



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

Case no: **962 /2023**

In the appeal of:

MATJHABENG LOCAL MUNICIPALITY

APPLICANT

and

MC SECURITY AND INVESTIGATIONS

FIRST RESPONDENT

THE SHERIFF: WELKOM

SECOND RESPONDENT

KRUGER VENTER MAREE INC

THIRD RESPONDENT

ABSA BANK: WELKOM

FOURTH RESPONDENT

JUDGMENT BY: **MOLITSOANE, J**

HEARD ON: **14 JULY 2023**

DELIVERED ON: **24 JULY 2023**

- [1] On 5 July 2023 the applicant brought an urgent application on an *ex parte* basis against the respondents in their absence. The order was granted in favour of the applicant. The First Respondent has now enrolled this matter for

the reconsideration of the said order in terms of Uniform Rule 6(12) (c). The applicant opposes the reconsideration. The remaining respondents did not participate in these proceedings. For convenience, the first respondent will be referred to simply as the respondent.

[2] In the *ex parte* application the court granted a rule nisi calling upon the 2nd and/or 3rd and /or 4th respondents to show cause on 27 July 2023 why they should not be interdicted from paying an amount of twenty-three million seven hundred and thirty-two thousand, one hundred and thirty-seven rand and eleven cents, (R23 732 137.11) held by the 2nd and/or 3rd and /or 4th respondent on behalf of the 1st respondent under writ of execution dated 26 April 2023, pending the final adjudication of the final order.

[3] The reconsideration is based squarely on the purported lack of authority of the Municipal Manager to institute the *ex parte* application. Because the attack on the application is solely based on this narrow issue, it is unnecessary to set out the whole factual matrix surrounding this application.

[4] 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. It is submitted that the municipal manager is a *delegated body*¹ as defined in the Systems of Delegation. It is lastly submitted that the Council, as the delegating authority has thus delegated the functions to the municipal manager as head of administration and accountability.

[5] Section 59 of the Systems Act provides as follows:

¹ Definition: '*delegated body*' in relation to the delegation of a power means the political structure, political office-bearer or employee to whom a power has been delegated in writing by the delegating authority."

59 Delegations

- (1) A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may-
- (a) Delegate appropriate powers, excluding a power mentioned in section 160(2) of the Constitution² and the power to set tariffs, to decide to enter into a service delivery agreement in terms of section 76(b) and to approve or amend the Municipality's integrated development plan, to any of the Municipality's other political structures, political office bearers, councillor, or staff members;
 - (b) Instruct any such political structure, political office bearer, councillor, or staff member to perform any of the Municipality's duties; and
 - (c) Withdraw any delegation or instruction.

[6] The reading of section 59 indicates that the said provision is peremptory. I do not understand the submissions of the applicant to hold otherwise. The essence of the case of the applicant is that the Municipal Manager was properly authorised to institute these proceedings by virtue of the delegated powers as set out in section 59. It is necessary to refer to the letter dated 13 July 2023 attached to the applicant's replying affidavit. This letter purports to evidence the authority conferred to the municipal manager to bring these proceedings and similar ones in accordance with the Systems of Delegations. The relevant part reads as follows:

'TO WHOM IT MAY CONCERN

EXTRACT FROM THE COUNCIL MINUTES: 26 September 2016 (Adoption of Delegation of Powers)

COUNCIL RESOLVED: (06 SEPTEMBER 2016)

² Section 160(2) of the Constitution provides as follows:

"The following functions may not be delegated by a Municipal Council:

- a) The passing of by-laws;
- b) the approval of budgets;
- c) the imposition of rates and other taxes, levies and duties; and
- d) the raising of loans."

1. *That Council ADOPTS the Delegation of Powers for 2016-2021 term of Council.*
2. *That a workshop BE CONDUCTED as a matter of urgency to familiarize all Councillors on delegated powers.*
3. *That the relevant provisions of the new SPLUMA Act should BE INCORPORATED in the delegation of powers.*
4. ...

Signed: Adv. LONWABO NGOQO

MUNICIPAL MANAGER'

[7] 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 provides 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.

[8] The resolution of the Council of the delegation in terms of the Delegated Systems of Powers in this case was clearly not intended to be indefinite. Such delegation was clearly tied to the term of the Council. Section 159(1) of the Constitution provides that the term of office of the Municipal Council may not exceed five years. The resolution was clearly in line with the Constitution. The next Council, post 2021 was at liberty to resolve and delegate some of its powers in line with s59. There is no evidence before me indicating that such was done.

[9] I am of the considered view that, in the absence of a Council resolution or delegated powers, it cannot be said that the Municipal Manager was properly

authorised to institute this application. It is unnecessary in my view to deal with the arguments raised by applicant with regard to the purported authorisation emanating from the Delegated Systems of powers in view of the finding I made that there was non-compliance with section 59 of the Systems Act. The Delegated Systems of powers relied upon by the applicant does not assist it as its period has expired. The order granted on an *ex parte* basis on 5 July stands therefore to be reconsidered.

[10] I now turn to the issue of costs. It appears that the Applicant launched an application in terms of Uniform Rule 45A in this court under the same case number. In that application the respondent challenged the Municipal Manager's³ authority to act for the applicant as far back as 30 May 2023. The applicant responded to the challenge by filing the Delegated Powers relied upon in this case. At the time these current proceedings were instituted, the Rule 45A proceedings had not been concluded.

[11] Rule 7 provides, *inter alia*, that where the authority of a person is challenged, such a person may no longer act unless he satisfies the court that he is authorised to act. The applicant was aware of this challenge. In spite of that awareness, it still chose to bring this application on an *ex parte* basis in the absence of the respondents relying on the disputed authority. In view of the fact that the authority was challenged by filing Rule 7 notice, it was incumbent on the applicant to have dealt with that issue raised in the Rule 45 application before launching these proceedings. By ignoring the challenge raised, the applicant caused respondent to deal with what ought to have been dealt with before initiating these proceedings. This conduct must be deprecated and be met with an appropriate punitive costs. I accordingly make the following order:

ORDER

³ Adv. Ngoqo- a deponent in the Rule 45A application and this application.

1. The order of this Court granted on 5 JULY 2023 is hereby reconsidered and set aside.
2. The Applicant is ordered to pay the costs occasioned by the reconsideration on attorney and client scale.



P. E. MOLITSOANE, J

On behalf of the Applicant: Adv. LA Roux
Instructed by Kruger Venter Attorneys
BLOEMFONTEIN

On behalf of the Respondents: Adv. WJ Prinsloo
Instructed by Pieter Skein Attorneys
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