

SOUTH AFRICA / JUDGMENT

Ramashilabele v Ngaka Modiri Molema District Municipality and Another (1220/13) [2014] ZANWHC 1 (16 January 2014)

[2014] ZANWHC 1

COURT

North West High Court, Mafikeng

BEFORE

Kgoele

CASE / FILE NUMBER

1220/13

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE NORTH WEST HIGH COURT

MAFIKENG

CASE

NO.: 1220/13

16

JANUARY 2014

In

the matter between:

TEBOGO

FRANK

RAMASHILABELE.....Applicant

And

NGAKA

MODIRI MOLEMA DISTRICT MUNICIPALITY.....1st

Respondent

VINCENT

DILA.....2nd

Respondent

KGOELE

J

DATE

OF HEARING : 20 SEPTEMBER 2013

DATE

OF JUDGMENT : 16 JANUARY 2014

FOR

THE APPLICANT : Adv. JHF Pistor (SC)

(With

him Adv. H.J. Scholtz)

FOR
THE RESPONDENT : Adv. N.G.D Maritz (SC)
(With
him Mr N.G. Laubscher)

JUDGMENT

KGOELE J:

A. INTRODUCTION

[1] The applicant, the former Speaker of the first respondent, has approached this Court for a declaratory order that the first

respondent's meeting of the 17th July 2013 in terms of which he had been removed from his position as a Speaker and the second

respondent appointed a Speaker, is null and void together with ancillary relief. The applicant initially lodged the application on an urgent basis, which application was struck off the roll due to lack of urgency on the 1/08/2013.

[2] The relief sought by the applicant were couched as follows:-

"2. That the resolution(s) to the effect that the Applicant be removed as Speaker of the Council of the First Respondent and that the Second Respondent be appointed as Speaker of that Council which resolution(s) had been adopted at a meeting on 17 July 2013, be declared null and void and of no force and effect.

[3] That the Respondents be directed to (with immediate effect):

3.1 recognise and re-instate the Applicant as Speaker of the Municipal Council of the First Respondent Municipality;

3.2 allow the Applicant access, use and possession of his office and all other facilities to which he is entitled as Speaker of the First Respondent Municipality.

4. That the Second Respondent be declared not be the lawfully appointed Speaker of the First Respondent Municipal Council, and that the Second Respondent be ordered and directed to immediately vacate the office of the Speaker of the said Municipal Council, and not to irregularly interfere in any way with the duties of the Applicant.

5. That in the event of the Respondent failing to comply with the orders set out herein above, the Sheriff of the above Honourable Court be authorised and directed to take such steps, as might reasonably be necessary (including the obtaining of the assistance of the SOUTH AFRICAN POLICE and/or a locksmith, if necessary) in order to implement and execute the aforesaid orders."

B. ISSUES

- [3] It is clear that the relief claimed in paragraph 3 and a portion of paragraph 4 of the notice of motion is in essence ancillary reliefs, and a claim for a mandatory interdict, therefore a decision as to a relief claimed in paragraph 2 is paramount important to further determination of the ancillary reliefs. It will therefore be prudent to mention at the beginning that there is no dispute as to whether applicant was the duly appointed Speaker of the Council of the first respondent District Municipality (the Council) and further that, by a resolution of the 17th July 2013 the Council purported to remove the applicant from office as a Speaker. The crux of the application before this Court is therefore whether such removal from office was lawful or not.
- [4] The applicant maintains that the removal was unlawful whilst the respondents contend that applicant was lawfully removed. However,

the facts on which the applicant and the respondents respectively rely for their said contentions are the same. The only issue is whether on those facts and on a proper interpretation of the relevant statutory provisions, the applicant's removal from office as Speaker was lawful or not.

C. FACTUAL

BACKGROUND

The meeting of the 16th July 2013

- [5] Applicant was inaugurated as a Speaker of the Council of the first respondent on the 3 June 2011. He contends that he received two letters from the African National Congress (ANC) on the 12 July 2013 wherein some Councillors were withdrawn from representing the ANC at the District Municipality and also indicating the names of those that need to be replaced. In this regard he had also previously received from the Ditsobotla Local Municipality as well as Mafikeng Local Municipality letters of which the Local Municipalities had replaced the so mentioned Councillors in the ANC letters respectively on the 11 September 2012 and 21 June 2012. The Municipal District Council of the first respondent consists of 42 Councillors of various political parties. On the 12 July 2013 he himself prepared the notice and an agenda for the Special Council meeting to be held on 16 July 2013 in order to have the new Councillors sworn pursuant to the information in the letter. However some of the old Councillors according to his messenger, refused to accept the notice and the agenda. On Saturday, 13 July 2013, when he went to his office he found that the locks of his office had been changed (this is disputed by the respondents who allege that the locks were only changed on the 18th July 2013). On the 15th July 2013 the applicant send a cellular phone message to all the Councillors informing them about the change of the venue because of the notice that he received on the 12 July 2013 about the proposed SAMWU picketing activity that would be conducted on the 16 July

2013. According to him when he prepared the notice of the Special Council Meeting he was unaware of this. On the morning of the 16th July 2013 a further cellular phone message was sent by him to all the Councillors changing the time from 10h00 – 11h00. At the meeting on the 16th July 2013 according to the copy of the attendance register marked Annexure “TRF11” in the

papers 22 Councillors out of 42 attended the meeting. Therefore according to the applicant a quorum was reached and the meeting

proceeded wherein 8 new Councillors were sworn in by himself. Further resolutions were also taken by the Council on the day in

question. The ones that are relevant and important in this matter and another matter which is almost similar and connected to this one under Case No. 1321/13 are:-

- the removal of the Executive Mayor of the Ngaka Modiri Molema Council Audrey Phaladi Saku (applicant in Case No. 1321/13)
- the removal of Councillor Audrey Phaladi Saku as a Councillor of the Ngaka Modiri Molema District Council and appointing Nomsa Margaret Dube (the fifth respondent in Case No. 1321/13) in place of her.
- the removal of the Municipal Manager of the Ngaka Modiri Molema District Council Mr Ernest Mojaki and appointment of an Acting Municipal

Manager Ms T. Motswenyane (the sixth respondent in Case No. 1321/13).

The meeting of the 17th July 2013

[6] It is evident from the papers that whilst the applicant was busy preparing his meeting without the Municipal Manager of the Council, there was on the side-line, another meeting which was being prepared by the Municipal Manager and other Councillors of the District Council. This is evident from the answering affidavit of the Municipal Manager himself Mr Ernest Mojaki, deposed to on behalf of the first respondent. According to him the applicant was initially requested in writing by the majority of Councillors on the 9 July 2013 to convene a Special Council meeting on the 11 July 2013 in accordance with the Standing Orders of the Municipality. The applicant then wrote a letter marked Annexure “NM5.2” in the papers that the Special meeting will be held on the 17 July 2013. Mr Mojaki contends that the reasons for the request were to address the “conduct of the applicant, the absence of the Executive Mayor due to sick leave and other matters. Upon receiving legal advice and after the other Councillors approaching him to convene such a meeting himself as applicant refused to do so, the Municipal Manager proceeded to convene the meeting on the 11 July 2013 as requested. On 12 July 2013 he received a petition to convene another Council meeting signed by the majority of Councillors to be held on the 17 July 2013, for the removal of the Speaker of the Municipality (applicant). He caused the notice of the meeting, the petition thereof, and the request to applicant to sign the agenda to be served upon the

applicant. The date of service of the said papers of the 12th is not admitted by the applicant as he alleges that he received them on the 15th July

2013. On the 17 July 2013 the meeting proceeded attended by 22 Councillors and was convened by the Municipal Manager. The 22 Councillors present voted for the removal of the applicant as a Speaker. According to the applicant he did not attend the meeting since in his view the meeting was not lawfully called and no valid decisions or resolutions could be made or adopted. On the 17 July 2013 applicant received a letter informing him of his removal. In his submissions he maintained that there was no quorum in that meeting as 8 of the Councillors that participated in the meeting were already replaced. On the other hand the Municipal Manager contends that he was never informed of the alleged replacement and therefore never declared any vacancies of such Councillors with the IEC, and further that the letters from the ANC and the two Local Municipalities cannot provide any authority or lawful, valid and legitimate basis for applicant to “swear in the new Councillors”.

D. APPLICANT’S SUBMISSIONS

- [7] The applicant’s first bone of contention is to the effect that the meeting of the 17th July 2013 was not regularly and lawfully convened as required by Section 29 of the Local Government Municipal Structures Act 117 of 1996 (the Structures Act). He submitted that a meeting must be convened by the proper person, and where a specific person has been appointed to convene a meeting, any other person not so appointed or authorised cannot convene the meeting. Applicant based this submission on the provisions of section 29 of the Structures Act which provides that:

“29. Meetings of municipal councils.—(1) the speaker of a municipal council decides when and where the council meets subject to section 18 (2), but if a majority of the councillors requests the speaker in writing to convene a council meeting, the speaker must convene a meeting at a time set out in the request.

- (2) The municipal manager of a municipality or, in the absence of the municipal manager, a person designated by the MEC for local

government in the province, must call the first meeting of the council of that municipality within 14 days after the council has

been declared elected or, if it is a district council, after all the members to be appointed by local councils, have been appointed.”

- [8] In this matter, it is common cause that the Municipal Manager convened the meeting of 17th July 2013, and not the Speaker. The Municipal Manager claims to have been entitled to convene such a meeting in case where the applicant as a Speaker of the Council

refuses or fails to do so. According to the applicant, the provisions of Section 29 (2) above deals with the situation where no

Speaker has been appointed after the election of Council. He maintained that the section does not deal with the situation where

the Speaker is in office but refuses or neglects his duties. In such event it is not for the Municipal Manager to usurp the responsibilities or powers of the Speaker. In such a case the applicant submitted, the respondents or the Municipal Manager could and should have approach the Court for:

- (a) a mandamus against the Speaker in terms of which the Court would have considered the granting of an order directing the Speaker to comply with his statutory duties; and / or;
- (b) an order that the Municipal Manager be authorised to convene such a meeting.

[9] In addition the applicant submitted that the meeting was flawed because:-

- There was no consultation between the Municipal Manager and the Speaker regarding the agenda as required by paragraph 11 of the Ngaka Modiri Molema Standing Orders of Council of 2010 (the Standing Orders);
- The said agenda was not co-signed by the Speaker as required by paragraph 20 of the Standing Orders;
- The notice in terms of which the meeting was convened was also not co-signed by the Speaker as required by paragraph 8 of the Standing

Orders.

[10] Furthermore, the applicant submitted that paragraph 9 of the Standing Orders provides that in respect of an ordinary Council meeting notice of that meeting should be given at least 7 days before the meeting and in the event of a Special Council meeting at least 48 hours notice should be given. According to him the notice of the meeting did not comply with this request.

[11] The second and the crux of the applicant's submissions that relates to the replacement of the 8 Councillors is two-folded.

Firstly it is to the effect that the petition on which the respondents rely in this regard is invalid and did not justify the

convening of a meeting since the said petition was signed inter alia by a number of Councillors who had been replaced by their Local Councils who should have in fact vacated their offices long ago. Secondly that, the meeting of the 17th was not regular and lawful in that there was no quorum at the meeting because some of the Councillors that participated in the said meeting were already replaced and could therefore not be taken into account for the purpose of calculating a quorum.

- [12] Applicant submitted that the 8 Councillors were replaced because letters were written to the first respondent District Municipality by the Local Municipalities of Ditsobotla and of Mafikeng in terms of which they were replaced by the said Local Municipalities with other representatives. Irrespective of such correspondence the relevant Councillors have not vacated their offices and continued to participate in the matters of the District Council. The applicant submitted that the respondents now appear to maintain that by virtue of the provisions of Items 11 and 23 of Schedule 2 of the Structures Act, the said members are required to vacate their offices only when the Chief Electoral Officer (CEO) of the Independent Electoral Commission (IEC) has declared new Councillors in their place. The applicant maintains that the respondents are wrong in their latter submission. According to applicant the office of the IEC is not a party to the Municipality or to its affairs and is, apart from its record keeping duties, not responsible for the appointment of Councillors in a District Municipality.
- [13] Applicant maintained that the wording of Sections 23 (1) (a) and (b) of the Structures Act are important in these regards as they are clear that representatives of a Local Council in a District Council are appointed and not elected. In so far as Items 16 to 24 of Schedule 2 to the Structures Act deal with the election of representatives to the District Council, according to him the said provisions provide for a procedure for the election of such Councillors in the Local Council and clearly not in the District

Council. Therefore, both items 11 and 23 of Schedule 2 (on which respondents rely) deal with Councillors who have been elected and those provisions are not applicable to Councillors who are appointed.

- [14] The applicant submitted further that the respondents' submission in this regard is wrong for further reasons that follow in this paragraph. Applicant quoted Item 11 (a) on which respondents rely, which provides as follows:-

"If a councillor elected from a party list ceases to hold office, the chief electoral officer (CEO) must, subject to item 13, declare in writing the person whose name is on the top of the applicable party list to be elected in the vacancy." [My own emphasis]."

The interpretation of this item by the applicant is to the effect that the duty of the CEO to declare as contemplated in the latter item only arises "if a councillor Ceases to hold office" According to the applicant it is therefore not the action of the CEO that causes the Councillor to cease the holding of office but the Councillor must have ceased to hold office i.e. "he/she must not be in office anymore and only then can the CEO "declare". Stated differently, the applicant maintains: "a vacancy must be in existence before the CEO can declare" and it is clear, that the vacancy is not caused by such declaration. Consequently he submitted, the provisions of Section 27 (e) of the Structures Act must be interpreted to mean that a Councillor who represents his Local Council in a District Council vacates his / her office in the District Council the moment that he / she is replaced and further that the replacing Councillor then and there ipso facto becomes a member of the District Council as a representative of the Local Council.

- [15] Lastly the applicant further submitted that, if the Court accept the interpretation as submitted by the applicant, it therefore means that there was no quorum during the said meeting and the absence of such a quorum is fatal to the validity of the proceedings of that day. The term “quorum” has not been defined in the Structures Act. However, it has been held that it normally means half of the members plus 1. It has also been held that in order to establish a quorum with regard to the provisions of the Act, one should work with the number of incumbents and not with the number of posts. If the replaced Councillors were to be considered not as incumbents, then and in such event their replacements should have been considered as incumbents. That being the position and on the respondents’ version the quorum has to be calculated on the basis that there were at the relevant time 41 Councillors. Consequently, a quorum would have been 21 Councillors. It is the respondents’ version that the meeting of 17th July 2013 was attended by 24 Councillors. However, 8 of the said Councillors had been replaced by their Local Municipalities as has been stated herein above and they could therefore not participate in Council matters which leaves 14 Councillors who could (on respondents’ version) attend the meeting which number is less than the required number (21) for a quorum. On the same breath, he submitted further that a number of the replaced Councillors who attended the meeting of 17th July 2013 participated in material respects in the proceedings at that meeting and that their participation resulted in a nullity of the proceedings.
- [16] The last leg upon which the applicant relies on relates to Schedule 3 of the Structures Act which provides for a procedure to be followed whenever a Speaker has to be elected. Applicant submitted that *prima facie* and according to the minutes of the meeting of 17th July 2013 the said procedure was in a number of respects not been complied with. According to this Schedule the nomination for a Speaker must be made in writing and on a form determined by the Municipal Manager. It does not appear that such form has been used. Furthermore, the said form must be signed by two members of the Council. There is nothing in the minutes to justify an inference or conclusion that this has happened. The person who is nominated must indicate acceptance of the nomination by signing either the nomination form or any other form of written confirmation. There is no evidence whatsoever in the minutes

that this requirement has been complied with. Accordingly the non compliance of the procedure invalidates the election of the second respondent as Speaker and justifies an order accordingly in applicant’s favour.

E. RESPONDENT’S

SUBMISSIONS

- [17] According to the respondent’s Counsel the meeting of the 17th were validly convened, constituted and could therefore take lawfully valid and binding resolutions. He based his submissions on the fact that ordinarily the Speaker of a Municipal Council has the power to decide to convene a Council meeting. In the event where the Speaker is requested by the

majority of the Councillors in writing to convene a meeting, the Speaker has a statutory obligation in terms of section 29(1) of the Structures Act to convene such a meeting at a time set out in the request as a result of the peremptory manner in which the section is couched. In the event where a Speaker unreasonably refuses to convene a meeting at the request of the majority of the Council, the Municipal Manager has the power to convene such a meeting. He referred the Court to the following cases as a basis for the submission:- Makume and Another v Northern Free State District Municipality and Another [2003] ZAHSHC 36, [2003] ZAFSHC 15 (21 August 2003); Premier of Western Cape and Another v Overberg District Municipality and Another 2011 (4) SA 441 (SCA).

- [18] Counsel for the respondent argued further in this regard that the majority of Councillors requested the applicant to convene a Special meeting with the purpose to remove the applicant as a Speaker on grounds of his misconduct. The applicant was aware of the request, he was requested by the Municipal Manager to take the necessary steps to convene the Special Council meeting as requested by a majority of the Councillors, but applicant unreasonably refused to convene the requested Special Council meeting. As a result, the first respondent's Municipal Manager was requested by the Councillors to convene the Special Council meeting. The Municipal Manager convened the Special Council meeting of the 17 July 2013, and the provisions of the first respondent's Standing Rules were followed by the Municipal Manager, save for the applicant convening the meeting. The former Speaker was duly removed in terms of section 40 of the Structures Act on 17 July 2013.
- [19] As far as the issue of quorum is concerned, he submitted that on the 17 July 2013 according to the attendance register 22 councillors

which are in fact one more than the required quorum attended the meeting.

- [20] As to the issue which is the bone of contention in this matter of whether 8 of the Councillors who attended the meeting on the 17th were entitled to be regarded as Councillors at the said meeting, he submitted that the respondent's version is that those 8 Councillors who attended the said meeting had not duly and validly been replaced, therefore they were to be regarded as Councillors for the purpose of the quorum on 17 July 2013 meeting. This submission is based on his interpretation of item 23 of the Structure which can be succinctly summarised as follows:-

20.1 A District Municipality's Councillors consist of elected Councillors and Councillors appointed by the Local Municipalities;

20.2 Section 23(2) of the Structures Act, read with item 14(a) and item 16(3) of Schedule 2 to the Structures Act prescribes the manner in which Local Municipalities appoint Councillors;

20.3 The term of office of an appointed Councillor can come to an end, when the next Local Council is declared elected or (a) when he ceases to be a member of the local municipality or (b) is replaced by the local council;

20.4 In the event where Councillors are replaced, they cease to hold office and the vacancies which are created must be filled in

accordance with section 23, read with item 11 of Schedule 2 of the Structures Act. It goes without saying that the replacement of a District Councillor by a Local Municipality, as contemplated in terms of the latter portion of the provisions of section 27(e) of the Structures Act, can only be done by means of a valid, lawful and binding resolution of that Local Municipality, an issue in dispute in this application. According to him there are no valid, lawful and binding resolutions by the Local Municipalities to remove the Councillors that were submitted by the applicant except the letters which are not resolutions.

20.5 When a Councillor is duly and lawfully replaced, it is not the end of the process. A vacancy is then created which must be filled. In order to fill the vacancy, the Local Municipality must inform the Municipal Manager of the District Municipality that the Local Municipality has resolved to replace certain Councillors. The Municipal Manager in casu was never informed of the replacement.

20.6 The Municipal Manager must thereafter inform the Chief Electoral Officer of the fact that the Councillors have ceased to hold office. The Municipal Manager has not informed the Chief Electoral Officer.

20.7 The Chief Electoral Officer must then declare in writing the name of the person whose name is on the top of the party list to be elected in the vacancy. The Chief Electoral Officer has not made the required declaration.

[21] According to his submissions, the 8 Councillors whom the two Local Municipalities purported to replace in terms of section 27(e) of the Structures Act were not validly replaced as required in terms of the provisions of section 27(e) nor were their vacancies validly filled as required by section 23, read with item 11 of Schedule 2 to the Structure Act. Therefore he contended, firstly, that the respondents deny that the two Local Municipalities have adopted resolutions that the Councillors concerned be removed and replaced in accordance with section 27(e) of the Structures Act, and secondly, and most importantly, resolutions (by the Local Municipalities to effect the intended replacements) are not enough – a declaration by the Chief Electoral Officer as described above is also required (which declarations were not made). In the premise, he argued, the Councillors who attended the meeting on 17 July 2013 were entitled to participate in the meeting as they had not been validly replaced by the so-called “new councillors”.

[22] In as far as the submission by the applicant that Schedule 3 of the Structures Act was not complied with on the 17 July 2013, the respondents’ Counsel submitted that Section 40 of the Structures Act permits a Municipality to remove its Speaker from

office by resolution. In order to have this done, a notice stating the intention to move a motion for the removal of the Speaker must be given. Such a motion was received by the first respondent, duly submitted and seconded in terms of the Standing Rules. The applicant has also received the aforementioned notice prior to the motion being tabled at the Special Council meeting of 17 July 2013. In the premise, there was compliance with section 40 of the Structures Act.

F. ANALYSIS

[23] A key issue in this application relates to the procedure for the election and appointment of the members of the Council of a District Municipality. The first respondent is a District Municipality. I will start by saying that I do not agree with the applicant's interpretation of Section 23(1) of the Structures Act. For the sake of completeness, the provisions of this section which provides as follows are, in my view, to be quoted verbatim:

"23.1 Election and appointment of district councils

The council of a district municipality consist of:-

- (a) Councillors elected in accordance with Part 1 of the Schedule 2 by voters registered on that municipality's segment of the national common voters roll, to proportionally represent the parties that contested the election in that district municipality;
- (b) Councillors appointed in accordance with Schedule 2 by the councils of the respective local municipalities within that district

municipality, to directly represent those local municipalities; and

- (c) If the district municipality has a district management area, councillors elected in accordance with Part 1 of Schedule 2 by voters registered on that district municipality's segment of the national common voters roll in that area, to proportionally represent the parties that contested in that area." [My own emphasis]

[24] Section 26 of the Structure Act, which is equally important to the decision in this matter provides as follows:-

"26. Term of office of councillors

- (1) A person
 - (a) is elected as a member of a municipal council for a period ending when the next council is declared elected; or
 - (b) is appointed as a representative of a local council to a district council for a period ending when the next local council is declared elected" [My own emphasis]

[25] It is trite law that when a meaning of a word or a section in an Act is being sought, the Act as a whole and the purpose thereof must be taken into consideration. The said interpretation ought not to take place in a piecemeal fashion. The purpose of the Structures Act has been provided as follows in the Act:-

“To provide for the establishment of municipalities in accordance with the requirements relating to categories and types of municipality; to establish criteria for determining the category of municipality to be established within each category, to provide for an appropriate

division of functions and powers between categories of municipality, to regulate the internal systems, structures and office-bearers of municipalities; to provide for appropriate electoral systems; and to provide for matters in connection therewith.” [My own emphasis]

[26] In a reportable case that was heard by the Supreme Court of Appeal in the matter of Chake v S (205//13) [2013] ZASCA 141 (30 September

2013) the following was emphasised when dealing with interpretation of legislation.

“This conclusion is clearly wrong. Judges must be careful not to submit to the temptation of substituting what they regard would have been reasonable and sensible for what was in fact done by the legislature, and to thereby ‘cross the divide between interpretation and legislation; instead a court must determine the appropriate meaning of the words used in the statutory provision in question by adopting their plain meaning unless it would lead to a glaring absurdity. In the present case there is not absurdity.”
..... [My own emphasis]

[27] The heading of Part 2 of Schedule 2 to the Structures Act is worded as follows:-

“Allocation and election of representative of local councils and district management areas to district councils”

The words, “allocation and election of representatives”; “to district council”; clearly denotes that this part of Schedule 2 regulates the appointment of Councillors as contemplated in Section 23(1) (b) of the Structures Act.

[28] In my view the words, “to directly represent those local municipality” found in sec 23(1) (b) and “representatives

of local council” found in the heading of Part 2 of Schedule 2, and Item 16(1) thereof, connects and cut across all these sections and reveals that these provisions actually relates to one another.

[29] Item 14 of Part 2 of Schedule 2 to the Structures Act stipulates that the members of a District Council as referred to in section 23(2) of the Structures Act (which include Councillors appointed by Local Municipalities as contemplated in section 23(1) (b) must be “appointed by the councils of the local municipalities in the area of the district council from among their members”.

Accordingly, a Local Council can only appoint a representative to a District Council from among the members of the Local Council. Item 14(b), which is not relevant to the present application, provides for the election of representatives of a district management area to a District Council. Item 15 specifies the formula for determining the quota of registered voters that a Local Council or a District Management area must have in order to be entitled to a seat on a District Council.

- [30] Item 16(1) provides that the Chief Electoral Officer “must manage the election of representatives of a local council to the district council”. Although this refers to “election”, in my view, it can only refer to representatives of a Local Council to the District Council as contemplated in item 14(a), which refers to members of a District Council who are appointed by the Councils of Local Municipalities. Item 16(3) provides that if the Council has been awarded more than one seat (on the basis of the quota determined under item 15) “the Council must elect that number of members according to proportional representation as set out in items 17 to 22”. Accordingly, if a Local Council is awarded only one seat, there is no election and one member of the Local Council is simply to represent the Local Council on the District Council. However, if the Local Councillor has in terms of a quota been awarded more than one seat, the Local Council must elect that number of its members to represent it on the District Council. The persons elected are then appointed to represent the Local Council on the District Council, as contemplated in section 23(1)(b) of the Structures Act and item 14(a) of Part 2 of Schedule 2.
- [31] Items 17 provide that every party or independent Ward Councillor may submit a candidates’ list containing the names of Councillors, that no party or independent Ward Councillor may submit more than one list, and that the candidates’ names must appear on the list in order of preference. Candidates’ lists are, however, only relevant where a Local Council has been awarded more than one seat on a District Council. Item 18 provides that each Councillor (of a Local Council) casts one vote for one list only (for election of a Local Councillor as a member of the District Council). Item 19 specifies the formula for the quota of votes for a seat to the District Council (to give effect to the proportional representation referred to in item 16(3)). Item 20(1) stipulates that the number of votes casted in favour of each list (being the party lists or independent Ward Councillor lists referred to in item 17) must be divided by the quota of votes for a seat and the result is the number of seats allocated to that list. Item 21 stipulates that the Chief Electoral Officer, in accordance with the order of preference on a list, must select the number of candidates from the list that is equal to the number of seats allocated to that list. Item 21 provides further that the Chief Electoral Officer, in accordance with the order of preference on the list, must select the number of candidates from the list that is equal to the number of seats allocated to that list. This clearly relates to the selection of the candidates for appointment by a Local Municipality to represent it on the District Council, as contemplated in item 14(a), as item 24 provides separately for the election of Councillors to represent a District Management in the District Council, as contemplated in item 14(b). In my view the interpretation by the respondents’ counsel is correct to the effect that it is only when the Chief Electoral Officer in terms of items 21 selects the members of a Local Council to represent it on the District Council, that those

Councillors are appointed as members of the District Council.

- [32] Item 23 of Part 2 of Schedule 2 provides that if a Councillor elected from a “candidates’ list” (this in my view and as correctly pointed out by respondent’s counsel, clearly refers to a Councillor appointed to represent a Local Council on the District Council, as contemplated in item 14(a)), ceases to hold office “the corresponding provisions of item 11 must be applied to the extent that that item can be applied”. Part 2 of Schedule 2 does not specify when a Councillor “ceases to hold office”. This is dealt with in section 27 of the Structures Act. If regard is had to section 27(e) of the Structures Act, a representative of a Local Council in a District council “vacates office” (and cease to hold office) if the Councillor “is replaced by the Local Council as its representative in the district council”. It follows logically that if a Local Council decides to replace a Councillor as its representative on the District Council, that Councillor, being “a councillor elected from a candidates’ list” as contemplated in item 23, “ceases to hold office”. Item 23 provides that in such event the provisions of item 11 must be applied to the extent that they can be applied.
- [33] Item 11(1) of Part 1 of Schedule 2 clearly can be applied in such a case. Item 11(1)(a) provides that if a Councillor elected from a party list “ceases to hold office”, the Chief Electoral Officer must, subject to a party’s right to supplement or amend its list, declare in writing the person whose name is on the top of the applicable party list to be elected to the vacancy. Item 11(1)(b) can also clearly be applied in such a case. It further stipulates that whenever a Councillor elected from a party list “ceases to hold office”, the Municipal Manager concerned must, within 7 days after the councillor has ceased to hold office, inform the Chief Electoral Officer thereof (obviously so that the Chief Electoral Officer can in writing declare the person whose name is on the top of the applicable party list to be elected in the vacancy). The Ditsobotla Local Municipality and the Mafikeng Local Municipality were each entitled to more than one seat on the Council of the first respondent, being the District Municipality. Accordingly, the representatives of those two Local Councils on the District Council must initially have been appointed, after an election process, in terms of which the Councillors of the Local Council’s voted for party lists, had been conducted, in accordance with the provisions of Part 2 of Schedule 2 to the Structures Act.
- [34] In terms of section 27(e) of the Structures Act, a Councillor who is a representative of a Local Council in a District Council vacates office if he/she “is replaced” by the Local Council as its representative in the District Council. As correctly submitted by respondent’s counsel, at the very least a resolution by the Local Council is a precondition for such replacement. Section 27(e) of the Structures Act does not specify when the replacement becomes effective. The dictionary word “replace” means, *inter alia* “to take the place of especially as a substitute or successor; to put something new in the place of”. It appears to be reasonably logical that the Act does not contemplate a situation where the position is vacant for a period, but rather a position where the initially appointed Councillor holds office until the moment when the newly appointed Councillor replaces him/her as the representative of the Local Council on the District Council. The question, however, remains whether the replacement of one

Councillor by another takes place merely upon the Local Council deciding to replace one representative with another, or whether some further action or formality is required in order for the replacement to be effective. I fully agree with the submissions by respondents' Counsel that, if regard is had to the provisions of section 26(2) of the Structures Act, the replacement Councillor only assumes office, "when appointed", and until that time there is no "replacement".

[35] For the sake of completeness and better understanding of the analysis I made above, the following definitions are in my view worthy to be quoted:-

- "Party candidate" means a person whose name appear on the party list;
- "Party list" means a list of candidates proposed by a party for the purpose of the election of members of a Municipal Council to proportionally represent parties in the Council either in relation to the municipality or in relation to a district management area.

The amendment of, supplement, change or increase and or insufficiency of a list of a party is dealt with in separate provisions in the two schedules but all provides that when a party does so, it must provide the CEO with an amended lists.

[36] There exists Local Government Elections Legislation that regulates the Municipal Election. It is quite clear and obvious that the IEC has a register of every level of the Government, including the Local Government level. The whole election system works on proportional representation and on the lists. The people on the list had worked themselves to be there. If the argument of Advocate Pistor SC on behalf of the applicant is regarded as correct, then it means that all those Local Councillors appointed by the people who elected them cannot be checked, and can simply be removed and appointed solely by a letter. This will lead to an absurd result in that anyone / member of a party may willy-nilly write a letter and change the party lists which is held by the IEC without its intervention. In my view, this will obviously fly against the purpose of the Structures Act including the Constitution of this Country. The Municipalities will also not be able to give effect to the Structures Act. Furthermore, the worse thing that will happen if we accept Adv. Pistor SC interpretation as correct is that the preferential list held by it will not have any effect in that, IEC will still think that the Councillors on the preferential list are still Councillors whereas they are de facto not.

[37] The interpretation contended for by the applicant raises a further difficulty in that it renders the reference to Items 16 in Part 2 superfluous. In my view, the submission by the applicant's counsel to the effect that the Chief Electoral Officer has no role to play in the replacement of a Councillor who ceased to be a member is clearly ill-conceived.

[38] I fully agree with the submission of the respondent's counsel that, in order for any of the representatives of the Local Councils to be replaced on the District Council, the following would have had to occur:-

38.1 The Local Council would have to resolve to replace the representative on the District Council, as contemplated in section 27(e) of the Structures Act;

38.2 The Local Council would have to inform the Municipal Manager of their resolution to that effect;

38.3 The Municipal Manager would have to inform the Chief Electoral Officer, in accordance with the provisions of item 23 of Schedule 2 read with item 11 of Schedule 2 that a “vacancy” existed;

38.4 The Chief Electoral Officer would then in terms of item 23 read with item 11(1)(a) of Schedule 2 to the Structures Act have to declare in writing the person whose name is one the top of the applicable party list to be elected in the vacancy;

38.5 Once the Chief Electoral Officer has declared in writing the names of the persons elected to fill the vacancies, then those persons would assume office as Councillors in the District Council, as provided for in section 26(2) of the Structures Act, and would replace the previous representatives of the Local Council, who would thereupon vacate their office, as contemplated in section 27(e) of the Structures Act.

[39] Whilst Advocate Pistor SC on behalf of the applicant conceded that item 14 in Part 2 of Schedule 2 deals with the appointment of representatives of Local Council in the District Council, he loses sight of the fact that Sec 23(1) (b) stipulates that the Councillors must be appointed in accordance with Schedule 2. Looking at all the items that fall under Part 1, Part 2 and Part 3 of Schedule 2, there is no provision made therein of the manner in which appointment of representative of Local Council to District Council is specifically made for. As indicated earlier above, reference is specifically made in regard to members that are appointed by Council of the Local Municipalities only in Part 2 under item 14(a). Of utmost importance it stipulates that those appointed Councillors, must be appointed as such from amongst their members. The heading of item 14 in Part 2 “Manner of election”, and the heading of item 16 in Part 2 clearly qualifies Item 14 and its sub- paragraphs as it states: “Electing Local Councils representatives to district councils”. Therefore, representatives of the Local Council in the District Council have to be elected first in accordance with Part 2 before appointment there. The submission by the applicant’s counsel that the representatives of a Local Council in a District Council are appointed and not elected is a narrow interpretation of the Structures Act and may in my view, lead to absurd result.

[40] The submission by the counsel for the applicant that item 11 and 23 of Part 2 of Schedule 2 to the Structures Act deal with Councillors who have been elected and not to Councillors who are appointed is also flawed. Part 2 also makes a reference to selecting names on the list of candidates, which item still forms part of the heading of Part 2 which states: “allocation and election of representatives of local councils”. To sum up, the words “representative” “to represent in the district

council” cut across and is used in most of the headings and most of the items under Part 2 to show that all of the provisions of Part 2 relates to the appointment of representative Councillors of the Local Council in the District Council.

- [41] Consequently, I remain un-persuaded by the interpretation that the provisions of section 27(e) of the Structures Act means that a Councillor who represents his Local Council in a District Council vacates his/her office in the District Council the moment that he/she is replaced by his/her Local Council and that the replacing Councillor there and then ipso facto becomes a member of the District Council without the office of the IEC having a role therein.
- [42] The interpretation by the first and second respondents’ Counsel is further strengthened by the fact which was not denied by the applicant that, up until the 16th of July, a day before the 17th of July, the said Councillors who allegedly replaced the others who vacated their offices were never sworn in as new Councillors. They never came to the office and never participated in any meeting called by the Council for +- 9 months. Instead, the supposed to have been replaced Councillors continued to act as such up and until 17th July and surprisingly, the applicant himself called them to a meeting he convened on the 16th July 2013. Furthermore, support of this interpretation can also be found in a copy of the e-mail from the Local IEC offices dated 10 April 2012 which is annexed to the papers setting out that the process the Mafikeng Local Municipality is endeavouring to adopt as far as replacements of Councillors is incorrect and further setting out the correct one. Unfortunately this e-mail affirms the view taken by this Court and puts a final nail to the submissions of the applicant’s Counsel.
- [43] In as far as the issue that relates to whether the meeting of the 17th July 2013 was not convened by a proper person is concerned, it is common cause between the parties that ordinarily the Speaker of a Municipal Council has the power to convene a Council meeting in terms of section 29(1) of the Structures Act and also section 3, Part 1 of Chapter 2 of the Standing Orders of Council (2010) of the Ngaka Modiri Molema District Municipality (The Standing Orders). As correctly contended by the respondent’s counsel, it is only in the event where the Speaker is requested by the majority of the Councillors in writing to convene a meeting, that the Speaker then has a statutory obligation to convene such a meeting at a time set out in the request as a result of the peremptory manner in which the provisions of section 29(1) of the Structures Act are phrased.
- [44] The question that needs to be considered is therefore whether the Speaker in the current matter refused and unreasonably so to hold a meeting as requested by the majority of the Councillors. Having concluded in the previous paragraph that the 8 Councillors were not validly replaced as required by the Structures Act, the issue of whether the meeting was called by a majority of Councillors and whether the petition on which the respondents rely in this regard is invalid and did not justify the convening of a meeting therefore fell away. The only issues that remain is whether the Municipal Manager can call a meeting, and whether applicant unreasonably refused to hold a meeting.

[45] Applicant's submission is that the Municipal Manager cannot convene a meeting even if the Speaker unreasonably refused to call one after being requested by a majority of Councillors. He should have approached the court for a mandamus against the Speaker or an order that the Municipal Manager be authorised to convene such a meeting. He referred to a case of *Van Tonder v Pienaar and Others* 1982 (2) SA 336 (SE) at 337. Counsel for the applicant further submitted that the cases of *Makume & Others v Northern Free State District Municipality & Others* [2003] ZAFSA, 36, [2003] ZAFSHC 15 (21 August 2003) and *Premier of the Western Cape & Another v Overberg District Municipality & Another* 2011 (4) SA 441 (SCA) which were referred to by the respondents' counsel wherein it was decided that where a Speaker / Executive Mayor unreasonably

refuses to convene a meeting at the request of the majority of the Council, the Municipal Manager has the power to convene such a meeting should not be followed by this Court as what the Honourable Judges in those matters said was just obiter.

[46] I do not agree with the submission of the applicant counsel in this regard. The Makume matter although is not binding on this Court, I found it persuasive in the decision of this matter. Although the facts are not the same, but it dealt with this issue pertinently as to whether the Municipal Manager can hold a meeting in the circumstances where the Executive Mayor refuses. The Honourable Judge went on in that matter to decide whether the refusal was reasonable or not and decided in favour of the Mayor because he found that refusal was not unreasonable but justified. In this matter although the applicant wants to say the letters were not received by one Ms Polela whom he deny as having been his secretary by then, the fact remains that in paragraph 10.17 of his replying affidavit he acknowledges that he received the papers the applicant referred to as the petition, the request to hold a meeting and the agenda of the meeting of the 17th on the 15th of July 2013. It is therefore clear that he received a request to convene a Council meeting. The papers that he received also revealed that it was not an ordinary meeting that he was requested to convene but a Special one. He therefore knew that only 48 hours notice is required. In my view, the Speaker had time to respond to this request even though he received it on the 15th, but nevertheless did not do anything. He did not at the least communicate at all his problems that he allegedly encountered with the date including the fact that his offices were locked. A mere phone call to the Municipal manager to this effect could have been sufficient and or even to request a postponement. According to the

applicant he did not respond nor attend the meeting because he was of the view that the said meeting was not lawfully called and no valid decisions or resolutions could be made or adopted at that meeting. Paragraph 10.8 of his replying affidavit indicates that he was aware of the motion that was tabled to wit "to remove the Speaker from office". Nevertheless, he did not deem it fit to attend the said meeting in order to advise the Councillors that requested the said meeting of the fact that they do not form a quorum which was the view that was according to him, at that moment labouring in his mind, well knowing that in terms of Section 29(1) of the Structures Act he was obliged to hold such a meeting. The situation is aggravated by the fact that this was not

the first time that he was requested to convene a Special meeting. He was notified of the request of the meeting of the 11 of July 2013 wherein his conduct was to be discussed. The Municipal Manager had to convene such a meeting because he did not head to the request. The fact remains that the applicant received a notice of his intended removal in time and refused unjustifiably so in my view, to hold the said meeting.

[47] The argument that was raised by Advocate Pistor SC that there is no proof that the newly nominated person as a Speaker signed a form where he accepted the nomination is not only very shallow and thin, but a narrow interpretation of the provisions of Schedule 3 of the Structures Act. The minutes of the Special meeting held on the 17th are clear as to what procedure was followed and what happened that resulted in the ultimate resolution of the appointment of the second respondent as stipulated by Section 40.

[48] The considerations that I have made in all the preceding paragraphs to reach the conclusion that the removal from office of the applicant as a Speaker was lawful are equally applicable and further summarily disposes off the requirements that the applicant had to prove in order to succeed to obtain a final interdict. It follows that the reliance also on the relief of mandament Van Spolie cannot be sustained.

G. ORDER

[49] The application is therefore dismissed with costs.

A M KGOELE

JUDGE OF THE HIGH COURT

ATTORNEYS:

FOR THE APPLICANT : Vere Attorneys

No. 2283 Tshite Street, Unit 1

MMABATHO

FOR THE RESPONDENTS : Liezel Venter Attorneys

C/O Botha Coetzer Smith Att.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2014/1.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/ramashilabele-v-ngaka-modiri-molema-district-municipality-and-others-unknown-topic-anwhc-2014--6a3ea5203b1caa91298167a0>

Prepared on 11 October 2026 · Esheria