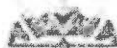


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
2/8/2016 DATE	
<i>[Signature]</i> SIGNATURE	

CASE NO: 32719/2015

In the matter between -

MOGALE CITY MUNICIPALITY

First Appellant

SIDAS GUARDING (PTY) LTD

Second Appellant

DAN MASHITISO

Third Appellant

RENELL LIEBENBERG

Fourth Appellant

and

FIDELITY SECURITY SERVICES

Respondent

REASONS FOR JUDGMENT

SUTHERLAND J:

Introduction

[1] An appeal pursuant to section 18(4) of the Superior Courts Act 10 of 2013 (SCAct)¹ was heard by us on 26 July 2016. It was, axiomatically, convened urgently. At the conclusion of the hearing the following order was made:

- '(1) The appeal is dismissed with costs including the costs of two counsel.
- (2) The wasted costs occasioned by the postponement of the hearing from 21 July to 26 July shall be borne by the first, third and fourth appellants jointly and severally, the one paying, the others to be absolved.'²

¹ Section 18 of Superior Courts Act 13 of 2013:

Suspension of decision pending appeal

(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.

(4) If a court orders otherwise, as contemplated in subsection (1)-

- (i) the court must immediately record its reasons for doing so;
- (ii) the aggrieved party has an automatic right of appeal to the next highest court;
- (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and
- (iv) such order will be automatically suspended, pending the outcome of such appeal.

(5) For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules.

² The order about wasted costs was made by consent, such costs being tendered by the appellants. The sole reason to postpone the matter had been the contention that the Mogale City would be prejudiced if the matter was heard then and there and did not have the services of Adv Erasmus SC to argue the case. When the matter was heard, Mr Erasmus was present but informed the court that Mr Roux, who had appeared initially and made the application for a postponement would argue the matter as he, having been briefed only the day before, was unready to do so. The impression that the matter had been delayed unnecessarily, and on misleading grounds required an explanation. The postponement had caused considerable disruption as the composition of the bench had to be changed on short notice. It became apparent that, at best for the counsel for Mogale City, the postponement was required in order to properly prepare a counter-argument to that of the counsel for Fidelity. The view we took was that the explanation was thin, but it could not be ruled out that there had been a genuine wish to have a silk argue the matter, despite the slack efforts to secure his participation. Mr Erasmus had been abroad during the interval between appearances. Plainly the only beneficiary of the postponement was Mogale City. The tender of costs was wholly appropriate.

[2] These are our reasons, which were filed on 4 August 2016.

[3] The second appellant (Sidas) played no active role in the matter. It was cited by reason of its ostensible interest in an agreement concluded between it and the first appellant (Mogale City) to which reference shall be made in due course. The third appellant is the municipal manager of Mogale City, and where necessary, shall be referred to as such in this judgment. The fourth appellant is an employee of Mogale City, whose role was not expressly addressed in the debate. The respondent shall be referred to as Fidelity.

[4] The principal adversaries are Mogale City and Fidelity. Litigation has raged between them since 2012. The dispute is essentially about whether Mogale City has improperly awarded tenders for security services and improperly not awarded a tender to Fidelity. Fidelity believes itself to have been unlawfully wronged by the actions of Mogale City, whose chief agent has been the municipal manager. Thus far, judgments handed down on four occasions have vindicated that stance.³ Because the history of this saga has already been captured in those earlier judgments, including one in the SCA, and also in a fifth judgment which is the subject of the appeal in terms of section 18(4), it is inappropriate to regurgitate a further account.

[5] For the purposes of this appeal it is sufficient to record that the proximate controversy stems from the fourth judgment, in which an order was made by Du Toit AJ on 27 May 2016. The portion of that order directly relevant is in paragraph 51.4:

“Pending the lawful conclusion of a new contract pursuant to a competitive bidding process, [Mogale City] is directed to reinstate the previous month –to – month contract with [Fidelity] on the same terms.”

³ These judgments are: *Red Ant (Pty) Ltd v Mogale City Municipality* (16813/2012) SGHC 22 March 2013; *Mogale City Local Municipality v Fidelity Security Services (Pty) Ltd* (572/2013) [2014] ZASCA 172, 19 November 2014; *Fidelity Security Services (Pty) Ltd v Mogale City Local Municipality* (14936/2014) SGHC 17 December 2014; *Fidelity Services (Pty) Ltd v Mogale City Local Municipality* (32719/2015) SGHC 26 May 2016: the judgment which is the subject of the section 18 proceedings.

[6] Subsequently, on 9 June 2016, a section 18(1) application to execute, or put into effect, this order was instituted by Fidelity. Kathree-Setiloane J, *a quo*, granted that order on 8 July 2016. The order reads:

“Paragraphs [51.2, 51.3 and 51.4] of the order of Du Toit AJ under case number 32719/15 is declared to be effective and enforceable pending the application for leave to appeal, and, if granted, the appeal.”

An order of costs on the attorney and client was also ordered against Mogale City.

[7] In response to that order, Mogale City launched an appeal as contemplated in section 18(4) of the SCAct.

[8] In the appeal hearing before us on 26 July 2016, argument was pressed on two discrete issues, and it is upon these two issues that the appeal turns.

8.1. First, whether or not the application to execute the order of Du Toit AJ ought to have been heard at all, owing to the fact that when the application to execute was lodged on 9 June, Mogale City had not yet lodged an application for leave to appeal, doing so only on 20 June.

8.2. Second, whether the finding of fact by Kathree-Setiloane J that Fidelity would suffer irreparable harm if the order to execute was not made is incorrect. (Although other aspects of the findings were earlier challenged in written heads of argument they were not pursued in argument, and correctly so.)

The challenge to the propriety of the section 18(1) application per se

[9] The controversy which arises is a question of law, framed by the following common cause facts, the chronology of which is important:

- 9.1. 27 May 2016: Judgment by Du Toit AJ was handed down.
- 9.2. 31 May 2016: Letters were exchanged between Mogale City and Fidelity in which Mogale City states that it will not comply with the court order and will apply for leave to appeal.
- 9.3. 31 May 2016: Mogale City, unbeknown at the time to Fidelity, contracts with Sidas to perform security services (The subject matter of the court order) for six months.
- 9.4. 9 June 2016: Fidelity lodges a section 18(1) application.
- 9.5. 20 June 2016: Mogale City lodges application for leave to appeal
- 9.6. 21 June 2016: the section 18(1) application to execute is heard.

[10] The court *a quo* addressed several dimensions of the constitutional guarantees of access to the courts and the power of the court to effectively regulate its own process and reasoned that an interpretation could be placed upon section 18 which spares a successful party from linking the lodgement of an application to execute pending an application for leave to appeal to an actual lodgement of such application for leave to appeal, and because of an absence of any express or implied injunction in the text of the section as to when such application to execute can or must be lodged, a lodgement of an application to execute, in anticipation of an actual application for leave to appeal, is action which is consistent with the procedure provided for in the section, purposively interpreted. The effect of such an interpretation is that a successful party could by pre-emptive action, preclude an order being suspended by a subsequent application for leave to appeal.

[11] We are of the view that the facts of this case are such that it is unnecessary to conclude that such pre-emptive action is necessarily contemplated by section 18, properly interpreted, and that the result found by the court *a quo*, i.e. that it was proper to entertain the application, in the circumstances, can be reached on a narrower legal basis.

[12] On the facts of this case, the application for leave to appeal was lodged before the hearing. Thus, at the time of the hearing, all the jurisdictional facts required by section 18 were indeed present. To illustrate the significance of this circumstance it may be imagined that had no application for leave to appeal ever having been *lodged* by the time of the hearing: in such circumstances, it is difficult to suppose that the application to execute could have had a *factual basis*, because the defeated party would at that stage still be obliged to comply with the order, it having not been suspended, and immediately the defeated party refused to comply, it would be in default, exposing it to the risk of a contempt application.⁴ In short, there would be no suspension of the order for an application to execute to reverse.

[13] By contrast, the facts in this case also show that at the time of the hearing there had indeed been both an application for leave to appeal and an application to execute lodged. All that was necessary in order to entertain the application was present, albeit that the application to execute was the earlier event of the two. Helpfully, it is incontrovertible that the substance of an application for leave to appeal, i.e. setting out why an appeal would be appropriate, could not trespass into the domain of the considerations relevant to an application to execute pending such appeal because the substance of each application is distinct; hence no question can arise about an application to execute 'responding' in the slightest way to the substance of an application for leave to appeal.

[14] The critical argument levelled by Mogale City at the judgment of the court *a quo* is that notwithstanding that at the time of the hearing in terms section 18(1), an application for leave to appeal had been lodged, section 18 requires an *actual application* for leave to appeal to have been *lodged* before there can be an application lodged to uplift the suspension of the order. There is, in our view, considerable force in this argument. The architecture of section 18 provides for three realms. The first is

⁴ In our view, it is doubtful that contempt proceedings would not be legitimate until after the *dies* within which to apply for leave to appeal had lapsed. To bring contempt proceedings within that period might well encounter an evidential problem to exclude a non-contemptuous failure to comply, but the application would remain legally competent. Plainly, if evidence existed of an unequivocal intention not to comply, and better still, if evidence existed of a clear intention to defy the order, no controversy could arise.

that when an order of court is made, there is at once an obligation by the defeated party to comply. The second is that the obligation to comply is suspended, a circumstance created by the action of lodging an application for leave to appeal. The third realm is the reversal of the suspension on the grounds provided for in section 18. Therefore, inescapably, there can be no upliftment of a suspension before a state of suspension exists. On this view, the preferable interpretation of section 18 would be to recognise that an application to execute in terms of section 18(1) is a defence mechanism that a successful party may put up to resist the harm wrought by a suspension of the obligation to comply. Accordingly, there is no occasion to raise a shield unless and until a sword is drawn.

[15] Therefore, it must follow that when Fidelity lodged an application to execute before an application for leave to appeal had been lodged, in our view, Fidelity took an irregular step. What could Mogale City have done about this irregularity? It could have invoked Rule 30 of the Uniform Rules⁵ in terms of which it could have applied to have the irregular step set aside. It did not. Instead it embarked on two parallel courses of action. On 17 June it responded with answering affidavit, which addressed the premature lodgement and the merits of the application to execute. Also, it lodged the application for leave to appeal. In our view, Mogale City took 'further steps' as contemplated by Rule 30(2) (a) of the Uniform Rules of Court, having the effect of

⁵ Rule 30 of the Uniform Rules of Court provides:
Irregular Proceedings

- (1) A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside.
- (2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged, and may be made only if-
 - (a) the applicant has not himself taken a further step in the cause with knowledge of the irregularity;
 - (b) the applicant has, within ten days of becoming aware of the step, by written notice afforded his opponent an opportunity of removing the cause of complaint within ten days;
 - (c) the application is delivered within 15 days after the expiry of the second period mentioned in paragraph (b) of subrule (2).
- (3) If at the hearing of such application the court is of opinion that the proceeding or step is irregular or improper, it may set it aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make any such order as to it seems meet.
- (4) Until a party has complied with any order of court made against him in terms of this rule, he shall not take any further step in the cause, save to apply for an extension of time within which to comply with such order.

'advanc[ing] the proceedings one step nearer completion'⁶. By taking such further steps Mogale City, in effect, forfeited a right to complain about the premature lodging of the application to execute. The non-compliance with the section, of which Fidelity was guilty, was, in effect, thereby purged.

[16] An attempt was made to argue that the premature lodging of an application to execute could not be the subject matter of Rule 30, on the footing that there had to be what was, initially described as a 'complete cause of action' when the lodgement occurred, but which, as the argument became refined in the course of debate, was contended to be the necessary presence of a jurisdictional fact. We disagree. The controversy is wholly to do with compliance with the section. The section peremptorily prescribes certain requirements. Although section 18 is obviously not a mere rule of court, the section is wholly procedural in character and its purpose is to facilitate rapid relief to parties in the given circumstances and has been enacted to replace the procedure formerly regulated by Rule 49 (11) of the Uniform Rules.⁷ The irregularity, in our view, was wholly of form and not of substance, and once the application for leave to appeal was lodged, the irregularity was no longer susceptible to complaint. It

⁶ See: *Jowell v Bramwell-Jones* 1998(1) SA 836 (W) at 903I – 904G per Heher J. At 904C- F it was held:

"The criterion laid down in *Pettersen v Burnside* 1940 NPD 403 at 406, that a further step in the proceedings is 'some act which advances the proceedings one stage nearer completion', has been followed and applied for more than 50 years. In *Cyril Smiedt (Pty) Ltd v Lourens* 1966 (1) SA 150 (O) at 152E Erasmus J phrased his reasoning thus:

'Dit is myns insiens duidelik dat die onreëlmatigheid deur die Reël beoog 'n stap in die prosedure moet wees wat die verwikkeling van 'n geding op een of ander stadium in sy geheel raak.'

I do not find these dicta sufficient. As far as I have been able to discover, none of the cases looks at the limitation (now contained in Rule 30(2)(a)) in the context of the purpose which it serves. Essentially that purpose is to create a species of estoppel: a party may not be heard to complain of an irregular procedural step if he acts in a manner which is at variance with an objection to that irregularity, even though he did not when taking the further step appreciate that the step of the other party was irregular. Presumably, there was a recognition that the taking of a further step was likely to lead the other party to act in reliance on that conduct and it was thought undesirable to open the way to disputes on wasted costs.

If that is the thinking behind the limitation, then the *Pettersen v Burnside* dictum needs to be reformulated along the following lines: *a further step in the proceedings is one which advances the proceedings one stage nearer completion and which, objectively viewed, manifests an intention to pursue the cause despite the irregularity.* (emphasis supplied)

⁷ Old, now repealed, Rule 49(11) provides:

Where an appeal has been noted or an application for leave to appeal against or to rescind, correct or vary an order of a court has been made, the operation and execution of the order in question shall be suspended, pending the decision of such an appeal or application, unless the court which gave such order, on the application of a party, otherwise directs.

is true that such an example has not hitherto been recognised as an irregularity contemplated by Rule 30. That novelty is no obstacle to it being recognised now.

[17] Part of the argument advanced by Mogale City was in effect to contend that the application to execute was a nullity. If an application for leave to appeal had not been lodged, that point might have been warranted examination, but, on these facts, the need to decide that point does not arise.

[18] No prejudice to Mogale City exists. On the contrary, the application to execute was launched only after a formal communication by Mogale City's attorney to Fidelity's attorney that it would not comply with the order of Du Toit AJ in which it was cheekily stated 'it shall do so within the time prescribed by the Rules', a virtual admission of a dilatory objective. What also occurred on 31 May 2016 is even more unsavoury. Mogale City clandestinely contracted with Sidas for a six months contract in flagrant defiance of its obligations to comply with the order of Du Toit AJ, at that moment still fully in force, and then when revealing this occurrence in its answering affidavit (dated 16 June) to the application to execute, submitted that this act of skulduggery be taken into account in refusing the application to execute. [Record; p74, para 20.]

[19] A mechanical application of the section, genuflecting to a rigidity of the order of precedence of the jurisdictional preconditions could serve only a dilatory objective, an outcome wholly inconsistent with the purpose of the section to afford urgent relief. In our view, independently of the regulation provided by Rule 30, the dismissal of the application to execute would have been so obviously wasteful and the delay in Fidelity coming again later on fresh identical papers so inimical to the aims of section 18, that a court exercising its inherent power to regulate its process effectively, ought to have allowed the matter to proceed and *mero motu* condoned the irregularity.

[20] It may also bear mention that the Courts' patience with dilatory litigious behaviour, and unconstructive tactical manoeuvrings is exhausted, and increasingly,

it shall be expected of legal practitioners to manage and conduct litigation with at least a semblance of awareness that it is irresponsible to engage in Fabian skirmishes which consume the resources of opponents and of the legal system. If counsel are to be thought of as officers of the court it is incumbent of them that see that there are clear manifestations that they are deserving of such an identity by promoting the resolution of disputes through the process and not indulge in the manipulation of the process to arrest progress.

[21] Accordingly in our view, the court a quo ought to have heard the matter, was correct in doing so, albeit that we reach that conclusion for different reasons.

Is the finding that Fidelity would suffer irreparable harm if the order was not executed incorrect?

[22] The discernment of 'irreparable harm' by a court is a factual finding. It was stated in *Incubeta Holdings (Pty) Ltd & Another v Ellis & Another* 2014(3) SA 189 (GJ) at [24]:

'The second leg of the s 18 test[, [i.e., the presence or absence of irreparable harm to either party] in my view, does introduce a novel dimension. On the South Cape test, No 4 (cited supra), an even-handed balance is aimed for, best expressed as a balance of convenience or of hardship. In blunt terms, it is asked: who will be worse off if the order is put into operation or is stayed. But s 18(3) seems to require a different approach. The proper meaning of that subsection is that if the loser, who seeks leave to appeal, will suffer irreparable harm, the order must remain stayed, even if the stay will cause the victor irreparable harm too. In addition, if the loser will not suffer irreparable harm, the victor must nevertheless show irreparable harm to itself. A hierarchy of entitlement has been created, absent from the South Cape test. Two distinct findings of fact must now be made, rather than a weighing-up to discern a 'preponderance of equities'. The discretion is indeed absent, in the sense articulated in South Cape. What remains intriguing, however, is the extent to which even a finding of fact as to irreparable harm is a qualitative decision admitting of some scope for reasonable people to disagree about the presence of the so-called 'fact' of 'irreparability'.

[23] Irreparability is a dimension of the exceptional circumstances essential to justify the reversal of the default position as regards the immediate enforceability of the order. Among the possible range of exceptional circumstances, it was further stated in *Incubeta*:

'[27] Do these circumstances give rise to 'exceptionality' as contemplated? In my view the predicament of being left with no relief, regardless of the outcome of an appeal, constitutes exceptional circumstances which warrant a consideration of putting the order into operation. The forfeiture of substantive relief because of procedural delays, even if not protracted in bad faith by a litigant, ought to be sufficient to cross the threshold of 'exceptional circumstances'.

"[28] The plight of the victor alone is probably all that is required to pass muster. Nonetheless, I am not unconscious of the undesirable outcome that relief granted by the court becomes a vacuous gesture. A court order ought not to be lightly allowed to evaporate, a fate which, seems to me, would tend to undermine the role of courts in the ordering of social relations.'

[24] The argument advanced on behalf of Mogale City was that denying the enjoyment the relief granted to Fidelity could not cause Fidelity irreparable harm because:

24.1. First, Fidelity had an alternative damages claim in delict for loss of profits against Mogale, based on the corrupt conduct of the municipal manager, and others acting for Mogale.

24.2. Second, having to wait however long to conclude such an action aimed merely at obtaining money, and which would be capable of institution only after the appeal was decided, would not bankrupt Fidelity.

A delictual action?

[25] The very idea that, as a fact, any delictual claim exists, is hotly disputed. The claim upon which Fidelity succeeded before Du Toit AJ was not in delict. Fidelity sought relief in terms of its rights to fair administrative action from an organ of state, i.e. Mogale City. Fidelity brought a review application against Mogale City. The relief sought was to set aside Mogale City's allegedly unlawful contract with Sidas and to direct Mogale City to reinstate a contract between them, on the same terms as that previously in force, on an interim basis, pending a lawful competitive bid process. The relief granted was as prayed.

[26] The contentions advanced on behalf of Mogale City concede, correctly, that if the application to execute on the order of Du Toit AJ was refused, that relief can never at a later stage be enjoyed. (This consequence is self-evident with an order *ad factum ad praestandum*.) However, notwithstanding that sacrifice, the forfeiture does not cause irreparable harm to Fidelity because, in years to come, once the appeal is dismissed, Fidelity can sue for damages in delict.

[27] In our view, the proposition is misconceived in principle. The implication is that if the fruits of these proceedings are sacrificed, Fidelity can institute fresh proceedings on another cause of action and get some money at some time in the future. That scenario does not address the irreparable harm of losing the efficacy of the relief Fidelity has already obtained. Moreover, Fidelity must incur the usual risks of litigation in another action, including the burden of proving fraud by Mogale and quantifying the quantum of its losses.

[28] In any event, the prospects of such a delictual action being available is itself highly speculative. Mogale City recognises that an action against an organ of state for damages owing to tender irregularities is fraught with certain vulnerabilities. Proof of fraud and corruption are the fount of such a claim, not mere negligent irregularities. *In*

Steenkamp N. O. v Provincial Tender Board, Eastern Cape 2007 (3) SA 121 (CC) at [55] this proposition was made clear. Ever since the fate of the aggrieved plaintiff in *Olitzki |Property Holdings v State Tender Board and Another 2001(3) SA 1247 (SCA)*, who sought such damages based on irregularities and was rebuffed by the courts, litigants who seek recompense from state organs for unlawful treatment have trod warily. The only plaintiff to have hitherto succeeded, insofar as the law reports represent a record, is that illustrated in *Minister of Finance v Gore N.O. 2007(1) SA 111 (SCA)*. The restriction, on policy grounds, to holding organs of state liable in damages only when officials were proven to have perpetrated fraud or other corrupt acts was reaffirmed in *Country Cloud Trading CC v MEC, Department of Infrastructure Development 2015 (1) SA 1 (CC)* at [44] - [47].

[29] It is no part of Fidelity's case in the action concluded by the judgment of Du Toit AJ that Mogale City acted corruptly. Indeed, the notion, nursed by Mogale, that corruption is evident and available to add to Fidelity's quiver of legal arrows, stems not from any allegation pleaded by Fidelity, but from condemnations by Vermeulen AJ in one of the earlier matters remarking upon the inconsistencies between two affidavits deposed to by the municipal manager. The notion of delictual claim available to Fidelity is therefore fanciful both on grounds of its very premises, and in relation to the facts of the case.

The norm of irreparability and the risk of bankruptcy

[30] As to the second point about there being no risk of bankruptcy, the idea of irreparable harm can never mean the financial annihilation of a litigant. A well-heeled litigant may suffer irreparable harm, in the sense contemplated by the section, even if it experiences no discomfort whatever. The core meaning to be attributed to the concept of irreparable harm is the *irretrievable loss of what the litigant is entitled to in terms of the court order*. In this case, Fidelity is entitled to render security services forthwith for reward as previously contracted until a certain event. Moreover, it is no part of the process contemplated by section 18 that the court hearing such a matter

second-guesses the propriety of the relief granted, because it might be thought there is another way to prosecute a claim to advance a litigant's interests. What is and remains at stake is the relief granted.

Criticism of the conduct of the litigation

[31] Fidelity has been critical of the resistance put up by Mogale City to its claims. As alluded to earlier, this shall be the sixth judgment delivered in the litigation epic between Fidelity and Mogale City. Fidelity is bold to say that it is weary of what it perceives, perhaps accurately, as reckless rear-guard litigation by Mogale City. In particular, Fidelity points to the not inconsiderable dismay that all citizens of South Africa should have at the spectacle of an organ of state losing six court cases in a row, all funded by the taxpayer. As a result Fidelity seeks penal costs and that individual officials of Mogale City be held liable. We are not unconscious of these considerations. However, we have not been placed in a position to determine, reliably, all the relevant circumstances, especially whether identifiable persons are in any way culpable of inappropriate conduct. In particular, bearing in mind that this is an urgent appeal, convened hurriedly, and dealt with speedily, in our view this is not an appropriate forum to address these concerns.

[32] What does seem appropriate, in the public interest, is that the circumstances be drawn to the attention of the Minister of Local Government and the MEC for Local Government, Gauteng. Accordingly, we shall direct the registrar to forward to those officials copies of the six judgments given in the course of the litigation between the parties, with a request to investigate the matter and determine whether any grounds exist to suppose public funds are being wastefully expended such as contemplated by the Local Government: Municipal Finance Management Act 56 of 2003. Furthermore, The Minister and the MEC shall be requested to report to the Judge President of this Division, their findings, within 12 months of the referral to them of the judgments.



Sutherland J (with whom Windell and Modiba JJ agree)



Windell J



Modiba J

Hearing and order:	26 July 2016
Reasons for Judgment filed:	4 August 2016
For the first, third and fourth Appellants:	Adv M C Erasmus SC, with him, Adv J Roux and Adv WTB Ridgard,
Instructed by:	Makhubela Attorneys.
For the respondent:	Adv Carol Steinberg, with her, Adv Nick Ferreira and Adv Musatondwa Musandiwa,
Instructed by:	Blake Bester De Wet and Jordaan.