delay in finalising the disciplinary hearing was not, strictly speaking, the issue before the LC, the court nonetheless considered it relevant in assessing the questions of irreparable harm and prejudice. It held that the Municipality, as the employer, bore the responsibility for managing the disciplinary process and could not now rely on the delay to its advantage, particularly where it had consented to multiple postponements. The court further observed that no explanation had been provided regarding the steps taken after the respondent pleaded to the charges in October 2024. Nor was there any justification offered for the continued delay or for the failure to finalise the disciplinary hearing.
- [15] The LC further held that a precautionary suspension cannot be permitted to continue indefinitely, particularly after the investigation has been completed and a decision was taken to institute disciplinary proceedings. The LC noted that more than nine months had passed since the respondent was suspended, and over six months had elapsed since she was charged, with the disciplinary hearing yet to be finalised. The court emphasised that a precautionary suspension is a temporary measure and may not be used as a means to exclude an employee from the workplace indefinitely.

[16] In determining whether the harm or prejudice suffered by the Municipality is irreparable, the LC emphasised that the execution of the order does not impede the finalisation of the disciplinary proceedings in any way and that it is undoubtedly in the interest of all parties that the disciplinary hearing be finalised, as further delays will not promote fairness or justice.

[17] In considering the prospects of success as a relevant factor in determining whether to grant the exceptional remedy of execution

pending appeal,[3] the LC rejected the applicants' assertion that they had "excellent prospects of success on appeal". In particular, the LC agreed with the LAC's interpretation of regulations 6(6) (a) and 10(3), which distinguish between the

commencement of a disciplinary process and the commencement of a disciplinary hearing. The LC agreed with the conclusion that the

regulations, properly construed, contemplate that the disciplinary process commences upon service of the charges on the employee. In contrast, the disciplinary hearing only commences when the charges are formally read during the disciplinary proceedings.

[18] The LC concluded that exceptional circumstances were present, given the undisputed time-sensitive nature of the relief sought and the principle that a precautionary suspension cannot continue indefinitely. It further held that the respondent would suffer irreparable harm if execution were not granted. In contrast, the Municipality failed to demonstrate that it would suffer irreparable harm should execution be granted pending the outcome of the application for leave to appeal.

[19] The LC granted the section 18 application and ordered that the employee be allowed to resume duties pending the finalisation of the appeal to the Constitutional Court. It is against this order that this appeal application was filed.

This Court

Lack of authority

[20] In this Court, the respondent initially contested the authority of Peyper Attorneys to act on behalf of the Municipality but subsequently abandoned this challenge during argument. Accordingly, the issue no longer requires the attention of this Court.

Application to adduce further evidence

[21] The Municipality, evidently realising that the LC's decision to grant the application in terms of section 18 was primarily based on the prejudice suffered by the respondent due to being denied a performance assessment under her performance level agreement, sought to introduce new evidence at the appeal stage. This evidence relates to the fact that, when the section 18 application was granted, the respondent did not have a valid performance agreement with the Municipality.

- [22] It is common cause that the respondent's performance agreement lapsed on 30 June 2024. However, notwithstanding the provision in clause 4.3 of the agreement, which provides that the parties "will review the provisions of this Agreement during June each year" and "will conclude a new Performance Agreement that replaces this Agreement by no later than 31 July of each successive financial year", no such renewal was concluded. The Municipality accordingly contended that, as no valid performance agreement existed at the time the LC heard the matter in December 2024, the court could not properly have relied on such an agreement in concluding that the respondent's suspension adversely affected her entitlement to benefits thereunder, or that she would suffer irreparable harm as a result.
- [23] During argument, the applicants, somewhat opportunistically, sought to attribute the failure to renew the performance agreement to the respondent, contending that she could have initiated the renewal process. This submission lacks merit, particularly in light of the fact that the respondent has been precluded from attending the workplace since her precautionary suspension took effect on 1 March 2024. As the employer and custodian of the performance agreement, the Municipality is responsible for initiating the renewal process, as contemplated in clause 4.3 of the agreement. The respondent's suspension does not absolve the Municipality of its contractual obligations under the respondent's terms of service.
- [24] The failure to renew the performance agreement—and the attempt to now rely on that very omission—only further prejudices the respondent, whose position is already adversely affected by her prolonged and unlawful suspension. The Municipality cannot seek to benefit from her enforced absence by contending that the LC erred in relying on the prejudice arising from the lack of a performance assessment when the Municipality's inaction led to the lapse of the agreement. Surprisingly, by its own admission, the Municipality, the custodian of employee-related documents in the workplace, was only able to obtain a copy of the performance level agreement on 19 February 2024.
- [25] Returning to the application to introduce further evidence. While a court on appeal has the discretion to admit new evidence, it will exercise this discretion sparingly and only in exceptional circumstances. In *O'Shea NO v Van Zyl and Others*,^[4] the court held that a relevant consideration in determining whether to admit new evidence late is whether such evidence would be
- "practically conclusive and final in its effect on the issue to which it is directed". A party seeking the admission of such evidence must thus demonstrate that it is materially relevant to the outcome of the matter. In addition, that party must address any potential prejudice that may be occasioned to the opposing parties should the evidence be admitted.*
- [26] I am not persuaded that the applicants have made out a case for introducing further evidence, particularly since the proposed new evidence is not materially relevant to the determination of the matter. As previously noted, the Municipality's failure to initiate the renewal of the performance level agreement in circumstances where the respondent was

excluded from the workplace only exacerbates the respondent's already precarious position. Therefore, the application to adduce further evidence at the appeal stage is dismissed with costs.

Section 18(4) application

[27] In terms of section 18(4)(a)(ii) of the Superior Courts Act, the appellants have an automatic right of appeal against the order of the Labour Court. In challenging the Labour Court's decision to grant the application under section 18, the appellants dispute firstly, the finding that exceptional circumstances exist, and secondly, the conclusion that the respondent would suffer irreparable harm if the order were not implemented.

[28] This Court in *Road Traffic Management Corporation v Tasima (Pty) Ltd and others*,^[5] explains the radical alteration from the common law position that usually prevails once an application for leave to appeal is noted:

'Section 18 of the SC Act has significantly altered the common law in more than one respect. The court no longer has a wide discretion to do what is just and equitable or to rely exclusively on the balance of convenience or the appeal's prospects of success. Now, before a court may order interim execution, the applicant for that relief must prove three things on a balance of probabilities. Firstly, the applicant must show that exceptional circumstances exist (perhaps including the balance of convenience and prospects of success) justifying the reversal of the ordinary principle of suspension pending appeal. Secondly, it must prove on the probabilities that it will suffer irreparable harm if interim execution is not ordered. Thirdly, it must prove that the other party will not suffer irreparable harm if an order of interim execution is granted. Should the applicant fail to discharge its onus in relation to any one of these requirements, the court may not grant an interim execution order.'

[30] Sections 18(1) and 18(3) of the Superior Court's Act empower a court (which granted the order) to direct, upon application, the execution of its order pending an application for leave to appeal or an appeal, provided that the following jurisdictional requirements are established to overturn the well-established common law default position that an order is suspended pending an application for leave to appeal or an appeal:

30.1 Firstly, exceptional circumstances exist that justify granting an order reversing the ordinary principle of suspension pending an application for leave to appeal.

30.2 Secondly, proof on a balance of probabilities -

30.2.1 that the applicant will suffer irreparable harm if the order is not granted; and

30.2.2 that the other party will not suffer if the application is not granted.^[6]

[31] As explained by the court in *University of the Free State v Afriforum and another*,^[7] section 18(3) places the onus on the applicant to prove "onerous requirements":

[10] It is further apparent that the requirements introduced by s 18(1) and (3) are more onerous than those of the common law. Apart from the requirement of 'exceptional circumstances' in s 18(1), s 18(3) requires the applicant 'in addition' to prove on a balance of probabilities that he or she 'will' suffer irreparable harm if the order is not made, and that the other party 'will not' suffer irreparable harm if the order is made. The application of rule 49(11) required a weighing-up of the potentiality of irreparable harm or prejudice being sustained by the respective parties and, where there was a potentiality of harm or prejudice to both of the parties, a weighing-up of the balance of hardship or convenience, as the case may be, was required. Section 18(3), however, has introduced a higher threshold, namely proof on a balance of probabilities that the applicant will suffer irreparable harm if the order is not granted, and conversely that the respondent will not if the order is granted.'

Exceptional circumstances

[32] What constitutes "exceptional circumstances" has been considered in various judgments: In Knoop NO and Another v Gupta (Execution),[8] the court described the meaning of "exceptional circumstances" in the context of section 18 as being "...something that is sufficiently out of the ordinary and of an unusual nature to warrant a departure from the ordinary rule that the effect of an application for leave to appeal or an appeal is to suspend the operation of the judgment appealed from".[9]

[33] In Incubeta Holdings (Pty) Ltd and Another v Ellis and Another[10] the Court answered the question as to what constitutes exceptional circumstances as follows:

'[17] What constitutes 'exceptional circumstances' has been addressed by Thring J in MV Ais Mamas Seatrans Maritime v Owners, MV Ais Mamas, and Another 2002

(6) SA 150 (C), where a summation of the meaning of the phrase is given as follows at 156I – 157C:

'What does emerge from an examination of the authorities, however, seems to me to be the following:

1. What is ordinarily contemplated by the words "exceptional circumstances" is something out of the ordinary and of an unusual

nature; something which is excepted in the sense that the general rule does not apply to it; something uncommon, rare or different;

"besonder", "seldsaam", "uitsonderlik", or "in hoë mate ongewoon".

2. To be exceptional the circumstances concerned must arise out of, or be incidental to, the particular case.
3. Whether or not exceptional circumstances exist is not a decision which depends upon the exercise of a judicial discretion: their existence or otherwise is a matter of fact which the Court must decide accordingly.

4. Depending on the context in which it is used, the word "exceptional" has two shades of meaning: the primary meaning is

unusual or different; the secondary meaning is markedly unusual or specially different.

5. Where, in a statute, it is directed that a fixed rule shall be departed from only under exceptional circumstances, effect will, generally speaking, best be given to the intention of the Legislature by applying a strict rather than a liberal meaning to the phrase, and by carefully examining any circumstances relied on as allegedly being exceptional.'

[18] Significantly, although it is accepted in that judgment that what is cognisable as 'exceptional circumstances' may be indefinable and difficult to articulate, the conclusion that such circumstances exist in a given case is not a product of a discretion, but a finding of fact.'

[34] The Constitutional Court in *Liesching and Others v S*[11] similarly interpreted "exceptional circumstances" (albeit in terms of section 17 thereof) as follows:

'[51] What then is the meaning that should be ascribed to the phrase "exceptional circumstances" in section 17(2)(f) of the Superior Courts Act? Construed strictly, I consider the words "rare", "extraordinary", "unique", "novel", "atypical",

"unprecedented", and "markedly unusual" to more fittingly exemplify the meaning of the phrase contemplated by section 17(2)(f) of the Superior Courts Act. What we must remain mindful of though, is that what is exceptional must be determined on the merits of each case. It is a factual inquiry.

[52] The court must look at substance, not form. It must consider all relevant factors and determine whether "individually or cumulatively" they constitute exceptional circumstances. An "ordinary circumstance that is present to an exceptional degree" may also constitute an exceptional circumstance. So too may the conflation of a number of unusual circumstances. The exceptionality of the circumstance must be of such nature so as to persuade the President that it would be in the interests of justice to refer the decision refusing leave to appeal to the Court for reconsideration.'

[35] Whether exceptional circumstances exist is a factual question that does not involve the exercise of a discretion or, as the court in *Incubeta* put it, "[n]ecessarily, in my view, exceptionality must be fact-specific. The circumstances which are or may be exceptional must be derived from the actual predicaments in which the given litigants find themselves". In determining whether exceptional circumstances exist that warrant the order, a Court must also consider whether there are prospects of success in the appeal.[12]

Irreparable harm

[36] With regard to the requirement of irreparable harm, the court in *Incubeta* held that even if an applicant demonstrates that it would suffer irreparable harm if the suspension order is not granted, such relief may still be refused unless the applicant also establishes that the respondent will not suffer irreparable harm if the order is granted.

[37] This exercise is not akin to a balance of convenience examination where the respective harm to the parties is weighed up to determine the “preponderance of equities”. [13] The applicant must, as a matter of fact, show that it will suffer irreparable harm if the suspension order is not granted and that the respondent will not suffer irreparable harm. Where both parties will suffer irreparable harm, the court should refuse the application. The court in *Helen Suzman Foundation v Minister of Police* [14] explains:

‘[19] With regard to the first requirement, in other words, whether or not exceptional circumstances exist, exceptionality must be fact specific, this means that the circumstances which are or which may be exceptional must be located within the predicaments in which the given litigants find themselves. This first leg of the test does not change the common law position. It is the second leg of the test that has somewhat stringent requirements of proof. Section 18 introduces the requirement of proof on a balance of probabilities that, firstly, the applicant stands to suffer irreparable harm if the order is not granted and secondly, conversely, that if the order is granted, the respondent will not suffer any such irreparable harm. In performing this exercise the Court looks to both sides. Where there is potentially irreparable harm or prejudice to both parties the Court should refuse the application as it will no longer balance the two in the interest of justice.’

[38] In this Court, the appellants argued that the circumstances relied upon by the respondent in relation to her performance bonus do not constitute exceptional circumstances, nor would the continuation of her suspension give rise to irreparable harm. They submitted that any amount potentially owed to the respondent could be recovered through a contractual claim later, once the appeal has been finalised. The appellants further contended that the LC erred in finding that exceptional circumstances existed, relying on the following grounds:

38.1 First, the court failed to consider the seriousness of the charges against the respondent. There is no merit in this submission. Nothing prevents the municipality from continuing with the disciplinary hearing, and, as pointed out by the LC, the municipality, as the employer, should maintain control over the disciplinary hearing and should not allow the process to drag on for months.

38.2 Second, the respondent did not adequately plead the terms of the alleged performance agreement, nor did she convincingly demonstrate how her absence from the workplace prejudiced her regarding that agreement. This argument lacks merit. The LC was careful to emphasise how the prolonged suspension and absence from the workplace negatively impacted any possibility of assessment, as the respondent is prevented from working and rendering any work.

38.3 Third, there is nothing inherently improper about suspending an employee pending the finalisation of disciplinary proceedings. The appellants miss the point: once a suspension has lapsed, as found by the LAC, an employee is entitled to return to work.

38.4 Fourth, it was submitted that the Council did not expressly limit the period of suspension to the duration necessary to complete the investigation. While it is correct that the Council's resolution did not explicitly impose such a limitation, the respondent was nonetheless informed in a letter from the Mayor that her suspension would endure pending the outcome of the investigation. However, this distinction is ultimately of no consequence. Whether the limitation appeared in the Council's resolution or the Mayor's letter is academic. In terms of the applicable regulations, the suspension lapsed by operation of law once the

prescribed three-month period expired without the commencement of the disciplinary hearing.

38.5 Lastly, the Council has a statutory and fiduciary duty to prevent irregular, fruitless, and wasteful expenditure. Although this is undoubtedly so, the municipality retains the right to proceed with the disciplinary hearing, even though the respondent's suspension has lapsed.

[39] Insofar as the prospects of success have a bearing on the determination of whether exceptional circumstances exist, it is necessary to briefly consider whether there are reasonable prospects that another court would interfere with the LAC's finding that, in terms of regulations 8(1) and 6(6), a suspension lapses where a disciplinary hearing has not commenced within three months from the date of suspension. Having regard to the reasoning adopted by the LAC in arriving at that conclusion, I am not persuaded that the appellants have reasonable prospects of success on appeal.

[40] In conclusion, it is necessary to express this Court's dissatisfaction with the manner in which the appellants prosecuted this appeal. Section 18(4)(a)(iii) of the Act expressly provides that appeals of this nature must be heard "as a matter of extreme urgency". Despite being aware of the LC's judgment handed down on 23 December 2024, which ordered that the LAC's order would remain operative pending the outcome of the application for leave to appeal, the appellants failed to act with the urgency required. As a result, nearly six months passed before the appeal was brought before this Court. This delay is wholly inconsistent with the clear legislative intention that appeals in terms of section 18(4) be pursued and adjudicated urgently. The failure to act promptly is particularly concerning in light of the Labour Court's finding that the relief granted was time-sensitive in nature. This lack of urgency is unacceptable.

[45] In conclusion, the appeal, for the reasons set out hereinabove, is dismissed. There is no reason to deny the respondent of her costs in this appeal.

[46] I make the following order:

Order

1. The application to adduce further evidence is dismissed with costs.
2. The appeal is dismissed with the appellants to pay the costs.

A.C Basson AJA

Mohanlehi JP and Tokota AJA concur.

APPEARANCES

FOR THE APPELLANTS: Adv. L.A. Roux, instructed by Peyper Attorneys

FOR THE RESPONDENT: Adv. D.F. Makhubele, instructed by MM Baloyi Attorneys

[1] Act 10 of 2013.

[2] Additional emphasis.

[3] Minister of Social Development, Western Cape and Others v Justice Alliance of South Africa and Another (20806/2013) [2016] ZAWCHC 34 (1 April 2016) at para 27.

[4] Quoted with approval in KSL v AL (731/2015) [2016] ZASCA 153; 2017 (1) SACR 141 (SCA) (3 October

2016) at para 13.

[5]

[2019] 5 BLLR 434 (LAC); [2018] ZALAC 47 (LAC) at para 44.

[6] See Incubeta Holdings (Pty) Ltd and another v Ellis and another (Incubeta) 2014

(3) SA 189 (GJ); [2013] ZAGPJHC 274 at para 16. This judgment was followed with approval by the court in Jai Hind EMCC CC t/a Emmarentia Convenience Centre v Engen Petroleum Ltd South Africa 2023

(2) SA 252 (GJ) at para 36.

[7] 2018

(3) SA 428 (SCA); [2016] ZASCA 165.

[8] 2021

(3) SA 135 (SCA); [2021] 1 All SA 17 (SCA) at para 46.

[9] See also: University of the Free State v Afriforum and another 2018 (3) SA 428 (SCA); [2016] ZASCA 165 at para 13.

[10] Supra at para 17.

[11] (CCT304/16) [2018] ZACC 25; 2018 (11) BCLR 1349 (CC) (29 August 2018) at para 51.

[12] University of the Free State v Afriforum and another supra at para 15.

[13] Ibid.

[14] 2017 JDR 0794 (GP); [2017] ZAGPPHC 151 at para 19.

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