

REPUBLIC OF SOUTH AFRICA



THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

25 MARCH 2022

DATE

Jehapi

SIGNATURE

CASE NUMBER: 11527/22

In the matter between:

THE ACTING MUNICIPAL MANAGER

FIRST APPLICANT

MADIBENG LOCAL MUNICIPALITY

SECOND APPLICANT

And

MADIBENG BLACK BUSINESS CHAMBER

FIRST RESPONDENT

JUDAH MALEPE

SECOND RESPONDENT

GABY TSHEOLA

THIRD RESPONDENT

ANNAH MOSIDI

FOURTH RESPONDENT

ELIAS BUDA

FIFTH RESPONDENT

SELLO MONNAPULE

SIXTH RESPONDENT

THABISO RAMALEPA

SEVENTH RESPONDENT

T MMEBE

EIGHTH RESPONDENT

**ALL PERSONS ASSOCIATED WITH OR
MEMBERS OF THE MADIBENG BLACK
BUSINESS CHAMBER**

NINTH RESPONDENT

JUDGMENT

TLHAPI J

INTRODUCTION

[1] The applicants approached this court on urgency in terms of Rule 6 (12) of the Uniforms Rules of Court. The application was dismissed with costs the order is filed on CaseLines and these are my reasons.

[2] The applicants sought the following relief:

- “
2. That the first to the ninth respondent be, and are interdicted and restrained from directly or indirectly:

- a. Entering to partake in, instigate disruption or riots or violent behaviour resulting in damage to property, infringement of rights of assault of applicants' employees;
 - b. Obstructing entry and exiting of any person vehicle to and from the premises and buildings set out in prayer 3 below;
 - c. Committing any act that is prejudicial to the effective operations conducted by the applicants;
 - d. Disrupting or entering with normal activities at the premises and buildings set out in prayer 3 below;
 - e. Participating in calling for support, encouraging or inciting unlawful behaviour, violence, causing damage to the premises and buildings set out in prayer 3 below and to the applicants' employee;
 - f. Intimidating, threatening, harassing or harming applicants' employees, contract workers, service providers &/or members of the public;
 - g. Carrying firearms or dangerous weapons or knives or other sharp objects, sticks at or near entrances at the premises and buildings set out in prayer 3 below;
 - h. Vandalizing property or illegally occupying any building or portion of the premises and buildings set out in prayer 3 below;
3. That the interdict operates at the second applicant's municipal premises including the following:
- a. Civic Centre, 53 Van Velden Street, Brits,
 - b. Licensing Department (DLTC);
 - c. Magasyn Building
 - d. Community Service Building;
 - e. Cosmos Hartebees Building;"

[3] The relief in respect of prayers 4 to 14 relates to compliance, assistance by the

South African Police, notice of opposition and costs.

- [4] The application was opposed by the first to the eighth respondents and counsel for the parties also prepared heads of argument which addressed both merits and points *in limine* raised.

BACKGROUND

- [5] The first applicant is the acting municipal manager of the second applicant who brings the application in her official capacity as the first applicant and such having being appointed in terms of section 54A (1) of the Municipal Systems Act 32 of 2000 (The Systems Act) and having being authorised to depose to the founding affidavit on behalf of the second applicant in terms of her delegation of authority which is attached to the founding papers as annexure “MM1”.
- [6] The first applicant contends that the conduct of the respondents on 21 February 2022 caused the offices of the second applicant to be closed, which also resulted in the office and employees of the second applicant not being able to render services to the public. The purpose of the order that was being sought was to return the said offices and its employees to normal operation free of a climate of fear and intimidation by the respondents, mainly a grouping of the Madibeng Black Business Chamber, (the MBBC).
- [7] The first applicant outlined the following chronology of events:
- 1) On 31 January 2022 30 members of the MBBC requested a meeting with the Mayor, Mr Maimane, to address grievances against the chief financial officer, Mr Molahlehi for bullying them and not providing them with work and denying them opportunities for business, his removal from office was demanded.

- 2) Mr Maimane promised to investigate the allegations and scheduled a follow up meeting for the 14 February 2022. The first applicant and Mr Maimane were not available. The MBBC members were dissatisfied at their unavailability and threats were levelled against the employees at the Civic Centre. A new date for the meeting 21 February 2022 was proposed.
- 3) On 20 February 2022 Mr Maimane communicated his unavailability on 21 February 2022 and proposed that the meeting be held on 23 February 2022.
- 4) On 21, 22 and 23 February 2022 the MBBC arrived at the Civic Centre, the DLTC, the Magasyn Building, Community Service Building and the Cosmos Hartebees Building and engaged in conduct, which is described in the relief sought and which threatened the smooth running of the business to the Municipality.
- 5) On 21 February 2003 the Municipality had to engage additional security and the SAPS had to be called to deal with the situation as MBBC members were brandishing weapons such as firearms, pangas and knives. Some members of the MBBC also sought to disrupt other meetings attended by the mayor.

[8] The first applicant contended that the conduct of the respondents posed a threat to the employees, members of the public who attended the offices of the municipality and to the buildings of the municipality. The MBBC has persisted in such unjustified disruptive conduct despite warning from the Municipality. The urgency in seeking an interdict against the respondent is, besides the continued threats to the public and employees, and this has resulted in the inability of the applicants carry on its business and to render and to deliver effective service to the public.

[9] The respondents raised the lack of *locus standi* of the first applicant to act on behalf of the second applicant and to launch the application, that there was no letter attached to supporting the first applicant's capacity and furthermore, that

there was no council resolution by the second applicant which authorised the first applicant to act on behalf of the second applicant.

- [10] The respondent's contended that the matter was not urgent. They deny that they were engaged in disruptive violent conduct or that the police were called to quell the alleged disruptive conduct. They alleged that they were allowed to engage in a peaceful march by the applicants, on 28 February 2022 as depicted in annexures FA3 and FA4 to the answering affidavit. The application for the strike was made on 24 February 2022 and this application was launched the following day, on 25 February 2022, the same day it gave approval for the strike to be staged,
- [11] At the first meeting held with the applicant, the second to the eighth respondent denied that there was any violent or disruptive conduct at such meeting and that on 21 February 2022 the offices of the second respondent were closed due to presence of a covid 19 case hence a request to have the meeting rescheduled. No meeting was scheduled for 22 February 2022. It was contended that when the respondents arrived for the meeting of 23 February 2022 there were community members from Segwaelane who had staged a strike against the Mayor Maimane. The members of the MBBC had not foreseen that they would have encountered the strike and it is contended that the additional security that was engaged had nothing to do with the purpose of the meeting they had intended holding with the mayor.
- [12] The respondents contended that most of them were contracted by the second respondent to render services to the communities, being the supply of water and waste removal. The issue of concern and what was intended to be addressed with the mayor was the allegation that since the mayor came into office, payments to the contractors was delayed and sometimes they were not addressed at all.

- [13] In reply the first applicant annexed her letter of appointment. It was also contended that the police were summoned to the premises of the respondent on each day that they made appearance which included the 24th and 26 and 28 of February 2022. It was not their attendance at the premises of the applicant which were objected to, but their conduct which continued to pose a threat to the employees, the public and affected service delivery. The first applicant conceded that permission had been granted for a strike on 28 February 2022 but complained that the respondents' conduct continued after such date.

THE LAW

- [14] The respondents raised two points *in limine* one on urgency and the other on *locus standi*. I gave a preliminary view that the nature of the complaint raised against the respondents could raise issues of urgency and that consideration would be given thereto on condition the applicant also satisfying the court on the issue of *locus standi*. The other problem regarding the merits in my view was that on the day the application was launched permission was given that the respondents hold a march. On 28 February 2022. The applicants in reply had not addressed the lack of Municipal Council's resolution to institute and prosecute this application. Mr Maserumule for the applicants had also not addressed the issue of *locus standi* in his heads of argument.
- [15] An opportunity was given to Mr Maserumule to address the issue and several cases were initially referred to by him being: (*Magodongo v Khara Hais Municipality and Others* (2018) 39 ILJ 406 (LC) (14 November 2017); *Manana v King Sabata Dalindyebo Municipality* (2011) 32 ILJ 581 (SCA) para 25; *Kouga Municipality v SA Local Government Bargaining Council* (2010) 31 ILJ 1211 (LC) para 23. Further cases were referred to after judgment was reserved, although objected to by respondents' counsel, I allowed their inclusion being, *Unlawful Occupiers of the School Site v City of Johannesburg* case number 36/2004 SCA para 11-16 and *Ganes and Another v Telecom Namibia Ltd* [2004] 2 All SA609 (SCA) para 19

- [16] It is contended for the applicants that the first applicant was duly appointed in terms of section 54A (1) of the Local Government: Municipal Systems Act 32 of 2000, (the Municipal Systems Act) and that her authority to depose to the affidavit launching the application on behalf of the second applicant was based on her delegated authority attached to the papers as Annexure “MM1”.
- [17] It was contended for the respondents that the first applicant had not attached a letter supporting her capacity with the second applicant and further that there was no council resolution which authorized the first applicant to act on behalf of second applicant, (reference to the second applicant as second respondent in the answering affidavit is in my view a typing error).
- [18] My understanding on the point *in limine* raised on behalf of the respondents’ is not a challenge to the first applicant’s authority to depose to the founding affidavit, either on her behalf or on behalf of the second applicant, but it first dealt with the absence of a letter confirming the first applicant’s capacity at the second applicant and, going to the heart of the application was the authorisation to institute and to prosecute the application in her capacity as acting municipal manager being the first applicant and on behalf of the second applicant. In this regard the respondents contended that a resolution of council was necessary.
- [19] The facts in *Ganes supra* are distinguishable to the present in that there it had to deal with the appointment of a firm of attorneys to represent the respondent. As at paragraph 19 it was stated that the authority to depose to an affidavit was not a requirement in motion proceedings, however, there had to be authority by the applicant to institute and prosecute the proceedings. Further, the court stated that where the authority of an attorney to launch proceedings was challenged, Rule 7(1) of the Uniform Rules of Court provided a procedure to be followed by a respondent who wishes to ‘challenge the authority of a person allegedly acting on behalf of the purported applicant’. When one goes to the specific Rule 7(1) which comes under the title Power of Attorney, the subrule

stipulates that a power of attorney to act subject to sub rules 2 and 3 need not be filed, but that the authority to act on behalf of any party may be challenged within 10 days of coming to such knowledge or with leave of the court on good cause shown.

- [20] In *Unlawful Occupiers of the School Site supra*, Brand JA touches on the procedure in Rule 7(1) afforded to a respondent who challenges authority of any person to launch proceedings which was a procedure which was less costly. The distinguishing factor in my view, is that here one was dealing with urgency and a less costly method would have been for the municipal manager to produce the resolution. It is my further view that the procedure in Rule 7(1) if insisted upon by the applicant would have rendered the application moot in that the urgency claimed would have been removed and, given the time limitations, the procedure was definitely not available to the respondents. As at paragraph 8 of Brand JA's judgment is stated that the PIE Act in as far as eviction applications were concerned in terms of section 6 thereof, authorised a municipality which was an organ of state with jurisdiction over a particular area, to bring eviction applications. Further as at paragraph 12 Mr Lefatola stated that he had delegated power to bring the application and to depose to the affidavit on behalf of the municipality and in **"reply, Lefatola produced a resolution of the municipal council which authorised him to launch proceedings of the present kind on behalf of the municipality"**. Another criticism was that the challenge by the Unlawful Occupiers caused the Municipality to file pages and pages of resolutions in a supplementary affidavit, followed by lengthy technical argument. (my emphasis)

- [21] It is common cause that there is no evidence that a resolution was passed by the Madibeng Council authorizing the municipal manager to institute and prosecute this application. In *ANC Umvoti Council Caucus and Others v Umvoti Municipality* 2010 (3) SA 31 (KZN) the court stated:

"The court was satisfied that since section 151(2) of the Constitution vested the executive and legislative authority in its municipality council, it was necessary for the council to have delegated the power to institute legal proceedings, such a delegation must be in writing, absent which a council resolution was required to empower an official to institute court proceedings on its behalf."

Again, in *Kouga Municipality supra*, the application was dismissed due to lack of evidence establishing authorisation to an employee to institute and to prosecute proceedings on behalf of the municipality.

[22] The authority relied upon by the first applicant is according to her, derived from delegated authority and in my view such delegated authority is such authority accorded to a municipal manager who is answerable for the administration and is accountable to a municipal council in Local Government. Such delegated authority in my view, is not equivalent to that in a power of attorney envisaged in Rule 7 (1). Despite the challenge to *locus standi* of the first applicant, no case was made out in reply to provide evidence that there existed authority to institute and prosecute the present application in the form of a municipal council resolution.

[23] It is trite that a Municipal Manager heads the administration of a municipality and is its accounting officer. A municipal manager functions according to delegated power which is of varied source. Delegated power is derived from section 55 of Municipal Systems Act which subjects the municipal manager to policy direction of the municipal council; delegated power is derived from the Municipal Council (except for those powers excluded by the Constitution), the Municipal Council which in terms of the Constitution section 151 is the primary executive and legislative body in governance of a Municipality; delegated power is also derived from section 82 of the Municipal Structures Act 117 of 1998; delegated power is derived from sections 60, 61 and 62 of the Municipal Finance Management Act 56 of 2003. Finally, it is required that such delegated power be in writing.

[24] It is therefore appropriate to examine annexure “MM1” relied upon by the first applicant. The document is one that depicts the delegations assigned to the municipal manager by the Madibeng Local Authority to name but a few, delegations are given in terms of the Municipal Structures Act 117 of 1998, the Municipal Systems Act 32 of 2000; the Municipal Finance Management Act 56

of 2003; the Disaster Management Act 57 of 2000; the Magistrate's Courts Act 32 of 1944; the Occupational Health and Safety Act 85 of 1993; etc. No delegation is given that the municipal manager is authorised to institute and prosecute legal proceedings in her capacity and on behalf of the Madibeng Municipality, hence the dismissal of the application with costs.

Thapi

TLHAPI V V

(JUDGE OF THE HIGH COURT)

APPEARANCES

MATTER HEARD AND RESERVED ON : 11 MARCH 2022
JUDGMENT HANDED DOWN ON : 25 MARCH 2022

COUNSEL FOR THE APPLICANT : ADV K MASERUMULA
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