



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

Case No: 5374/2022

REPORTABLE: YES/NO

OF INTEREST TO OTHER JUDGES: YES/NO

CIRCULATE TO MAGISTRATES: YES/NO

In the matter between:

**INDEPENDENT SOUTH AFRICAN NATIONAL
CIVIC ORGANISATION**

Applicant

And

ZUKILE LUYENGE

First Respondent

MOLAHLELI JACOB RANTSO

Second Respondent

MANGALI ELISA MAHLAKU

Third Respondent

MATJHABENG LOCAL MUNICIPALITY

Fourth Respondent

SELLO JOHANNES LEHASA

Fifth Respondent

LEJWELEPUTSWA DISTRICT MUNICIPALITY

Sixth Respondent

ELECTORAL COMMISSION OF

JUDGMENT

CORAM: NAIDOO J

HEARD ON: 9 FEBRUARY 2023

DELIVERED ON: 20 JUNE 2023

[1] This is essentially a dispute between two groups within the applicant - the group which is associated with Bakoena Stephen Ramosie (Ramosie), the deponent to the Founding Affidavit, and the group led by the first respondent, who was the president of the applicant. The applicant seeks an order, *inter alia*, in the following terms:

- “1. Declaring that from 29 December 2021 the First Respondent was expelled as a member of the Applicant.
2. Declaring that from 29 December 2021 the First Respondent was removed as the president of the applicant.
3. Declaring that all the decisions made by the First Respondent subsequent his expulsion as president and member of the Applicant relating to the affairs of the Applicant in the Free State are unlawful, invalid and *void ab initio*.
4. Declaring the deployment and or election of the Second and Third Respondents into the Fourth Respondent’s Council as Councillors representing the Applicant, unlawful, invalid and *void ab initio*

5. Declaring the deployment and or election of the fifth Respondent into the Sixth Respondent's Council as Councillor representing the Applicant, unlawful, invalid and void ab initio.

6. Directing the Seventh Respondent to remove the name of the First Respondent as a party leader and contact person of the Applicant from its registration lists and replace it with names and particulars of a person to be provided by the Applicant.

7. Costs of suit only in the event of opposition of the application"

Only the first and second respondents proceeded with their opposition of the application, although accused 5 had also filed a Notice to Oppose, and only the first respondent filed an Answering Affidavit. Adv M Somandi represented the applicant and Adv M Nonkonyana represented the first and second respondents.

[2] The applicant's case is that the first respondent acted in contravention of the applicant's Constitution, and in a manner that amounted to gross misconduct. On 29 November 2021, the applicant, via the office of its Deputy Secretary General (DSG), addressed a letter to the first respondent notifying him that its National Management Committee (NMC) had taken a decision to suspend him with immediate effect, and listed the grounds for such suspension. In essence it was alleged that the NMC had resolved that all NMC meetings were to be convened by the Chairperson and DSG and were to be held in Pietermaritzburg. It is alleged that contrary to this resolution and the constitution of the applicant, the first respondent unilaterally called a meeting which was held in East London. The first respondent was also notified of a disciplinary hearing to be held against him on 29 December 2021 at 9.00 in Pietermaritzburg.

[3] The applicant alleges that the first respondent ignored the suspension letter and continued to conduct himself as President of the applicant. A further letter of suspension was addressed to the first respondent on 20 December 2021, in which he was informed that a further decision was taken on 18 December 2021 to suspend

him for acts of gross misconduct. This letter expanded on the first respondent's conduct at the meeting in East London, alleging that he "replaced the structure of the applicant and rearranged the office bearers thereof, contrary to the NMC resolutions and the constitution, and without a mandate from the NMC.

[4] Further allegations of gross misconduct detailed in the letter were that during the period 19 November to 1 December 2021, the first respondent misrepresented the applicant to organs of state such as the Independent Electoral Commission (IEC) and municipalities purporting to have been mandated by the NMC to so act. Such conduct caused the NMC "*great harm, humiliation and embarrassment*" and also brought the organisation into disrepute. He is further alleged to have colluded with third parties to commit acts of fraud against the applicant by misrepresenting that such third parties were representatives of the applicant, who were authorised to act on its behalf. The first respondent was again notified that the disciplinary hearing against him was to take place on 29 December 2021 in Pietermaritzburg at 9:00.

[5] On 29 December 2021, the first respondent failed to attend the disciplinary hearing and a resolution was taken to expel the first respondent as president of the organisation and as a member. A letter to this effect and reiterating what was previously set out as gross misconduct was addressed to the first respondent on 29 December 2021 and transmitted to him on 6 January 2021. The applicants asserts that the first respondent failed to respond to any of the correspondence addressed to him, nor did he challenge its decisions in any way. He also did not utilise the review/appeal procedure provided for in the applicant's constitution.

[6] There are also allegations that the first respondent withdrew the applicant's candidates who were holding seats in local municipalities and replaced them with his own candidates, without the consent of or mandate from the NMC, and in violation of the applicant's constitution. In addition, the applicant alleges that the candidates who replaced their own candidates are not members of the applicant. The applicant's complaint against the seventh respondent, the IEC, is that it continues to communicate only with fourth and sixth respondents and refuses to reinstate the applicant's candidates on its Proportional Representation (PR) list, such candidates being the persons legitimately elected by the applicant's membership.

[7] As indicated, the first respondent was the only respondent that filed an Answering Affidavit, although the second respondent opposed the application and was represented at the hearing in court. The first respondent's version is almost diametrically opposed to that of the applicant, particularly with regard to his suspension and expulsion as president and member of the applicant, as well as his conduct which the applicant complains of. The first respondent alleges that he is authorised by the applicant to oppose this application and depose to all affidavits on its behalf in this matter. I will deal further with this later. He and the applicant are in agreement regarding the structure of the applicant and the that the constitution thereof regulates, *inter alia*, the relationship of its members and the manner in which proceedings are to be conducted and also provides for the way in which the various structures that comprise the applicant should operate. The first respondent also concedes that the NMC is the highest decision-making body of the applicant.

[8] He raised a point *in limine*, in which he attacked Ramosie's authority to depose to the Founding Affidavit, alleging that he is not the Secretary General of the applicant and that he was in fact expelled from the applicant from approximately March 2022. In addition, he alleges that the Deputy Secretary General (DSG), Ms Yvonne Kekezwa, was also expelled from the applicant and is no longer a member thereof. The first respondent further denies that he was notified of his suspension or expulsion from the applicant, alleging that he was never invited to a disciplinary hearing. As far as he is concerned, he remains the president of the applicant and is entitled to act as he did, and that such actions were in accordance with the constitution of the applicant.

[9] In Reply, Ramosie persisted with his assertion that he was properly authorised by the applicant to proceed with this application and to depose to the necessary affidavits in support thereof. He denied that he, Mr Bhekupiwe Lucas Ntshangase, Deputy President and now acting president of the appellant, or the DSG were expelled and are no longer members of the organisation. He gave a detailed explanation of how a suspension letter was sent to the DSG and thereafter a letter withdrawing such suspension was sent to her, alleging that the first respondent was well aware that she was always the DSG and a councillor in the King Sabata

Dalindyebo Municipality. An expulsion letter, purportedly under his hand was sent to the DSG on 29 November 2021. Ramosie denies that he wrote or sanctioned such a letter. I will deal further with the contents of the Replying Affidavit where necessary.

[10] As indicated, the Applicant's constitution regulates the manner in which the applicant is to function at various levels and in various respects. The parties have alluded to the relevant provisions applicable to this matter. I will set out such of the provisions as may be relevant to issues raised by the parties. **Section 9** deals with the NMC and provides that the NMC is the highest decision- making body of the applicant, in between National Conferences or National General Councils and is vested with the power to decide on policy issues and programmes. **Section 10** sets out the composition of the NMC as follows:

“The President, deputy President, National Chairperson, Secretary General, Deputy Secretary General, National Treasurer, and Organiser and fourteen (14) directly elected NMC members and four (4) co-opted members of the NMC”

The parties in this matter are in agreement that this numbers 43 members. This section also stipulates that Provincial Chairperson and Secretary have full voting rights.

[11] Section 10 stipulates that the NMC shall ordinarily meet at least once every three months on a date to be fixed by the National Working Committee (NWC), comprised of National Office Bearers. Special meetings of the NMC shall be called by the Secretary General following a resolution by NWC or upon written request of not less than two thirds of the provinces. **Section 11** sets out the powers and duties of the NMC. **Section 12** provides for the establishment of the NWC and **section 13** stipulates the powers and duties of the NWC. **Section 16** provides for the Provincial Management Committee (PMC) whose powers and duties are detailed in **section 17**. One of the functions of the NWC is carry out the decisions and instructions of the NMC. The PMC clearly functions in conjunction with national structures of the applicant. **Sections 64 and 65** deal with the Disciplinary Code of Conduct and Disciplinary Procedure, respectively. There are also clear hierarchical steps and

procedures to be followed in various aspects, including resolution of disputes and enforcement of discipline.

[12] Included in the duties of the NMC are to “Enforce discipline in terms of relevant clauses in this Constitution” [section 11.1(e)] and to “Endeavour to mediate and settle any disputes within and between structures” [section 11.1(g)]. I mention also that “quorum” is defined in section 4 of the applicant’s constitution to mean “50% +1 of members present as determined by the composition stipulated in each structure and shall apply to all ISANCO meetings and conferences at all levels”

[13] In this matter a picture emerges of a distasteful pursuit of position and power, resulting in serious in-fighting amongst national office bearers, who are senior members of the applicant. It emerged from the papers that there have been several High Court applications made by Ramosie and the first respondent in the name of the applicant, in the Eastern Cape and in the Free State, all with the aim of each party attempting to oust the other, or other members of the applicant. I shall deal first with the point *in limine* raised by the first respondent in his Answering Affidavit. He prefaces this point by mentioning Free State High Court case No. 2830/2022, which is similar to the present application, and in which Ramosie was the deponent to the Founding Affidavit in the name of the applicant.

[14] The first respondent challenged, in a point *in limine*, the authority of Ramosie, and it was this point that was argued and adjudicated by the court. The court dismissed the application on the basis that Ramosie did not have authority to depose to the affidavit. The latter conceded that due to an oversight on the part of his legal representatives, the wrong document was attached to the papers as the resolution authorising him to depose to the affidavit. It does not appear to be in dispute that the merits of the matter were not considered by the court in that application.

[15] In spite of this the first respondent declares that this application is a duplicate of case no. 2830/2022. He once again challenges the authority of Ramosie in this application, on the basis that the NMC meeting of 22 October 2022 was not properly convened or constituted. To this end, he alleges that only six (6) members were present at that meeting and could not have validly to authorise Ramosie to act on

behalf of the applicant. A perusal of the minutes of the meeting, together with the attendance register of 22 October 2022, indicates that 28 members were present at that meeting, which would render that meeting quorate, according to the definition of 'quorum' that I mentioned earlier. The first respondent's assertions were either an oversight or was a deliberate attempt to subvert the evidence on record. A further ground for challenging Ramosie's authority was that he is no longer a member of the applicant, having been expelled some months before he deposed to the affidavit in this matter. I note that no evidence of this was put forward by the first respondent, and in fact was countered by the Ramosie who appended his membership form to his Replying Affidavit.

[16] I therefore am satisfied that Ramosie was properly authorised to launch the present application and depose to the necessary papers. I note that in Reply Ramosie indicated that the administration officer of the applicant, one Mr Jikajika telephoned each member of the NMC on 5 October 2022 to inform them of the meeting of 22 October 2022. Whether this was proper notice in terms of the applicant's constitution is not for this court to decide. With regard to the serving of the letter of suspension and the letter of expulsion on the first respondent, the first respondent denies that such service was effected on him. The applicant has attached to its papers, copies of the said letters but was unable to provide proof that such notices were served on or reached the attention of the first respondent. On that basis, I am constrained to find that the letters of suspension and expulsion were properly served on the first respondent, and his non-response to those letters must be seen in that context.

[17] As I indicated earlier, the applicant appears to be a divided organisation, with its senior members locked in battle with each other, attempting to assert themselves over the "opposing" group. A number of inconsistencies appear in the evidence put up by both Ramosie and the first respondent, where both purport to be authorised to act in the name of the applicant. I do not intend to deal with each of these but to mention one or two instances, in order to highlight that approaching the court to referee the conflict between these two groups is not an appropriate course of action.

[18] Ramosie in the Founding Affidavit attached minutes of an NMC meeting which was held in Pietermaritzburg, (KwaZulu Natal) on 27 November 2021, at which the NMC resolved to suspend the first respondent with immediate effect. The minutes reflect that there were five attendees at the meeting. The attendance register for that meeting was later furnished by the applicant in response to the first respondent's Request in terms of Uniform Rule 35(12). The attendance register reflects that Ramosie was present at that meeting. The first respondent attached to his Answering Affidavit minutes of what is described as the "National Consultative Meeting", which was held on 27 November 2021 in East London (Eastern Cape). The minutes reflect that one of the attendees is Ramosie in his capacity as Secretary General. It was at this meeting that it was resolved to hold a disciplinary hearing in respect of the DSG, Ms Kekezwa. This immediately raises the question how Ramosie could have attended two meetings on the same day in two different provinces of South Africa. No explanation is given for this by either Ramosie or the first respondent. The holding of this meeting was one of the grounds for the alleged suspension and ultimate expulsion of the first respondent.

[19] Ramosie appears to have been party to the decision to discipline the DSG, and he had addressed a letter of suspension to her on 19 November 2021. When confronted in Answer with a letter ostensibly sent by him on 29 November 2021, Ramosie said in Reply that a meeting of the NMC was held on 24 November 2021 where the suspension of the DSG was discussed. The committee concluded that the suspension was not sanctioned by the NMC and should be set aside. He, consequently, addressed a letter to her on 25 November 2021 withdrawing the suspension. This is not understood as he appears to have been present at a meeting two days later when it was resolved to discipline the DSG, and yet said nothing about the withdrawal of the DSG's suspension. Ramosie distanced himself from the letter of expulsion sent to the DSG on 29 November 2021, alleging that he neither knew about it nor sanctioned it. A perusal of the letter shows that Ramosie did not in fact sign the letter as the signature is preceded by the letters "pp" (per procurationem), which is used when signing a letter on someone's behalf. If he had no knowledge of this letter, it begs the question who authorised and who signed the letter.

[20] I turn now to the first respondent. As I indicated, he makes bald statements, for example, the allegation that Ramosie was expelled from the appellant and was no longer a member, without any supporting evidence. He attached an attendance register to the minutes of 27 November 2021, which I mentioned above, purporting to reflect the members of the applicant who attended the “National Consultative” meeting. I note that the attendance register is headed thus:

“Attendance Register

National Management Committee

Venue: East London

Date: 27/11/2021

Time: 10h00AM”

[21] I note further that a “Pastor Ndabambi”, also appears to have attended the “National Consultative” meeting in East London and closed the meeting in prayer. Sonwabile Ndabambi deposed to a Confirmatory Affidavit, on 19 January 2023, in support of the first respondent’s Answering Affidavit, in which he requested that this “spurious” application be dismissed. Yet three months earlier, on 25 October 2022, ostensibly in his capacity as Acting Secretary General, he addressed a letter of expulsion from the applicant to the first respondent, and two months earlier on 9 November 2022, he addressed letters of expulsion from the applicant to the third and fifth respondents. The meeting held in East London raises many unanswered questions.

[22] Velly Janeiro Mokgotho, the Provincial Chairperson of the Applicant for Mpumalanga Province, deposed to a Confirmatory Affidavit to the Applicant’s Replying Affidavit, in which he tells a different story. He alleges that he does not know about a National Consultative meeting as no provision is made for such a meeting in the applicant’s constitution, and he did not attend such a meeting in East London. He noted that he is reflected as the national chairperson in that minute and denies that he holds that position. He further alleges that he did attend a meeting in East London on that morning of 27 November 2021, but it was a public community meeting which the applicant had arranged to thank the public for voting for the applicant during the Local Government elections. The applicant did this in all provinces where the applicant won votes. The meeting did not last long, as he was

able to travel to Pietermaritzburg to attend the NMC meeting scheduled for the same day (at 15h00).

[23] Mr Mokgotho further denies that the attendance register attached to the minutes of the “National Consultative” meeting is the attendance register in respect of that meeting. He alleges that it is the register signed by members of the public who attended the meeting he referred to, hence such a large number of names on the list. Based on his knowledge of the NMC members elected at the National Conference in November 2020, this attendance register did not reflect NMC members, but was a once-off public meeting register. He also points out that a party president does not sign minutes of a meeting (as the first respondent did in this instance) and asserts that the minutes are false and have been created or fabricated by the first respondent.

[24] From what I have said it appears that neither Ramosie nor the first respondent have approached this court with clean hands. There appears to be all manner of manipulation, which creates a situation that this court cannot decide the matter on the papers. In addition, no evidence has been placed before me to indicate that internal remedies have been utilised, let alone exhausted, in order to resolve the disputes I have mentioned. I have set out the constitutional provisions above from which it is clear that part of the functions of the NMC is to enforce discipline in terms of the constitution and to mediate and settle disputes between its structures (and by implication, its members). The manner in which the parties have conducted themselves in this matter is unacceptable and regrettable, as they have moved a distance away from the aims and objectives of the organisation they serve, as reflected in the preamble to its constitution.

[25] The court must sound a stern warning to the parties in this matter, and other like-minded parties that they should be slow to approach the courts to resolve disputes which are adequately catered for in their internal instruments, such as the constitution of the applicant. The relief that the applicant seeks, requires this court to breach the boundaries of the separation of powers. It is impermissible and unjustified for the court to do so in this instance, as there are internal remedies that have not been invoked to resolve the disputes between the parties. The court is being asked

to (impermissibly) interfere with the functioning of other organs/entities of state and make orders in respect of the manner in which they should perform their functions.

[26] With regard to costs, both parties purport to be acting in the name of the applicant. The applicant asks for costs only in the event of the application being opposed, while the first respondent seeks punitive costs against Ramosie for acting without proper authority. I have made my view clear regarding Ramosie's *locus standi*, and regarding the conduct of both parties. In any event, the evidence placed before me is confusing, contradictory and insufficient to justify granting the relief sought. I am also of the view that it would be unfair for costs to be paid out of the coffers of the applicant, as the conduct of Ramosie and the first respondent indicates that neither of them were committed to furthering the aims and objectives of the applicant or complying with the constitutional prescripts that bind them, but rather appear to have been pursuing their own ends.

[27] In the circumstances, I make the following orders:

27.1 The application is dismissed;

27.2 The point *in limine* raised by the first respondent is dismissed;

27.3 Each party is to pay their own costs, Bakoena Stephen Ramosie being directed to personally pay the costs of the applicant, while the first respondent, Zukile Luyenge being directed to personally pay the costs of the opposition in this matter.

S. NAIDOO, J

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