



**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 5374 / 2017

In the matter between:

SANNY NDLOVU AND 09 OTHERS

APPLICANT

and

(1) REPORTABLE : YES / NO
(2) INTERESTED TO THE JUDGES : YES / NO
(3) REVISED
<u>11/08/2017</u> <u>[Signature]</u>
DATE SIGNATURE

THABAZIMBI MUNICIPALITY AND 15 ORTHERS

RESPONDENTS

JUDGMENT

SIKHWARI AJ

[1] On 03 August 2017 I made the following order in this matter:

1. That the application is struck off the roll due to lack of urgency.
2. That no order as to cost.
3. That the reasons for my ruling will be handed down on the 11 August 2017 at 09:00 in the morning.

[2] I hereby hand down my reasons as follows:

[3] On 31 July 2017 the applicants approached this court on urgency for relief in the following terms:

1. That this matter be treated as one of urgency and that for the purposes thereof condonation is granted for non-compliances with the normal Rules of Court with regard to service, form and time-periods as contemplated in Rule 6 (12).
2. That a *Rule Nisi* be issued calling on the Respondents to show cause on 22 August 2017 at 10am or so soon as this matter may be heard why the following order set out in paragraph 3 to 5 should not be made final.
3. That the first respondent and any of its office bearers be interdicted from proceeding with the Special Meeting of the Council of the first respondent scheduled for 10:00 am on the 31st of July 2017.

4. That the fifteenth respondent be ordered with immediate effect to inform the chief electoral officer that Midah Moselane and Mpho Moloko no longer hold office.
5. That the first respondent be ordered to pay the costs of this application on a scale as between attorney and own client, save in the event of any other party opposing this application that such party jointly and severally with the first respondent paying the costs on a scale as between attorney and own client.
6. That prayer 3 operates as an interim interdict with immediate effect.
7. That such further and/or alternative relief as may be appropriate in the circumstances be granted.

[4] This matter came to court for the first time on urgency on Monday the 31 July 2017. It was heard by brother AML Phatudi ADJP who made the following interim order:

1. The matter is postponed to be heard on 03 August 2017.
2. The first respondent and any of its office bearers are interdicted from proceeding with the special meeting of the council of the first respondent scheduled for 10:00 am on the 31st of July 2017 until the current application has been disposed of.
3. The respondents to file their answering affidavit, if any, on or before 16:00 on the 01 August 2017.

4. The applicants to file their replying affidavit, if any, on or before 02 August 2017 at 14:00.

5. Costs are reserved.

[5] Justice Phatudi ADJP did not determine the question of urgency. The respondents were not able to comply with paragraph 3 of the order of Justice AML Phatudi ADJP. They filed their answering affidavits on the 2 August 2017. I condoned this delay due to the urgency of the matter and the fact that the applications themselves were physically served on some of the respondents on the 3 August 2017. The applicants have filed a replying affidavit to the third and thirteenth respondents' answering affidavit.

[6] I further made a ruling to determine urgency first before I may consider the applicants' application for postponement of the application and the point *in limine* in terms of Rule 7(1) challenging the right of the first and fifteenth respondents to oppose the application.

[7] Applicants' counsel submitted that urgency is based on the averments in paragraph 9 of the founding affidavit. Briefly stated, the applicants submitted that on Thursday the 27 July 2017 at 15:56 in the afternoon they received cellphone sms's inviting them to a special meeting of council of the first respondent scheduled for Monday the 31 July 2017 at 10h00 in the morning. There was no agenda attached thereto. However, the agenda for the said special meeting was later emailed to councillors on Friday, the 28 July 2017.

[8] Applicants submitted that the manner in which they were invited to the said meeting is contrary to Rules 5 & 6 of the Rules of Order for Meetings of Council and Its Committees of Thabazimbi Local Municipality, the first respondent. They submitted that the said rules require that a special meeting should be called by the Speaker on at least 48 hours' notice.

[9] The said Rules 5 and 6 of the first respondent provides as follows:

5. SPECIAL CONCIL METTING:

5.1. *The speaker may at any time of own accord and shall, call a special meeting of the council, provided that no such special meeting shall take place unless all councillors were given at least 48 hours' notice prior to the date and time set for the meeting.*

5.2. *In the event where the speaker falls and/or refuses to call a special meeting when requested in accordance with 5.1 above, the Municipal Manager of the Municipality may call the meeting.*

6. SERVICE OF NOTICES

At least 7 days before any ordinary meeting of the council and at least forty eight hours before any special meeting of the council, a notice to attend the meeting, specifying the business proposed to be transacted thereat and signed by the Speaker or the Chief Whip as contemplated in 5.2 above shall

be left or delivered to an accessible distribution point within the Municipality as determined by the council from time to time / sent by electronic mail to an address provided by the councillor as his/her official address/mail address.

[10] Applicants submitted that “48 hours” should be calculated as being the hours of a normal working day in line with the definition of a day in the rules of the first respondent which states that “a day shall mean a day that is not a public holiday, Saturday or Sunday, and for the calculation of days the first day shall be excluded and the last day included”. It was further argued that the invitation and agenda of the meeting were not properly signed by Speaker in accordance with dictations of the aforesaid rules.

[11] Applicant justified their urgency further on the basis that the agenda of the meeting shows that the meeting will discuss the appointment of Municipal Manager whose recruitment did not follow the proper procedures. Counsel outlined, extensively, the regulations and procedures which were violated in the process of shortlisting the candidates for the position of municipal manager and subsequent interview process and recommendation of a particular candidate. On the onset, I indicated to counsel that I am not persuaded that the disagreements about the suitability of a particular candidate or the unhappiness about the recruitment process is a sound ground to justify urgency or refusal to attend such a meeting. I still remain unpersuaded in this regard.

[12] Applicants conceded that prayer 4 of their notice of motion is not urgent. This prayer refers to the third and thirteenth respondents. Counsel had no explanation as to why the said prayer was not brought on ordinary motion court process.

Counsel indicated that the only urgent prayer was prayer 3 of the notice of motion for the interdicting of the special meeting of the first respondent of the 31 July 2017.

[13] Counsel for the first and fifteenth respondents submitted that the application lacks urgency, he indicated the “48 hours” in Rules 5.1 and 6 of the first respondent should be considered to be hours of a normal day irrespective of whether the said day is a holiday Saturday or Sunday. He stated further that if applicants had a problem with the said interpretation, they should have attended a meeting and seek the interpretation of the Rule 10.1 which states that *“the ruling of the Speaker or the Chairperson in the event of a meeting other than a council meeting, with regard to the application and interpretation of the rules as well as other procedural matters not dealt with in the rules shall be final and binding: Provided that the Speaker / Chairperson may be required to provide reasons for ruling”*.

[14] Counsel for the third and thirteenth respondent accepted the concession of the applicant that the case against the said respondents is not urgent. He applied for punitive costs order in view of strong language used by the applicants in referring to the third respondent as a person committing fraud by masquerading as Major or councillor.

[15] It is common cause that the meeting of the 31 July 2017 has not taken place due to the order of this court of the 31 July 2017 as stated above. This issue has now become moot. There is nothing which prevents the first respondent from calling a proper meeting in terms of its rules. However, the interim order made by this

court on the 31 July 2017 remains in force until finalisation of this matter. That order has the effect of preventing the first respondent from holding meetings in line with the agenda which was supposed to be discussed on the 31 July 2017. For that reason, I cannot extend the said order. I will rather prefer to finalize this matter.

[16] In view of the above, I am not going to decide on the correct interpretation or computation of the “48 hours” in the rules of the first respondent as it is not an issue before at this stage. However, I am of the view that the intention of the regulation was to provide an extra-ordinary mechanism through which council of the first respondent can operate and / or convene outside normal working hours or outside normal working days if exigencies of the time require same. Therefore, “an hour” in this context cannot be confined within the hour of a normal working day.

[17] Based on the concession of the applicants, the other prayers in the notice of motion are not urgent. Therefore, I will not express a view on them.

[18] The attack on the third respondent on allegations of a fraudulent conduct should be seen in light of political contestation and the use of the “fraud” word in a simplistic way. Such allegations are no uncommon in a heated political climate like the one in Thabazimbi Local Municipality although the court does not encourage at all. Leaders must learn to use decent language in political engagements notwithstanding the political stakes and tensions. In the final analysis, I do not see the applicants’ utterances in their founding affidavit as justifying a costs order against them, let alone on a punitive scale.

[19] The applicants rushed to court on their understanding of the calculations of the 48 hours within the ambit of a working day. This may be right or wrong; but it does not show *mala fides* on their part. I see no reason to make a costs order against the applicants. The applicants do have redress in due course. The applicants may attend the special council meeting and raise their points there. If not treated in accordance with the rules of the first respondent, the applicants may approach the court on review. There are two matters pending in this court involving same parties or their proxies or about the same dispute in which the applicants can join and contest issues there.

[20] In view of the foregoing, I see no urgency in this application. There was no sound justification for the applicants to drag everyone to court to interdict the meeting of the 31 July 2017. The other prayers were bound to fail as they lack urgency by any stretch of imagination.

[21] In the circumstances, I make the following order:

1. That the application is struck off the roll due to lack of urgency.
2. That the interim order of the 31 July 2017 is discharged.
3. That there is no order as to costs.



MS SIKHWARI, AJ

**Acting Judge of the High Court,
Limpopo Division, Polokwane**

1. Date of hearing : 03 August 2017

2. Date handed down : 11 August 2017