

SOUTH AFRICA / JUDGMENT

Yola and Another v Jonas and Others (1800/2022) [2022] ZANCHC 72 (8 November 2022) [2022] ZANCHC 72

COURT

Northern Cape High Court, Kimberley

BEFORE

MV Phatshoane

CASE / FILE NUMBER

1800/2022

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IN THE HIGH COURT OF SOUTH AFRICA,
NORTHERN CAPE DIVISION, KIMBERLEY

JUDGMENT

Not reportable

Case No: 1800/2022

In the matter between:

TOMMY YOLA FIRST APPLICANT

THE AFRICAN NATIONAL CONGRESS

(PIXLEY KA SEME REGION, NORTHERN CAPE) SECOND APPLICANT

and

DANNY ANDRIES JONAS

FIRST RESPONDENT

THEMBELIHLE LOCAL MUNICIPALITY SECOND

RESPONDENT

MUNICIPAL MANAGER: LMR NGOQO THIRD

RESPONDENT

THE INDEPENDENT ELECTORAL COMMISSION

OF SOUTH AFRICA FOURTH

RESPONDENT

THE SIYATHEMBA COMMUNITY MOVEMENT FIFTH

RESPONDENT

THE MEC- DEPARTMENT OF COOPERATIVE

GOVERNANCE, HUMAN SETTLEMENT AND

TRADITIONAL AFFAIRS, NORTHERN CAPE

SIXTH RESPONDENT

COUNCILLOR: RAGEL JANSEN SEVENTH

RESPONDENT

COUNCILLOR: LEONARD WILLIAM MAKENNA

(THE MAYOR) EIGHTH

RESPONDENT

COUNCILLOR: FRANS MANS NINTH

RESPONDENT

COUNCILLOR:ELZERONE STENEKAMP TENTH

RESPONDENT

COUNCILLOR: PAUL PETRUS VAN NIEKERK ELEVENTH

RESPONDENT

MARNUS STANLEY VISSER TWELFTH

RESPONDENT

Neutral citation: Yola and Another v Jonas and Others (Case no 1800/2022) (08 November 2022)

Heard: 13

October 2022

Delivered: 08 November 2022

Phatshoane DJP

Introduction

- [1] A municipal council ought to be a custodian of good governance. The prevailing state of affairs in the political governance structure of Thembelihle municipality can best be described as chaotic with a potential to permeate and lead into administrative inefficiency and lack of service delivery. The municipal council has descended into being virtually ungovernable. There reigns heightened tensions and dysfunctionality. The antagonists, in their respective positions, claim to be vindicating the rule of law. A poignant truism is that the community suffers the brunt. This put into context what this case is about.
- [2] Mr Tommy Yola and the African National Congress(ANC), the first and second applicants, approached this court on a semi-urgent basis for an order declaring that Mr Danny Jonas (Mr Jonas), the first respondent, was removed as a councillor of Thembelihle Local Municipality (the municipality), the second respondent, on 22 June 2022 which resulted in his seat being vacant and his position as a Speaker brought to its abrupt end. They further sought an order interdicting Mr Jonas from holding himself out as a councillor or speaker of the municipality or taking part in the affairs of the municipality as a speaker or councillor. I am further urged to forthwith order that the municipality and the municipal manager, Mr Ngoqo, the third respondent, convene a meeting of council of the municipality within 10 days for purposes of electing a new speaker of the municipality. In addition, the applicants seek an order of costs against Mr Jonas and any of the respondents that opposes the relief on an attorney and client scale.
- [3] Mr Jonas, the municipality, the municipal manager, the mayor, councillor Frans Mans, and councillor Elzerone Stenekamp, the first, second, third, eighth, ninth and tenth respondents (municipal respondents) resists the application. The Siyathemba Community Movement (Siyathemba), the fifth respondent, also filed its separate opposing affidavit late. It sought condonation. The delay is not inordinate and there can be no prejudice in admitting the affidavit. The twelfth respondent, Mr Marnus Stanley Visser, filed an affidavit in support of the application.
- [4] In their replying affidavit, the applicants took issue that the municipality and the municipal manager joined forces with Mr Jonas in opposition to the application when there is no council resolution sanctioning the conduct or the general delegation authorising Mr Jonas to act on behalf of the municipal respondents. It goes without saying, as the facts of the case would show, that an attempt by the municipal respondents to obtain a council resolution to oppose the application, would have turned futile. The opposing affidavit by the municipal respondents was deposed to by Mr Jonas. However, what is remarkable is that none of the municipal respondents attested to confirmatory affidavits.
- [5] Mr Jonas and the municipal respondents have attached, to their opposing affidavit, several applications that had been filed by various parties in this court, making the record unreasonably prodigious. I must add, that they took no effort to indicate the relevant passages they relied on which made traversing the record quite a difficult task. This ought to

be strongly deprecated. To borrow from Joffe J in *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others*:^[1] '(I)t is not open to an applicant or a respondent to merely annex to its affidavit documentation and to request the Court to have regard to it. What is required is the identification of the portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof. If this were not so the essence of our established practice would be destroyed.'

- [6] Mr Jonas and the municipal respondents took a point, first, that the application is not urgent. From the prelude to this judgment, it is difficult to comprehend how the issues traversed in the papers cannot be classified as urgent. It is in the interest of the community of Thembelihle that the impending disputes, within its municipal council, be resolved speedily. The second preliminary point is to the effect that the applicants failed to set out facts which support the requirements for a final interdict. This point, seen in the context of the present setting, as I shall show, is of little or no moment.
- [7] Siyathemba Community Movement (Siyathemba), the fifth respondent, applied in terms of s 15 of the Electoral Commission Act 51 of 1996 for registration as a political party. In terms of its application for registration, Siyathemba's leader and its chairperson is recorded to be Mr Andrew Phillips. Other members constituting its executive structure were, amongst others, Mr Andrew Phillips, Mr Chumisa Mooi, and Mr Piet Olyn.
- [8] On 3 December 2021, the IEC confirmed to the office of the Municipal manager of Thembelihle that Siyathemba had been registered as a political party with Mr Phillips indicated to be the party leader and Mr Piet Olyn, the Secretary. The municipal council (council) consists of 11 seats. Five of these are held by the ANC, one by the Democratic Alliance (DA), three by the Economic Freedom Fighters (EFF), Siyathemba and Freedom Front Plus (FFP) hold one seat each. The ANC won wards 1 to 4, the EFF won ward 5 and the FFP garnered ward 6. On a proportional basis, the ANC obtained a further seat, the EFF obtained two further seats, the DA one proportional seat and Siyathemba, one propositional seat. The elections were declared free and fair by the Independent Electoral Commission of South Africa (IEC), the fourth respondent. On 22 November 2021, at the inaugural council meeting, Mr Jonas of Siyathemba was elected the speaker of council.
- [9] Siyathemba's seat on the council (that which has been occupied by Mr Jonas) is based on proportional representation only. In terms of s 27(c) of the Local Government: Municipal Structures Act 117 of 1998 (the Structures Act) a councillor elected as a proportional representative loses his or her seat when he or she ceases to be a member of a party that he or she represented on the occurrence of which event the municipal manager of the municipality concerned is required by Item 18(1)(b) of Schedule 1 of the Structures Act to inform the chief electoral officer of the Electoral Commission that the councillor in question has ceased to hold office. Item 18(1)(a) provides that he or she will then be replaced by another person on the party's list after the chief electoral officer has declared this to be the case.

- [10] On 19 May 2022, Mr Jonas was informed by Siyathemba that he had been found guilty of gross misconduct and expelled from the party. Mr Jonas's letter of termination was signed by Mr Phillips, the party leader according to the records of the IEC. The applicants explained that Mr Phillips also forwarded a copy of a letter to the acting Municipal Manager of the municipality, Mr Shuping, which confirmed that Mr Jonas's membership in Siyathemba had been terminated and that Siyathemba's seat on the council was therefore vacant.
- [11] Mr Shuping directed a letter to the IEC informing it that Mr Jonas was expelled from Siyathemba and that in terms of s 27 of the Municipal Structures Act, his seat was vacant. By means of a letter delivered to the IEC on 8 June 2022, the Municipal manager called upon the IEC to fill the vacancy in terms of Item 18(1) of Schedule 1 of the Structures Act. Whether Mr Shuping was the duly appointed acting municipal manager at the time, and thus authorised to issue the letter, is highly contentious. The applicants claim that Mr Shuping was the acting municipal manager and properly authorised to act as he did. In terms of the council resolution of 30 March 2022, council resolved to extend his contract for a period of three months effective from 1 April to 30 June 2022. Mr Jonas, on the other hand, submits that Mr Steven Marufu was the acting municipal manager. He stated that, when Mr Marufu became aware of the letter that Mr Shuping forwarded to the IEC, concerning Mr Jonas's expulsion, he immediately informed the IEC that he (Mr Marufu) was the acting municipal manager and not Mr Shuping. The IEC did not respond to the letter. Therefore, Mr Jonas believes that the IEC acted in concert with Mr Shuping and involved itself in politics.
- [12] On 22 June 2022, the IEC issued a notice in terms of which it declared a vacancy in respect of the position that was held by Mr Jonas in the council and further advised that Siyathemba had recommended Mr Marnus Stanley Visser (Mr Visser), the twelfth respondent, as the next candidate to fill the vacancy. It further directed that Mr Visser, being the candidate on the top of Siyathemba's list, was declared to be elected to the council as envisaged in Schedule 1 Item 18 of the Structures Act and that Mr Visser had replaced Mr Jonas who had ceased to hold office in the municipal council. It is partly on this basis that the applicants approached this court for the declaratory order that Mr Jonas was removed as a councillor on 22 June 2022 which resulted in his seat being vacant and his position as a Speaker, being brought to an end.
- [13] Further reasons the applicants advanced, as having precipitated the launching of the application, were the following. They asserted that Mr Jonas, despite his expulsion from council, continues to represent himself as both a councillor and the speaker in meetings and in correspondence and notices that he dispatches. They say that this undermines the role of the council and also raises substantial risk of review applications being brought on account of an incorrectly constituted council. They portrayed Mr Jonas's role as a speaker as disruptive, suppressive and lacking objectivity. Time is largely spent in meetings addressing technical points on his status as a speaker. Furthermore, the majority of councillors refused to sign the attendance register as they do not recognise Mr Jonas.

[14] The applicants further state that Mr Jonas called several special council meetings between 22 June 2022 to 30 August 2022 on extremely short notices contrary to the Structures Act intent to foist upon council decisions without affording councillors sufficient time to consider reports and points traversed in the agenda. For instance, they claimed, he scheduled a special council meeting for 22 June 2022 at 10h00. The objection raised by other councillors that he should not preside over the meeting was rejected. He also presided over a special council meeting held on 29 June 2022 which dealt with important issues, including the 2022/23 final budget and 2022/27 first final independent plan. He repeatedly called special council meetings for 21 July 2022; 4 August 2022, 8 August 2022 and 30 August

2022. The applicants intimate that the frequency of meetings demonstrates that, as a direct consequence of Mr Jonas's conduct, the council affairs are out of control and requires intervention from this court.

[15] The frequency of the meetings drew the attention of the Department of Cooperative Governance, Human Settlement and Traditional Affairs (COGHSTA) which made an exhortation to the council on 28 July 2022 to limit the number of special council meetings and to convene for emergency purposes only. Mr Jonas was also implored to investigate a possible breach of the code of conduct aligned to the standing rules of order to determine reasons for absenteeism of one of the councillors. On 18 August 2022 the current Municipal manager, the third respondent, directed a letter to the MEC for COGHSTA, the sixth respondent, which reads in part:

'It seems to me there is a legal battle on the position of the speaker, which has a potential of creating instability and that is the reason why I am writing this letter for the intervention of the honourable MEC B.C Vass. It is my belief that a legal opinion be obtained on urgent basis in order to resolve the matter to prevent any interruption of services'.

[16] In his opposition Mr Jonas sketched some historical background to this saga. He says that his election as the speaker on 22 November 2021 and the eighth respondent as the mayor effectively culminated into the removal of the ANC as the governing party. Two months into office, he explained, he was confronted with an array of frivolous and vexatious motions of no confidence. He stated that Mr Yola, the first applicant, who is the representative of the ANC, Pixley Ka Seme Region, submitted a motion of no confidence to remove him as a speaker. He was made aware of his removal through a WhatsApp message. He then lodged an urgent application which resulted in the order by Erasmus AJ on 11 February 2022 which reads:

'1. Pending the finalisation of the application for the relief, as set out in PART B of the Notice of Motion issued on 25 January 2022:

1.1 the first to the seventh respondents [amongst them the municipality and the present applicants] are interdicted and restrained from implementing a resolution by the municipal council of the first respondent to remove the applicant [Mr Jonas] as the speaker of the first respondent;

1.2 the applicant is reinstated as the speaker of the first respondent;

2. The costs of this application shall be costs in the main application, set out in PART B of the Notice of Motion issued on 25 January 2022;

3.

4. The applicant is directed to enrol the application for the relief in PART B of the Notice of Motion issued on 25 January 2022 within 30 days of this order, failing which this order shall lapse, unless a court grants an order extending such time limit.'

[17] It would appear that the matter was not set down for the hearing of PART B as directed in para 4 of Erasmus AJ's order and consequently the order lapsed. Mr Jonas intimated that 3 months later, on 30 April 2022, he was again unlawfully removed as a speaker pursuant to a motion of no confidence that was submitted, once more, by Mr Yola. He successfully brought an urgent application to interdict his removal. Pursuant to this, on 19 May 2022, he received a letter from the Siyathemba informing him that he had been found guilty of, inter alia, participating in organised factional activity; behaving in a grossly, disorderly or unruly way; and interfering with the orderly functioning of the organisation. He was expelled but filed an appeal which nonetheless ruled that his conduct 'caused an irretrievable breakdown within the organisation' and thus confirm his expulsion. He then launched another urgent application which resulted in the order by Nxumalo J on 25 June 2022 in these terms:

'1. Part A of this application be and is hereby dealt with as a matter of urgency and that the applicant's [Mr Jonas's] noncompliance with the Rules of Court regarding service and process is condoned in terms of Rule 6(12)(a) and pending the determination of the review envisaged in part B.

2. The first to the fifth respondents [the IEC, the municipality, the municipal manager, Siyathemba and its chairperson] are hereby interdicted and restrained from appointing a councillor to replace the applicant as councillor pending finalisation of a review application.

3. The fourth to the fifth respondents [Siyathemba and its chairperson] are ordered to reinstate the applicant to his position as a member of the fourth respondent [Siyathemba] pending finalisation of the review application.

4. There is no order as to costs.'

[18] Mr Jonas gainsaid that he lacks objectivity and intimated that he has discharged his obligations as speaker with integrity and distinction. All the special council meetings that he called complied with the 48-hour notice as contemplated in s 5 of the standing rules and orders. He has never suppressed discussions or debates. He explained that it was a

disruptive behaviour of the applicants that prompted him to adjourn the meetings. He further intimated that the applicants brought Mr Visser to the meeting and demanded that Mr Jonas recognise him. They also called in the aid of a crowd to disrupt the meetings. Mr Jonas says that Mr Andrew Phillips, who issued the letters for his expulsion, had already been removed from Siyathemba on 04 January 2022 and therefore he had no authority to dismiss him from the party. Mr Phillips subsequently filed an application in this Court on 21 January 2022 under case No 148/22 challenging his expulsion. According to Mr Jonas, Mr Phillips and the Acting municipal manager, Mr Shuping, acted prematurely in notifying the IEC of his purported expulsion. He contended that the IEC ought

not to have declared a vacancy in circumstances where it was aware of the litigation in this court intended to address the rightful

leadership in the Siyathemba. The IEC was informed on 19 January 2022 that Mr Phillip had been expelled from Siyathemba and requested to remove Mr Phillips as a representative of Siyathemba.

[19] Siyathemba in its opposition confirmed that Mr Phillips was expelled from the party from 04 January

2022. It says that the decisions taken by Mr Phillips, concerning the operations of Siyathemba, since his expulsion are ultra vires. Essentially, it denied that Mr Jonas was suspended or expelled from Siyathemba. It says that despite the IEC knowing that there were disputes within the party, it recorded Mr Visser as a candidate for Siyathemba and 'declared him elected to Thembelihle Local Municipality.' Siyathemba's deponent, Mr Piet Olyn, says neither he, as the secretary of Siyathemba, nor Mr Ronald February, who was voted as the new chairperson of Siyathemba on 23 January 2022, informed the IEC and the municipal manager of the expulsion of Mr Jonas.

[20] Mr Jonas is of the view that the present application was launched solely to collapse the coalition government of the EFF, Siyathemba, DA and FFP and to block the tabling of the National Treasury forensic report which had been scheduled for 23 September 2022. He is further of the view that the applicants have teamed up with Mr Visser to oust the coalition rule.

[21] The functions of a speaker of a municipal council are set out in s 37 of the Structures Act. He or she plays a pivotal role in coordinating council's activities. He or she, inter alia, has to preside at meetings of the council; must maintain order during meetings; must ensure compliance in the council and council committees with the code of conduct; must ensure that council meetings are conducted in accordance with the rules and orders of the council; is responsible for the effective oversight over the executive authority of the municipality; and must ensure the effectiveness of the committees of the municipal council established in terms of section 79. If the speaker's office is rendered ineffectual, as it appears to be the case here, surely the edifice would crumble.

[22] The principal controversy that emerges on the papers is whether Mr Jonas is still a councillor and the speaker of the council or has been removed. The applicants contend that a key consideration, in answering the question, lies in the decision by the IEC that declared the position,

which Mr Jonas previously occupied, vacant and filled it. The decision by the IEC stands, it was argued, until set aside by a court

of law. The applicants further contended that Mr Jonas conceded before Nxumalo J that the decision by his own political party and

that of the IEC were valid and binding on him. He averred:

‘The decision of the fourth respondents (Siyathemba) is binding on me and to do otherwise would amount to self-help. The decision of the first, second and fourth respondent [IEC, Thembelihle Municipality, and Siyathemba] has legal consequences and must be complied with or acted upon. Accordingly, to achieve the opposite outcome lawfully, I am enjoined to approach this honourable court to interdict the decision of the fourth respondent pending an application to review and set aside the decision of the fourth respondent to expel me.’

The applicants submitted that the decision by the IEC, which includes the loss of Mr Jonas’s seat in the council, has legal consequences. It was argued for them that this Court should not interfere in matters of politics but must uphold the rule of law by condemning the on-going unlawful conduct on the part of Mr Jonas and those who engaged in an unlawful common enterprise with him.

[23] Mr Jonas countervailed that he has successfully interdicted, through the Nxumalo J order issued under case no 1308/2022, his replacement as a speaker of the municipality and a member of Siyathemba. To recapitulate, the Nxumalo J order is to the effect that the IEC, the municipality, the municipal manager, Siyathemba and its chairperson are restrained from appointing a councillor to replace Mr Jonas as councillor pending the finalisation of a review application. It also compels Siyathemba and its chairperson to reinstate Mr Jonas to his position as a member of Siyathemba pending the review.

[24] The parties gave divergent interpretations of the order by Nxumalo J. It was contended for the applicants, on the one hand, that the Nxumalo J order did no more than to reinstate Mr Jonas to his position as a member of the Siyathemba. The order did not reinstate him as a councillor or speaker of council but simply blocked the appointment of a new councillor to fill the seat. The IEC adopted the position, in its correspondence to the parties, that the Nxumalo J order was incapable of being complied with because, when it was issued, IEC had already declared and filled the vacancy purportedly left vacant by Mr Jonas. It was further argued, for the applicants, that the interdict was not a remedy for the past invasion of rights but concerned the present or future infringements of rights. Mr Jonas, on the other hand, persisted that the order reinstated him into his position as a councillor and speaker of the Thembelihle council.

[25] It is not necessary to venture into any interpretative task with regard to the order issued by Nxumalo J. It suffices to state that the expulsion of Mr Jonas as a member of Siyathemba is the subject matter of a review application pending before this court under case No 1308/2022. On the date of the hearing of the present application Mr Jonas also filed, from the bar, an application to review and set aside the

decision of the IEC for having declared and filled the vacancy. The pending reviews are not irrelevant or “designed to create a certain atmosphere and detract attention away from the facts of this matter” as the applicants sought to argue. On the contrary, as I see it, they lie at the heart of this application.

[26] There are four central decisions which would have to be taken into account in determining the merits or demerits of the present application. First the expulsion of Mr Jonas from Siyathemba. Secondly, the determination by the then acting municipal manager that there had been a vacancy of Mr Jona’s seat. Thirdly, the decision by the IEC to declare Mr Jonas’s seat vacant. Lastly, the decision to declare Mr Visser as the duly elected representative of Siyathemba. I have enquired from the applicants during the hearing of the application, if the application was not premature in light of the impending reviews. The applicants pressed ahead with their argument that the decisions, which are the subject matter in the reviews, remain valid and have not been reviewed or set aside. Thus, they argued, this Court ought to grant the relief sought. Reliance by the applicants in *Cathcart Residents Association v Municipal Manager for the Amahlathi Municipality*[2] in support of their argument is misplaced. The facts in *Cathcart* are entirely different from those which apply to this case. In *Cathcart*, the respondent had done nothing for a few months short of three years to challenge the lawfulness of the termination of his membership in the political party. Plasket J (as he then was) held that:

“He must be taken to have accepted it and, whatever doubts may arise as to the legal pedigree of the decision, it must be accepted as having legally valid consequences until it is set aside.”

[27] In this case, Mr Jonas took steps to challenge the lawfulness of his expulsion from his political party from the outset. It bears repeating that Nxumalo J has already interdicted the IEC, the municipality, the municipal manager, Siyathemba and its chairperson from “appointing a councillor to replace the applicant as councillor pending finalisation of a review application.” But even more importantly, Siyathemba and its

chairperson were also ordered “to reinstate the applicant [Mr Jonas] to his position as a member of the fourth respondent

[Siyathemba] pending finalisation of the review application. Reinstatement entails the restoration of the status quo ante.[3] The effect of an order reinstating Mr Jonas into his office is that he did not cease to hold office in Siyathemba as contemplated in Schedule 1 Part 3 Item 18(1)(b) of the Structures Act.

- [28] The applicant's argument that Mr Jonas did not approach this court with clean hands when he obtained an order before Nxumalo J does not change the situation. The reality is that the order has been issued. Court orders, irrespective of their validity, are binding until set aside. Wrongly issued judicial orders are not nullities. They are not void or nothingness, but exist in fact with possible legal consequences.[4] To my mind, any declaratory order at this stage, to the effect that Mr Jonas was removed as a councillor and speaker of Thembelihle Local Municipality would be legally untenable. This is so because of the pending review concerning the expulsion of Mr Jonas from his party and the review concerning the decision of the IEC to declare the position held by Mr Jonas vacant and filling it. The outcome of the reviews in question would have a bearing on the order which this Court is enjoined to make. In my view, it would be expedient that they be disposed of first, on an expedited basis.
- [29] The existing state of affairs in the council of Thembelihle cannot continue unabated. The fact that council meetings have been marred by a series of walkouts and stalemates indicates that the municipality cannot or does not fulfil an executive obligation as envisaged in s 139 of the Constitution. Apparent from the letter by the current municipal manager dated 18 August 2022, addressed to the MEC for COGHSTA, referred to earlier, the interruption of services to the local community of Thembelihle is imminent. The prevailing conditions in Thembelihle would require the relevant provincial executive, in this case, the MEC for COGHSTA, the sixth respondent, if so advised, to intervene by taking any appropriate steps to restore order and ensure fulfilment of the executive obligations constitutionally entrusted on the municipality, as an interim measure, pending the determination of the two review applications filed by Mr Jonas under case no 1308/2022 and the final determination of this case.
- [30] To expedite the hearing of the reviews, I am of the view that the applications filed under case no 1308/2022 be placed before the Judge President or any other judge to be designated by him for an expedited judicial case flow management.
- [31] Both parties sought punitive costs in the event they were successful. In view of my conclusion that the reviews be disposed of first, it would be pragmatic that costs be reserved for later determination. In the result, I make the following order.

Order:

1. Pending the determination of the two review applications filed under case no 1308/2022, the order in the present application filed under case no 1800/2022 is withheld.
2. The Registrar of this Court is directed forthwith to refer the applications filed under case no 1308/2022 to an expedited judicial case-flow management by the Judge President or a judge to be designated by the Judge President.
3. Costs are reserved for later determination.

MV Phatshoane DJP

APPEARANCES:

FOR THE FIRST AND

SECOND APPLICANTS:

Adv RJ Groenewalt

Instructed by:

Calteaux & Partners, Edenvale

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FOR THE FIRST, SECOND, THIRD

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[1] 1999

(2) SA 279 (T) at 324F-G.

[2] 2014 JDR 0797 (ECG).

[3] Nel v Oudtshoorn Municipality & another (2013) 34 ILJ 1737 (SCA) at paras 8 and 10.

[4] Municipal Manager OR Tambo District Municipality & another v Ndabeni (2022) 43 ILJ 1019 (CC) para 24.

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