



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NUMBER: 14399/2023P

In the matter between:

PETROS MTHANDENI NGUBANE

APPLICANT

And

**THE MEC FOR CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS (COGTA) KZN**

FIRST RESPONDENT

UMVOTI (GREYTOWN) LOCAL MUNICIPALITY

SECOND RESPONDENT

MUNICIPAL MANAGER:

UMVOTI (GREYTOWN) LOCAL MUNICIPALITY

THIRD RESPONDENT

UMZINYATHI DISTRICT MUNICIPALITY

FOURTH RESPONDENT

MUNICIPAL MANAGER:

UMZINYATHI DISTRICT MUNICIPALITY

FIFTH RESPONDENT

SPEAKER: UMVOTI LOCAL MUNICIPALITY

SIXTH RESPONDENT

SPEAKER: UMZINYATHI DISTRICT MUNICIPALITY

SEVENTH RESPONDENT

ADMINISTRATOR OF UMZINYATHI

DISTRICT MUNICIPALITY

EIGHTH RESPONDENT

INDEPENDENT ELECTORAL COMMISSION

NINTH RESPONDENT

JUDGMENT

P C BEZUIDENHOUT J:

[1] In this matter Mr Moodley SC appeared on behalf Applicant (Petros Mthandeni Ngubane), Mr Pammenter SC with Ms Mbonena on behalf of First Respondent (the MEC of Co-operative Governance and Traditional Affairs KZN) and Mr Luthuli on behalf of the Umvoti Local Municipality, the Municipal Manager: Umvoti Local Municipality and the Speaker: Umvoti Local Municipality (Second, Third and Sixth Respondents respectively).

[2] Applicant is also a member of the Umzinyathi District Municipality and has been a councillor for many years. He is one of the persons that was expelled as a councillor from the Umvoti Council by First Respondent and accordingly this also affected his position in the Umzinyathi District Municipality. As already stated in case number 14327/2023P these two matters are to a great extent similar and the basis in both cases

for the expulsion is due to allegations of non-attendance of three meetings by Applicants in case 14327/2023P and Applicant in this matter.

[3] The application is not opposed by the Fourth, fifth, Seventh, Eighth and Ninth Respondents.

[4] The relief which is claimed is *inter alia* a stay of Applicant's expulsion pending a review application which is to be heard. As stated in case number 14327/2023P it was requested by Mr. Xulu appearing in that matter that in the event of Applicants in these two applications being successful that the order which is to be granted be in terms of the notice of motion in case number 14399/2023P.

[5] Mr Moodley SC referred to the letter by Mr. Mvundla wherein he stated that he wanted to bring to the attention of the Speaker the conduct of various members which included Applicant. This letter is attached at page 74 of Applicant's papers. The complaint which was laid by Mr Mvundla was then dealt with by the Rules and Ethics Committee which was established and of which Mr Mvundla was a member. Although lodging the complaint he also formed part of the committee and then made a report to First Respondent. It was accordingly submitted that this was totally irregular in that being the complainant he forms part of the committee and then also reports to the member of the executive council, First Respondent.

[6] At a meeting of the council on 4 September 2023 Mr. Kathede advised the meeting that an Investigation Committee had been appointed and that interviews with the affected individuals will be conducted at the COGTA Offices and COGTA will liaise directly with the affected individuals. An extract of the minute is then attached to Applicant's founding papers but the meeting with Applicant never transpired. It was further submitted that First Respondent realised that the matter needs to be investigated

further and appointed an Investigating Committee. However despite this First Respondent then on 18 September 2023 merely makes a decision and issues a letter to Applicant expelling him as a Councillor. It is further submitted that the report is flawed.

[7] It was submitted on behalf of Applicant that the urgency emanates not merely due to the conduct of Mr Mvundla but also by the expectation to have an interview with members of COGTA which was never done. In addition there is the loss of income suffered by Applicant as he serves on both councils.

[8] In respect of the 72 hours' notice that had to be given to First Respondent it was submitted that it was served Friday morning and that accordingly it complied with the said provision, Respondents did not pursue this point any further. In a letter to the Speaker of the Umvoti Municipality (Sixth Respondent) the First Respondent sets out that she has removed the various councillors in terms of Rule 16(7) of the Code of Conduct of Municipal Councillors and that such letters have been issued to them. She sets out in the letter that the Municipal Manager (Third Respondent) must declare the said vacancies with the IEC for by-elections to be held. Also that a vacancy has occurred in the Umzinyathi District Municipality as contemplated in section 27(e) of the Local Government Municipal Structures Act for the Municipal Manager to declare such a vacancy. She refers to Councillor Makhaye and that there is still a pending assessment.

[9] It was submitted that First Respondent could not have been satisfied with the report she received from Second Respondent as she therefore appointed a committee to investigate the matter. The report of this committee recognises the problem created with the participation of Mr. Mvundla but ignores it. It is set out by Applicant that he has been a councillor for some time and earning an income which now has come to an end.

[10] It was submitted that there was not a non-joinder as it was not necessary to cite other political parties as they would continue in their respective positions and that accordingly there was no need to join them as Respondents in this matter. It was for this reason also that Applicant opposed the application by Abantu Batho Congress to intervene in these proceedings.

[11] In respect of urgency it was submitted that it sets out in paragraph 36 of the founding affidavit that Applicant became aware on 19 September 2023 of the decision to expel. He then addressed a letter to First Respondent and received a response on Saturday 23 September 2023. He also consulted with his attorney and thereafter the necessary papers had to be drawn. Information had to be obtained and this all took time. It is further contended that he has information that First Respondent is bringing pressure on the IEC to declare the seats vacant and to arrange the by-elections. A letter dated 26 September 2023 was sent by the Municipal Manager (Third Respondent) to the Electoral Commission requesting it to advertise the said vacancies and hold by-elections. This was done at the request of the First Respondent. It was further submitted that there are indeed prospects of success on review for the reasons which were mentioned above as well as contained in the affidavit.

[12] Mr Pammenter SC in response contended that the urgency was dealt with at length in the founding affidavit but that only one subparagraph dealt with the issue why it was brought so urgent and that was paragraph 36.15 which I have just referred to that the IEC has to declare a by-election. He accordingly submitted that there was no urgency and that the matter should be struck from the roll with costs.

[13] He further submitted that there was non-joinder and that the other political parties and representatives should have been joined as Respondents in the said application. He submitted that on the merits that there was only the contention that the procedure

followed by First Respondent was incorrect as she held her own investigation in this matter.

[14] Mr. Luthuli also contended that the application should be struck off the roll as it was not urgent. He also referred to paragraph 36.15 and that the test for urgency was not met. It was already known during July that there was a recommendation that they be removed and that a resolution was taken that it be reported to the member of the Executive Council. He further submitted that there was no conflict in the conduct of Mr Mvundla as he only had to decide on the complaint and it therefore did not matter whether he was the complainant and sat as a member of the committee.

[15] In reply it was submitted by Mr Moodley SC that First Respondent wrote to Third Respondent on 20 September 2023 stating that there was an error in the letter of 18 September 2023 as it referred to the removal of nine councillors where it should only have been eight and that the communication of 18 September 2023 be ignored and that the attached communication which is also dated 20 September 2023 should be taken as the official notification. That was exhibit "E" wherein it states that Applicant is removed as councillor of both Umvoti and Umzinyathi Municipalities. It was submitted that there are prospects on review for the reasons provided.

[16] Having considered all these submissions and the papers herein I am satisfied that there is urgency in the matter resulting from the letter which was addressed to the IEC on 26 September 2023. If the IEC commences with the process of a by-election resulting from the said expulsion of these Applicants then it would result in unnecessary and fruitless expenditure if the said review application is successful. It will be costly to reverse the process which had then been done.

[17] The conduct of Mr Mvundla being the complainant being part of the committee and then reporting to First Respondent that Applicant be expelled that this could be seen to be irregular and unfair procedure and create a wrong perception. The fact that First Respondent had herself appointed a further committee which was to consult *inter alia* with Applicant but did not do so and merely thereafter sent a letter that he *inter alia* with the other Applicants in the other matter was expelled may also be a factor which can be seen as unfair and which on review could have prospects in that she did not comply with what she had informed them would happen but merely expelled them without granting them the opportunity to make further submissions which she had indicated they would be entitled to do.

[18] The question further arises as to whether a case has been made out for interim relief. In my view this has indeed been done. The balance of convenience also favours Applicant more than that of the Respondents. I am also of the view that it was not necessary to join the other parties as they would not be affected by the result of this application.

[19] Mr Pammenter SC and Mr Luthuli did not oppose the request by the Abantu Batho Congress for leave to intervene. I can find no prejudice to any party if such leave is granted.

Order:

1. I accordingly grant an order in terms of paragraphs 2 and 3 of Part A of the notice of motion, the date in paragraph 2 to be 10 November 2023.
2. The Abantu Batho Congress is granted leave to intervene and be joined as the Tenth Respondent.

P C BEZUIDENHOUT J.

JUDGMENT RESERVED ON: 2 OCTOBER 2023

JUDGMENT HANDED DOWN ON: 6 OCTOBER 2023

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