



IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE: 18155/2023P

In the matter between:

NOXOLO PRECIOUS NDABA

APPLICANT

and

PHILANI GODFREY MAVUNDLA

FIRST RESPONDENT

UMVOTI LOCAL MUNICIPALITY

SECOND RESPONDENT

BONGIWE MCHUNU

THIRD RESPONDENT

SIBUSISO LUKHELE

FOURTH RESPONDENT

THE INDEPENDENT ELECTORAL COMMISSION

FIFTH RESPONDENT

JUDGMENT

P C BEZUIDENHOUT J:

[1] Applicant (Noxolo Precious Ndaba) brought an application on an urgent basis against First Respondent (Pilani Godfrey Mavundla), Second Respondent (Umvoti Local Municipality), Third Respondent (Bongiwe Mchunu), Fourth Respondent (Sibusiso Lukhele) and Fifth Respondent (Independent Electoral Commission). The notice of motion consists of an “A” and “B” section and Applicant seeks the relief in part A of the notice of motion pending the review which is sought in terms of part B of the notice of motion. In part A Applicant seeks *inter alia* that her precautionary suspension by First and Second Respondent be declared unlawful, invalid and reviewable and that the appointment of an Acting Municipal Manager invalid and reviewable. (Main application)

[2] The matter came before court on 7 December 2023 and was opposed by First, Second and Third Respondent who handed up an interim answering affidavit. This dealt mainly with the fact that it was contended that the matter was not urgent and that there was a misjoinder and that Applicant did not make out any case for the relief sought.

[3] However when the matter was called there was also appearance on behalf of one Mbuyiseni Majozi, who sought to intervene as an intervening party. However the relief which was being sought in the notice of motion did not only deal with the issue of intervention but also that a rule *nisi* be issued that pending final determination of the application for review First Respondent be interdicted and restrained from holding himself

out as a councilor as well as mayor of Umvoti Local Municipality and does not meddle or interfere in the affairs of Umvoti Local Municipality. (Majozi application)

[4] A further application was then handed up on behalf of ten (10) other councilors who wanted to intervene in the main application. The first applicant therein is one Nolothando Patricia Dlamini. The further relief which is sought in the notice of motion is similar to that of the Majozi application. (Dlamini application)

[5] First, Second and Third Respondents then indicated that they wish to oppose both the intervention applications of Majozi and Dlamini. It was submitted on behalf of First, Second and Third Respondent that they have the right to oppose the intervention and the relief which is being sought in the notice of motions in the said two applications seeking more relief than just an order to intervene as applicants and that they wish to file an answering affidavit in that regard.

[6] The further two applications were brought with the same case number as this main application.

[7] It was then agreed between the parties that the question of the intervention by the said parties must first be dealt with before any further consideration of the issues in the main application and in the notice of motions of the Majozi and Dlamini applications.

[8] Applicant in the main application indicated that she does not oppose the intervention application of both the Majozi and the Dlamini applications. As already indicated First, Second and Third Respondents indicated that they wish to oppose it and wish to file affidavits in that regard.

[9] It is common cause that on 27 November 2023 the council of Second Respondent placed Applicant in the main application on cautionary suspension for a period of three (3) months and appointed Third Respondent as the Acting Municipal Manager. It was contended on behalf of Applicant in the main application that on 30 November 2023 a letter from the Mayor indicated that the suspension or special leave has been withdrawn.

[10] From the papers in the answering affidavit of First, Second and Third Respondents it appears that on 20 September 2023 a rule *nisi* was granted that First Respondent, in the main application, membership of the Abantu Bantu Congress (ABC) shall not be terminated. Suspending the operation and execution of the decision to terminate First Respondent's membership of the ABC pending final determination of that application. This was part of the interim relief which was granted and the rule *nisi* was extended to 30 October 2023. On 30 October 2023 it was further adjourned and the rule *nisi* extended to 11 December 2023. Accordingly at that stage in terms of that court order First Respondent could not be expelled from the party. This effects the relief which is sought in the intervention applications of Dlamini and Majozi as to the positions occupied by First

Respondent in the main application. However it is not necessary to deal therewith at this stage. It is not known what transpired on the 11 December 2023.

[11] During argument it was contended on behalf of applicant in the main application that it was not clear due to the suspension of Applicant in the main application and the appointment of the Acting Municipal Manager, Third Respondent, who would be the person to conduct the necessary affairs of the Municipality at this stage.

[12] In the agreement of employment which Applicant in the main application signed when appointed as Municipal Manager during February 2023 it sets out in paragraph 13 that the Municipality may suspend the employee in terms of the Local Government Disciplinary Regulations for Senior Managers 2010 No.344 of 21 April 2010. It sets out in subparagraph 5 of paragraph 13 that the Municipal Council may suspend the employee. As appears from the minutes of 27 November 2023 it was indeed the Council which suspended Applicant in the main application. None of the parties could provide any authority that the Mayor could cancel the suspension of the employee by the Council on his own. The suspension can only be for three (3) months and if no disciplinary steps are taken within this time it automatically lapses.

[13] Accordingly in this matter it is just and equitable that First, Second and Third Respondents be granted the opportunity to oppose the intervention applications of Majozi and Dlamini. It would therefore be necessary for them to file an answering affidavit in

both these applications and then also the applicants in the intervention applications would be entitled to file a replying affidavit. It does not appear that it is necessary for Applicant in the main application to file any further papers in this regard as she indicated that she does not oppose the said intervention applications.

[14] It would accordingly appear that as Applicant in the main application was suspended by Council that that will remain in force until it is revoked by the Council. Accordingly Applicant therein will remain under suspension at this stage and the Acting Municipal Manager, Third Respondent, would then take over the duties of the Municipal Manager in the interim.

Accordingly the following order is made:

1. The matter in respect of the intervention applications and the main application are adjourned to 12 January 2024.
2. First, Second and Third Respondents are to file their answering affidavit opposing the intervention applications by 8 January 2024 and the applicants in the intervention applications to file any reply thereto by 11 January 2024.
3. Costs are reserved.

P C BEZUIDENHOUT J.

JUDGMENT RESERVED:

7 DECEMBER 2023

JUDGMENT HANDED DOWN:

20 DECEMBER 2023

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