



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Application no.: 3945/2023

In the matter between:

MATJHABENG LOCAL MUNICIPALITY

Applicant

and

MC SECURITY & INVESTIGATIONS
SHERIFF OF THE HIGH COURT: WELKOM
KRUGER, VENTER MAREE INCORPORATED
ABSA BANK: WELKOM

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent

CORAM: VAN ZYL, J

HEARD ON: 7 AUGUST 2023

DELIVERED ON: 15 FEBRUARY 2024

- [1] This is an application for reconsideration of an order in terms of Rule 6(12)(c).

Background:

- [2] The applicant initially approached court on an urgent and *ex parte* basis for an order in terms whereof the second, third and/or fourth respondents were to be interdicted and restrained from paying an amount of R23 732 137.11, held on behalf of the first respondent under a writ of execution, pending the final outcome of the application. That application served before Molitsoane, J on 5 July 2023 under application number 962/2023 (“the first main application”). A rule *nisi* was granted in favour of the applicant, returnable on 27 July 2023.

- [3] The first respondent subsequently enrolled the application for reconsideration in terms of Rule 6(12)(c) to be heard on 14 July 2023 (“the first reconsideration application”). The application again served before Molitsoane, J, and on 24 July 2023 he delivered judgment in terms whereof the order granted on 5 July 2023 was reconsidered and set aside, with the applicant to pay the costs on an attorney and client scale.

- [4] On 28 July 2023, under the present case number 3945/2023, the applicant brought an application similar to the first main application on an urgent and *ex parte* basis (“the second main application”). On 28 July 2023 Cronje, AJ, granted the requested relief.

- [5] On 3 August 2023 the first respondent filed a “*Notice in terms of Uniform Rule 6(8) and 6(12)(c)*” in terms whereof the first respondent enrolled the second main application for reconsideration on 7 August 2023 (“the second reconsideration

application”). It is this second reconsideration application which serves before me.

The merits of the application:

- [6] For reasons that will become evident, I deem it unnecessary to set out the factual matrix surrounding the two applications.

- [7] The founding affidavit filed in the first main application was deposed to by the Municipal Manager of the applicant.

- [8] The first reconsideration application, under application number 962/2023, was, in terms of paragraph [3] of Molitsoane, J’s judgment dated 24 July 2023, *“based squarely on the purported lack of authority of the Municipal Manager to institute the ex parte application”*.

- [9] Molitsoane, J, further stated as follows at paragraph [4] of his judgment, dated 24 July 2023:

“The applicant and the respondent are in agreement that the Municipal Manager’s authority to initiate and launch these types of proceedings is derived from the Municipal Systems Act, 32 of 2000 (the Systems Act). Further according to the applicant, the authority of the Municipal Manager is a delegated power vested in him by virtue of the Systems of Delegations which was resolved by the Municipal Council at a meeting held on 26 September 2016.”

- [10] For purposes of the Municipal Manager’s delegated powers, the applicant relied on an extract from a meeting of the Municipal

Council held on 26 September 2016, wherein, *inter alia*, the following was noted:

"1. That Council adopts the Delegation of Powers for 2016 – 2021 term of Council."

[11] Molitsoane, J, consequently found as follows at paragraph [7] of his judgment:

"The above extract of the Council resolution clearly indicates that the Delegation of Powers relied upon by the Applicant was for the period 2016 to 2021. Section 59(4) of the Systems Act provided that any delegation or sub-delegation to a staff member of a power conferred on a Municipal Manager must be approved by the Municipal Council in accordance with the system of delegation referred to in subsection 59(1). The applicant has not filed any further Council resolution approving or delegating any powers referred to in the Delegation of Powers after the year 2021. This *ex parte* application was launched in 2023 after the term of the resolution of the Council referred to above had ran its course. In this regard, there is no proof before me that the Municipal Manager had the necessary authority to bring these proceedings as envisaged in s59."

[12] The court concluded as follows at paragraph [9] of its judgment:

"I am of the considered view that in the absence of the Council resolution or delegated powers, it cannot be said that the Municipal Manager was authorised to institute this application."

[13] The court order of 5 July 2023 was consequently reconsidered and set aside by Molitsoane, J.

[14] In the second main application which subsequently served before Cronje, AJ, on 28 July 2023, the founding affidavit was

again deposed to by the same Municipal Manager. He, *inter alia*, stated as follows therein:

"7. I also attach hereto Provincial Notice No. 183 of 2000, more specifically pages confirming that the applicant's Systems of Delegations stays in effect subject to any amendment or repeal, marked as annexure "LRN4". I respectfully refer the Honourable Court to page 7, paragraph 10(1)(a) thereof. I submit, with respect, no amendment or repeal has taken place, and are they therefore still in effect.

...

10. The reason I elaborate on the above authority to launch and pursue this application is because a previous *ex parte* [application] was reconsidered and set aside by the Learned Molitsoane, J during the week on the grounds of my lack of authority. A copy of this order is attached hereto, marked as annexure "LNR6". This ruling, with respect, was incorrect and has an application for leave to appeal been filed on even date. A copy of the covering letter confirming same is attached hereto marked as annexure "LNR7".

[15] As previously indicated, it is the subsequent second reconsideration application which serves before me. The said application was again brought by the first respondent. In the said application the lack of authority of the deponent, the Municipal Manager, was again raised.

[16] At the commencement of the hearing of the second reconsideration application, Mr Prinsloo, who appeared on behalf of the applicant, indicated that as an officer of court and due to ethical reasons he is obliged to reveal to the court that he had been placed in possession of an agenda of a Special Council meeting which was convened for that very afternoon,

Monday, 7 August 2023, which came to his knowledge the preceding Saturday morning when the said agenda was handed to him by an attorney from his instructing attorney's office. The said agenda had been sent through to his instructing attorney the Friday evening. His instructing attorney attempted to obtain further instructions over the weekend, but was unable to do so. Mr Prinsloo consequently had no other facts regarding the planned meeting and the agenda which he could convey to me.

- [17] The said agenda, which was handed to me, contains a report of the speaker on "*THE ADOPTION OF THE SYSTEM OF DELEGATION OF POWER FOR MATJHABENG LOCAL MUNICIPALITY*". Under the heading "*PURPOSE OF REPORT*" the following was stated

"The purpose of the report is to submit to Council the draft revision of the system of delegation of power for due consideration and adoption."

- [18] In the said document section 59 of the Local Government: Municipal Systems Act 2000, was partly recorded, whereupon it was stated that:

"According to section 59(2)(f) the System of Delegation must **be reviewed** when a new Council is elected."

- [19] Under the heading "DISCUSSIONS" the following was recorded:

"On the 22nd November 2021, a report was submitted to Council on the Municipal System of delegation and Council resolved as follows under item number **IA10/2021**

That Council takes note of the report on the system of delegation.

It is important to note that the Council resolution of the (*sic*) November 2021 only noted the systems of delegation and did not approve same. The key consideration is that the Municipality cannot function outside the delegated authority and that all authority whether vested by legislation or municipal Council must be approved by Council. Is this pivotal that Council resolve to condone the error in noting the systems of delegation and consequently approved the systems of delegation. (Own emphasis)

[20] Amongst other "*RECOMMENDATIONS*", the following was recorded:

(a) That the Council adopt the system of delegation for Matjhabeng Local Municipality as reviewed."

[21] Mr Prinsloo consequently conceded that the Municipal Manager had not been duly delegated with the necessary authority to have instituted the aforesaid applications and to have deposed to the affidavits in support thereof. He consequently further conceded that the rule *nisi*, dated 28 July 2023, stands to be discharged.

[22] I am in agreement with the aforesaid concession by Mr Prinsloo on behalf of the applicant.

[23] The rule *nisi* in the second main application under case number 3945/2023 consequently stood to be discharged and set aside. For the sake of clarity, I record that I have already discharged and set aside the rule *nisi* by means of an order issued on 7 August 2023. It was only the issue of costs which was reserved.

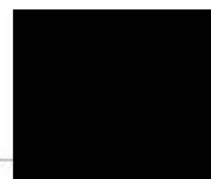
- [24] With regard to the costs of the application, Mr Grobler, who appeared on behalf of the first respondent, submitted that I should express my dismay with the issue regarding the Municipal Manager's authority and call upon the Municipal Manager and the Executive Mayor to advance reasons why they should not be ordered to pay the costs of the second main application and the second rescission application *de bonis propriis* and on an attorney and client scale. In this regard he submitted that they were, at the best for them, grossly negligent in persisting to rely upon alleged authority whilst they could have, had they acted with the necessary diligence when the authority issue had been raised for the first in the first rescission application already, been able to ascertain what the correct factual and legal position is.
- [25] I deem it prudent, at this stage, to record that I do not consider Mr Prinsloo to have acted improperly and/or unethical during any of the relevant applications. He indicated during argument that he consulted with both the Legal Manager and the Municipal Mayor and that he drafted the relevant papers and appeared during the hearing of the arguments based on their instructions to him. There is no way that he could have known about the lack of authority of the Municipal Manager and/or the proposed meeting of 7 August 2023 prior to the date when the agenda was handed to him, whereupon he immediately, as already stated, at the commencement of the hearing, revealed the existence of the agenda to the court, with the subsequent concession regarding the lack of authority of the Municipal Manager.

[26] I have given serious consideration to the option and possibility to call upon the Municipal Manager and the Executive Mayor to advance reasons why they should not be called upon to pay the costs *de bonis propriis*. However, I have, however, decided against it. At least, when the agenda and the consequent lack of authority indeed came to the fore, it was brought to the attention of applicant's instructing attorney. I do, however, deem a punitive costs order appropriate in the circumstances.

Order:

[27] I consequently make the following order:

1. The applicant is ordered to pay the costs of the (main) application under case number 3945/2023, which costs are to include the costs of the application for reconsideration in terms of Rule 6(12)(c), issued on 3 August 2023 and heard on 7 August 2023, all of which costs are to be paid on an attorney and client scale.



C/VAN ZYL, J

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