



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBERLEY**

Case No: **2620/2021**
Heard: **20/12/2021**
Delivered: **23/12/2021**

In the matter between:

**BUSISWE PATIENCE MGAGULI
PORTIA REMAKETSE SELOGILWE
TEBOGO AFRIKA**

1st Applicant
2nd Applicant
3rd Applicant

and

**MICHAEL SETLHOGOMI
GOITSEMODIMO HALTER
OLEBOGENG SAMUEL TUMODI
TSHOLOFETSO MOCUMIE
THABONYANE VAN WYK
NEO PITSO
LESEGO JANKI
ANNETTE VAN WYK
ESTELLE DAVIES
LEAN LE ROUX
MUNICIPAL COUNCIL: PHOKWANE MUNICIPALITY
MPHO MOJAKI**

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent
5th Respondent
6th Respondent
7th Respondent
8th Respondent
9th Respondent
10th Respondent
11th Respondent
12th Respondent

JUDGMENT

Mamosebo J

- [1] The applicants launched an urgent application on the basis that the termination of employment of the first applicant, Ms Busiswe

Patience Mgaguli, Acting Municipal Manager, Phokwane Municipality, was unlawful. They rely on two aspects, first, that the termination amounted to a breach of contract and, secondly, that it amounted to an exercise of public power that breached the rule of law.

- [2] This application was set down for 20 December 2021 with severely truncated time-periods determined by the applicants. The Notice of Motion was served and filed on 15 December 2021 for the respondents to consider the application and to file their answering affidavit by no later than 17 December 2021 at 13:00 and for the applicants to file their replying affidavit by 17 December 2021. The first to twelfth respondents filed a Notice to Oppose the application on 17 December 2021. The basis for opposition is that the application is not urgent.
- [3] At the commencement of the hearing, Mr Ntombeni, appearing for the applicants, took issue in terms of the Rule 7(1) Notice pertaining to the lack of authority of Moribe Attorneys to act on behalf of the eleventh respondent, the Municipal Council: Phokwane Municipality which they served on the respondents' legal representatives the morning of the hearing of the application. While Mr Ngandwe, counsel for the respondents, confirmed to only receiving the Notice just before the court sitting, more detail in respect of Moribe Attorneys' *locus standi* are captured in the answering affidavit with supporting documentation and there was no need, according to him, for the matter to be postponed for this reason. According to Mr Ngandwe the answering affidavit was served on 19 December 2021 at 20:53 and the respondents were yet to receive the replying affidavit. Notwithstanding, both counsel indicated their readiness to argue urgency while the applicants sought the relief as outlined in Part A of the Notice of Motion.

[4] The first applicant is Ms Busiswe Patience Mgaguli, Acting Municipal Manager, Phokwane Municipality. The second applicant, Ms Portia Remaketse Selogilwe, is the Speaker, while the third respondent, Mr Tebogo Afrika is the Mayor. The first to tenth respondents as well as the twelfth respondents are Council members and the eleventh respondent is the Municipal Council: Phokwane Municipality.

[5] The following relief is sought by Ms Mgaguli in Part A of a two-pronged application:

- "1. *Dispensing with the forms, service, time limits and such further requirements as may be applicable and prescribed by the Rules of this Honourable Court, condoning the applicants' non-compliance therewith and directing that this matter be heard as one of urgency as contemplated in terms of Rule 6(12) of the Uniform Rules of Court.*
2. *That the first respondent is interdicted and restrained from presenting himself as an acting Speaker of Council and/or acting under such false pretence or giving instructions or directive under such authority within the Municipality or publicly.*
3. *The first and 10th respondents are interdicted and restrained from interfering with the first applicant's lawful discharge of her duties and obligations as an acting Municipal Manager. Alternatively, first and 10th respondents are interdicted and restrained from unlawfully interfering with the first applicant's lawful discharge of her contractual obligations as an acting Municipal Manager who is duly appointed.*
4. *That Mr Mpho Mojaki, is interdicted and restrained from presenting himself as an acting Municipal Manager and/or giving instructions or performing any such obligations or exercising any authority under false pretence of being an appointed acting Municipal Manager by the first and 10th respondents.*
5. *Declare that pending the determination of Part B, the first applicant shall remain as an acting Municipal Manager as duly appointed on 11 October 2021 until expiry of her contract on 14 January 2022, alternatively until her employment contract or administrative support is lawfully terminated or extended by a duly authorised Council.*
6. *That any party which elects to oppose the relief sought be ordered to pay the costs of this application on an attorney and client scale either jointly or severally.*

7. *Granting the applicants further and/or alternative relief."*

- [6] Part B is an application still to be heard seeking to review and set aside the impugned decision of terminating the first applicant's employment as an acting Municipal Manager as unlawful and invalid. A declarator that the Council meeting organised and convened by the first to 10th respondents on 13 December 2021 and the consequent resolutions are invalid and unlawful. A declarator that the first to 10th respondents lacked the authority to terminate the first applicant's employment or to convene any Council meeting and such conduct was unlawful and invalid.

Points *in limine*

- [7] The following points were raised *in limine* by the respondents:

7.1 Lack of jurisdiction

Mr Ngandwe, for the respondents, contended that this court lacked jurisdiction to hear this application, maintaining that the applicants have failed to exhaust all remedies before litigating. Counsel intimated that this matter is not only a labour matter but it is also political. I find the contention that this Court lacks jurisdiction on the basis of the issues being labour-related unsubstantiated solely on the basis of the Constitutional Court pronouncements in *Baloyi v Public Protector and Others*¹ where Theron J remarked:

"[15] ...In *Chirwa*, [*Chirwa v Transnet Limited and Others*]² the majority of this Court stated that 'the jurisdiction of the High

¹ (CCT 03/20) [2020] ZACC 27; 2021 (2) BCLR 101 (CC); [2021] 4 BLLR 325 (CC); (2021) 42 ILJ 961 (CC) (4 December 2021) at para 15

² (CCT 78/06) [2007] ZACC 23; 2008 (4) SA 367 (CC); 2008 (3) BCLR 251 (CC); [2008] 2 BLLR 97 (CC); (2008) 29 ILJ 73 (CC) (28 November 2007)

Court is not ousted simply because a dispute is one that falls within the overall sphere of employment relations”.

The Concourt went further to state:

“[33] In Gcaba, this Court made clear that an assessment of jurisdiction must be based on an applicant’s pleadings, as opposed to the substantive merits of the case. It held:

‘In the event of the Court’s jurisdiction being challenged the applicant’s pleadings are the determining factor. They contain the legal basis of the claim under which the applicant seeks to invoke the court’s competence. While the pleadings – including in motion proceedings, not only the formal terminology of the notice of motion, but also the contents of the supporting affidavits – must be interpreted to establish what the legal basis of the applicant’s claim is, it is not for the court to say that the facts asserted by the applicant would also sustain another claim, cognisable only in another court. If however the pleadings, properly interpreted, establish that the applicant is asserting a claim under the LRA, one that is to be determined exclusively by the Labour Court, the High Court would lack jurisdiction.’”

Regard being had to the pleadings in the notice of motion and the relief sought, it is my view that this matter is not within the exclusive jurisdiction of the Labour Court and that makes the submission that it is a labour matter unsubstantiated.

Invoking Clause 24 (“MS1” to the founding papers) of the Phokwane Local Municipal Council Standing Orders By-Law, Mr Ngandwe submitted that the eleventh respondent is empowered to rescind its own resolution either at an Ordinary Meeting or at an Urgent Special Council Meeting, which has not been done.

Clause 24 stipulates:

“Motion to rescind any resolution passed within the preceding three months

- (1) *When a member proposes a motion in terms of provisions of section 21 which –*
 - (a) *is aimed at the revocation or amendment of a resolution of the Council taken within the preceding three months, or*
 - (b) *has the same purport as a motion which has been negative within the preceding three months such motion shall be placed on the agenda only if the notice of such motions is signed by three members in addition to a member who proposes such motion.*
- (2) *A motion similar to the one which was disposed of in terms of subsection (1), shall not again be proposed by a member before the expiry of six months after such disposal.*
- (3) *Notwithstanding the provisions of subsection (1) and (2), the Council may at any time rescind or amend a resolution in pursuance of a recommendation of the Executive Committee contained in a report in accordance with section 15.*

In countering this submission, Mr Ntombeni argued that the application is not dealing with the resolution in terms of section 15. I do not agree. The appointment of the first applicant was by resolution of Council and nothing stops Council, the eleventh respondent in this instance, to rescind its own resolutions passed within the preceding three months.

In as far as this aspect is concerned, the respondents have illustrated but one of the alternative remedies available to the applicants.

7.2 Separation of powers

The contention raised under this point is that should this Court entertain this matter it will be at risk of acting at variance with the doctrine of separation of powers. This point ties in with the argument that this case is political and must be left to the politicians to sort it out failing which the court will be encroaching in the sphere of other organs of the state.

Majiedt JA, then, made insightful remarks in *Cathay Pacific Airways Ltd & Another v Lin & Another*³ when he said:

"[1] *Judges wield enormous power in their courts. Judges decide, sometimes conclusively, the rights and obligations of the parties before them. They are independent, subject only to the Constitution and the law, which they are constrained to apply impartially and without fear, favour or prejudice. But these powers must be exercised with great responsibility and abundant caution. The overriding consideration in every matter must indubitably be the interests of justice. The blindfolded Lady Justice balancing the scales in her left hand and holding a sword in her right hand personifies the moral force of justice. While all three of these attributes of our system of justice come to the fore in this matter, it is the balancing of the scales of justice that is paramount.*"

The aforementioned quotation, in my view, addresses the role of the Judge and the courts in any matter, political or otherwise and what is of paramount importance, as already stated by the SCA in *Cathay* is to balance the scales of justice.

7.3 Misjoinder

Mr Ngandwe submitted that the Speaker (second applicant) and the Mayor (third applicant) are misjoined in this application because they have no direct and substantial interest in the matter and although they have filed confirmatory affidavits, which are, so the argument went, generic, they do not aver being aggrieved. In countering the submission, Mr Ntombeni argued that the Speaker convened, chaired and adjourned the meeting of Council on 13 December 2021 and the third applicant is the Mayor who is the head of the administration.

³ (260/2016) [2017] ZASCA 35 (29 March 2017)

Both the second and third applicants have filed their confirmatory affidavits supporting the application. Since they neither deny nor admit that they have a substantial interest in the matter, it follows that they will both be bound by the outcome.

Urgency

- [8] The issue of urgency remains alive. There are varying degrees of urgency. The respondents maintain that the application is not urgent. It follows that I have to deal with it elaborately since it may be dispositive of the entire application.
- [9] It is trite that urgent applications are brought in terms of rule 6(12) of the Uniform Rules of Court. I take cue from the guidelines as enunciated in, amongst others, the classical cases like *Die Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk*⁴ and *Luna Meubelvervaardigers (Edms) Bpk v Makin and Another t/a Makin's Furniture Manufacturers*⁵.
- [10] The applicants deal with urgency at para 5 of the founding affidavit, which read:

"5. URGENCY

5.1 *I have been advised that any party which approach this Honourable Court on an urgent basis for a relief, such a party shall be required in order to succeed with an urgent application to clearly set out the reasons and circumstances in the founding affidavit, which the Applicant alleges render the matter urgent and why the Applicant will not be afforded substantial redress at a hearing in due course. Accordingly, I now turn to set out grounds why this matter should be enrolled and be heard on an urgent basis.*

⁴ 1972 (1) SA 773 (A) at para 782A - G

⁵ 1977 (4) SA 135 (W)

- 5.2 *The Applicants only became aware of the termination of the First Applicant's employment contract on 14 December 2021, and the purported appointment of the 12th Respondent as an acting municipal manager, and the masquerading of the First Respondent as an acting speaker of the Council.*
- 5.3 *This application was brought pursuant to the sheer lawlessness contained in the letter dated 13 December 2021, which I have already referred above. In the aforesaid letter the First to Ten Respondents brazenly, and unlawful give wide ranging of instructions while pretending to exercise a power which they don't have in law in perpetuation of falsehood.*
- 5.4 *The First Applicant was unlawful[ly] given an ultimatum to handover her obligation and to vacate her position on [or] before 14 December 2021. It is the Applicants' contention that such conducts were unlawful and constitute undue interference in the administration of the municipality. The First to Ten Respondents appears determine[d] to use unlawful means to prevent a duly appointed acting municipal manager to carry out her duties as required in law. Secondly, the First to Ten Respondents have anointed themselves with powers which are only vested in the Municipal Council and the Speaker, and they are busy giving unlawful instructions under such false pretence and this is negatively impacting on the proper function of the administration.*
- 5.5 *The Applicants are fearful that should anyone act on the unlawful instructions of the First to Ten Respondents, chaos will ensue which will cripple the ability of the municipality from providing service delivery. The Conduct of the First to Third Respondent will render the municipality ungovernable and collapse the capacity of the municipality to provide basic services as entailed in the constitution.*
- 5.6 *The Conduct of the First to Ten Respondent is unlawful, and the meeting which they convened or orchestrate or engineer the creation of the parallel structures was plainly unlawful. It is submitted that there is no persons or entity which is allowed to exercise more powers than it has, or powers which are not confer[red] in law. The conduct of the First to Ten*

Respondents amount from taking the law into their hands and cannot be allowed in a democratic society which is founded on the supremacy of the Rule of law, and supreme constitution.

- 5.7 *The Applicant approaches this Honourable Court on an extremely urgent basis to avert a calamity which may ensue should the unlawful instructions to the First to Ten Respondents be carried. The Applicant is duty bound to comply with the law, and to act in haste manner would be contrary to the duties imposed by the constitution.*
- 5.8 *The letter dated 14 December 2021 creates the impression that there are two persons who are either appointed as acting municipal managers, or that I have been removed from office or my contract is terminated. I submit that this is untenable situation which is false created by the First to Ten Respondents. It is submitted that this creates instability within the municipality and makes it intolerable for me to perform my function or for the speaker to do so. The First to Ten Respondent have no authority to terminate or appoint any person, or to convened Council meetings, and this cannot be allowed unabated.*
- 5.9 *The First to Ten Respondents' conduct directly undermined the authority of the legitimate structures, and the decorum of the Council. Their conduct seems to be aimed at creating a shadow Council to delegitimize the existence of the Speaker and render the administration of the municipality unworkable. It is submitted that this is unlawful, and ought to be curbed on an extremely urgent basis.*
- 5.10 *I have been advised that the question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. Accordingly, I submit that the Applicant would be not substantial redress in due course.*
- 5.11 *The applicant will have no substantial redress in due course and cannot wait for the hearing in the normal Court Roll as the First to Ten Respondents are currently exerting pressure on the Applicants to vacate her position despite the unlawfulness of such*

instructions. Furthermore, the First Applicant would not obtained substantial redress in due course if the application is brought in the ordinary course because her employment contract as an acting Municipal Manager would have expired on 14 January 2022, which she seeks to protect. If the application is not heard on extremely urgent basis, it will be unlikely that it would have been heard before the 14 January 2022.

- 5.12 *The First to Ten Respondents have abused their powers in purporting to terminate my employment contract and contravening the alleged Council meeting which purport to have appointed the First Respondent as acting speaker. It is submitted that the First Ten Respondents lack authority to terminate my employment contract or appoint any person or to convene a council. As a result, I respectfully submit that an abuse of public power is inherently urgent, and the Court is obliged to curb same.*
- 5.13 *The ongoing lawlessness perpetuated by the First to Ten Respondents would diminish the capacity of the Municipality to render service delivery as constitutional mandated, and an impact of same would be far reaching to the communities which desperately depend on the municipality for services. The Applicant would have no substantial redress in due course. The Court is obliged to immediately put an end to the perpetuation of the lawlessness.*
- 5.14 *I also wish to immediately point out that this application is not based on a self-created urgency nor attempts by the Applicant to circumvent the proper functioning of the Court to jump the queue, in fact, far from it, this application constitutes a sincere effort to resolve the matter since they would be no substantial redress in due course.*
- 5.15 *In the premises, it is submitted that it is just and equitable, and in the interests of justice, that this application be heard on an urgent basis.*
- 5.16 *The Applicant submits that there is prospect of success in the declaratory application and it would not be just and equitable for Applicants to be forced to vacate her position which she was duly appointed by Council to facilitated service delivery, otherwise to do*

so will have a devastating impact on the financial being of the Municipality and create instability which will impede on service delivery.

5.17 *I wish to point out that an attempt to have the First to Ten Respondents withdraw their unlawful instructions and desist from such unlawful conduct has dismal failed. The Respondents were served with a letter requesting them to give undertaking however, they have failed to do so. I have attached a copy of a letter marked annexure "FA8"*

5.18 *Under the circumstances, I respectfully submit that a court is obliged to enrol and hear this mater as an urgent application, and the short notice for service is justified by the degree of urgency in this matter, and the continue act of unlawfulness which has placed the municipality at the verge of collapse and instability."*

[11] Essentially, and gleaning from the aforementioned explanation to support the basis for urgency, what the first applicant is seeking is addressing her employment contract as the acting municipal manager and the concern around the unlawfulness of her removal by letter dated 13 December 2021 which effectively denies her the opportunity to complete her term of contract which would end on 14 January 2022.

[12] Rule 6(12)(b) of the Uniform Rules of Court provides:

*"In every affidavit or petition filed in support of any application under paragraph (a) of this sub-rule, the applicant **must set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that the applicant could not be afforded substantial redress at a hearing in due course.**"* (own emphasis) Should I find that the matter urgent, I have the discretion to dispense of the forms and service provided for in the rules.

[13] The onus is on the applicants to illustrate that they will not be afforded substantial redress if the matter is not on an urgent basis and this does not equate to irreparable harm, which is one of the requirements to be met when seeking an interim interdict. See *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*.⁶

[14] One would have hoped that the many admonitions concerning what is required of an applicant in an urgent application would be trite knowledge among practitioners who are entrusted with the preparation to this Court. In *Luna Meubelvervaardigers*⁷ Coetzee J emphasised the following factors, which have been cited with approval in numerous divisions of the courts:

"For the sake of clarity I am going to set forth the important aspects of 'urgency'. In doing so I shall not deal with those ex parte applications which fall under Rule 6(4). Urgency involves mainly the abridgement of times prescribed by the Rules and, secondarily, the departure from the established filing and sitting times of the Court. The following factors must be borne in mind. They are stated thus, in ascending order of urgency:

1. ***The question is whether there must be a departure at all from the times prescribed in Rule 6(5)(b).*** Usually this involves a departure from the time of seven days which must elapse from the date of service of the papers until the stated day for hearing. Once that is so, this requirement may be ignored and the application may be set down for hearing on the first available motion day ***but regard must still be had to the necessity of filing the papers with the Registrar*** by the preceding Thursday so that it can come onto the following week's motion roll which will be prepared by the Motion Court Judge on duty for that week.
2. ***Only if the matter is so urgent that the applicant cannot wait for the next motion day,*** from the point of view of his obligation to file papers by the preceding Thursday, can he consider placing it on the roll for the next Tuesday, without having filed his papers by the previous Thursday.

⁶ [2012] JOL 28244 (GSJ) at para 7

⁷ At 136H – 137F

3. ***Only if the urgency be such that the applicant dare not wait even for the next Tuesday,*** may he set the matter down for hearing on the next Court day at the normal time of 10:00 a.m. or for the same day if the Court has not yet adjourned.
4. ***Once the Court has dealt with the causes for that day and has adjourned,*** only if the applicant cannot possibly wait for the hearing until the next Court day at the normal time that the Court sits, may he set the matter down forthwith for hearing at any reasonably convenient time, in consultation with the Registrar, even if that be at night or during a weekend.

Practitioners should carefully analyse the facts of each case to determine, for purposes of setting the case down for hearing, whether a greater or lesser degree of relaxation of the Rules and of the ordinary practice of the Court is required. The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate therewith. Mere lip service to the requirements of Rule 6(12)(b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down.” (Own emphasis)

[15] In as far as procedural issues are concerned, it must be established whether the applicants have complied with the procedural requirements, that is, whether all the papers were properly indexed and paginated and filed before the date of the hearing, which is the Thursday preceding 20 December 2021. According to their own arrangement, the respondents were served on 15 December 2021 while the Answering Affidavit and the Replying Affidavit were to be served and filed on 17 December 2021. This did not happen. As a result, the Replying Affidavit was not served on the respondents until the hearing commenced.

[16] Not only were the respondents not afforded sufficient time to answer to the allegations in the founding affidavit, file affidavits and to attend court but the papers in this matter were also filed in drips and drabs just as the parties wished including during the hearing. The replying affidavit was handed up and consequently I have not

had opportunity to read it before the application was argued and further it was not served on the respondents.

[17] The relief the applicants seek amount to restoring the *status quo* of the first applicant as the acting Municipal Manager. Unquestionably, her contractual term expires on 14 January 2022. She is urging this Court to restrain and prohibit the twelfth respondent from exercising the functions of the acting Municipal Manager because he was purportedly unlawfully placed in that position. The contention by the respondents is that the first applicant was removed by a properly constituted Council of the majority of 10 out of 19 councillors and in an ordinary council meeting.

[18] Moseneke DCJ sounded this warning in dealing with interim relief pending a review in *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*⁸

"[26] *A court must also be alive to and carefully consider whether the temporary restraining order would unduly trespass upon the sole terrain of other branches of Government even before the final determination of the review grounds. A court must be astute not to stop dead the exercise of executive or legislative power before the exercise has been successfully and finally impugned on review. This approach accords well with the comity the courts owe to other branches of Government, provided they act lawfully. Yet another important consideration is whether in deciding an appeal against an interim order, the appellate court would in effect usurp the role of the review court. Ordinarily the appellate court should avoid anticipating the outcome of the review except perhaps where the review has no prospects of success whatsoever.*"

[19] In *Mogalakwena Local Municipality v The Provincial Executive Council, Limpopo and Others*⁹ the Court held:

⁸ (CCT 38/12) [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) (20 September 2012)

⁹ (2014) JOL 32103 (GP) at paras 63 - 64

"It seems to me that when urgency is an issue the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent. Once such prejudice is established, the other factors come into consideration. These factors include (but are not limited to): Whether the respondents can adequately present their cases in the time available between the notice of the application to them and the actual hearing, other prejudice to the respondent's and administration of justice, the strength of the case made by the applicant and any delay by the applicant in asserting its rights. The last factor is often called, usually by counsel acting for the respondents, self-created urgency."

- [19] The responsibility still lies with the applicants to meet the requirements for urgency. The explanation, if any, by the applicants of their belief that substantial redress in due course would be unattainable has, in my view, not satisfied the requirement to be met.
- [20] In any event, the applicants have to meet the test for interim relief, namely, the well-known requirements for the grant of an interim interdict set out in *Setlogelo v Setlogelo*¹⁰. The test requires that an applicant that claims an interim interdict must establish (a) a *prima facie* right even if it is open to some doubt; (b) a reasonable apprehension of irreparable and imminent harm to the right if an interdict is not granted; (c) the balance of convenience must favour the grant of the interdict and (d) the applicant must have no other remedy. From the submissions made on behalf of the applicants, I am also not persuaded that these requirements have been met.
- [21] I am not convinced that the averments by the first applicant in the founding papers pertaining to termination of her appointment as acting Municipal Manager under the circumstances as she has described them are sufficient to cause this Court to find the matter

¹⁰ 1914 AD 221 at 227

urgent. This Court cannot be seen to treat all matters, where a party is aggrieved by a decision or conduct of another as urgent. Should that be the case, it will create a wrong precedent and open floodgates of unmerited urgent applications based on the slightest complaints instead of pursuing available internal remedies. While each case must be weighed on its own merits, generally, the Courts should not be the first port of call in such instances.

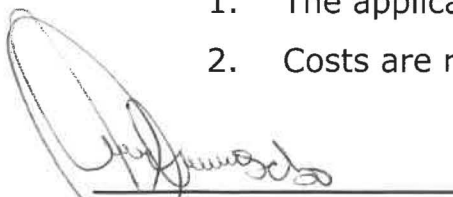
[22] Regard being had to the afore-mentioned reasons, I find that the application is not urgent. I refrain from dealing with the merits of the matter. The applicants' attorneys should approach the Registrar for an expedited review date during term. That is where all the issues will be fully ventilated after a proper exchange of documents between the parties and a properly updated, indexed and paginated court file.

Costs

[23] Counsel for the applicants argued for costs in their favour and added that this matter was not so complex as to justify costs for two counsel. Counsel for the respondents sought costs for both counsel in the event that the respondents were the successful party. It will be more sensible at this stage to reserve the issue of costs for later determination, which is when Part B of the application is heard.

[24] The following order is made:

1. The application is struck off the roll.
2. Costs are reserved for later determination.



M.C. MAMOSEBO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

For the Applicants:
Instructed by:

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