



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

Case No: 7940/2024

In the matter between:

**PHILANI GODFREY MAVUNDLA, MAYOR
UMVOTI MUNICIPAL COUNCIL**

APPLICANT

and

**THE MEC: DEPARTMENT OF CORPORATIVE
GOVERNMENT AND TRADITIONAL AFFAIRS
KWAZULU-NATAL**

FIRST RESPONDENT

**INDEPENDENT ELECTORAL COMMISSION
UMVOTI LOCAL MUNICIPALITY**

SECOND RESPONDENT

THE ACTING MUNICIPAL MANAGER

THIRD RESPONDENT

FORTH RESPONDENT

REASONS FOR ORDER

E BEZUIDENHOUT J:

Introduction

[1] On 19 June 2024, this matter came before me as an urgent opposed application to anticipate a rule nisi issued on 20 May 2024 by R Singh AJ. I also heard another urgent opposed application, under case number 8441/2024, to anticipate a rule nisi issued on 28 May 2024 by Keshav AJ, which involved the same parties, but with the addition of a few other parties. A third urgent application, under case number 8928/2024, was set down for the same day, again involving similar parties but with the

addition of further parties. That matter was, however, adjourned to 22 August 2024 for argument. The applicant in the present matter, Mr Philani Godfrey Mavundla, featured in all three applications. In the last mentioned application, he was however represented by a different attorney and counsel.

[2] In this matter bearing case number 7940/2024, which I heard first, I granted the following order on 19 June 2024:

- ‘1. The order granted by R Singh AJ on 20 May 2024 in case number 7940/24 is hereby rescinded.
2. The Rule Nisi issued on 20 May 2024, returnable on 6 August 2024 is discharged with costs, such costs to be on attorney and client scale.
3. Reasons for the order will be provided in due course.’

[3] In case number 8441/2024, which I heard next, I granted a similar order on 24 June 2024, discharging the rule nisi issued by Keshav AJ on 28 May 2024, returnable on 6 August 2024, with a similar costs order and an indication that reasons will be provided in due course. The reasons for this order will be addressed separately.

[4] These are the reasons for order I made in the present matter on 19 June 2024.

Background

[5] The applicant, the erstwhile mayor of the uMvoti Municipal Council, brought an application on an urgent basis against the MEC for Cooperative Governance and Traditional Affairs as the first respondent, the Independent Electoral Commission as the second respondent, the uMvoti Municipality as the third respondent, and the acting municipal manager of the uMvoti Municipality as the fourth respondent.

[6] The application was issued by the registrar on 20 May 2024 and was set down to be heard on the same day, at 12h00, in motion court. The applicant sought the following relief:

- ‘1. That the application be heard on an urgent basis and that the Rules and forms of normal service be and is hereby dispensed with.
2. That a rule nisi be issued calling upon the Respondents to show cause on the day of 2024 why an order in terms of (1) above should not be made.

- 2.1 That the first respondent be and is hereby interdicted from holding a Special Meeting on 2nd (sic) May 2024;
3. That the first respondent be ordered to pay the costs of this application on an attorney and client scale.
4. Further and /or alternative relief.
5. That para 2.1 above operate as an interim interdict.'

[7] R Singh AJ was the judge sitting in motion court and granted the following order:

'1. A rule nisi be and is hereby issued calling upon the Respondents to show cause on the 6th day of August 2024 at 9h30 why an order should not be granted in the following terms:

1.1 That the First Respondent be and is hereby interdicted from holding a Special Meeting on 21st May 2024 at 10h00.

1.2 That the First Respondent is directed to pay the costs of this application on an attorney and client scale.

2. Paragraph 1.1 above shall operate as an interim interdict.'

[8] The order was granted in the absence of any appearance by any of the respondents. It appears from the court file that service upon the first respondent was effected via email on 20 May 2024 at 11h20 and apparently by hand at 11h57. The email sent to the first respondent simply states in the subject line: 'P V Mavundla/MEC Cogta and others'. The email itself merely tells the receiver that attached to the email is a notice of motion, founding affidavit, annexures and a confirmatory affidavit of M Masondo. There is no reference to a certificate of urgency or to the fact that it is an urgent application, set down to be heard in less than an hour's time and would require urgent attention. The hand delivery of papers took place three minutes before the matter was to be heard in court. The name of a Mr Sipiwe Jiyane appears to have been written on the receipt but with no indication what his designation was.

[9] Service on the second respondent was likewise effected via email at 11h35, once again with no reference to the fact that it is an urgent application set down for 12h00.

[10] Service on the third and fourth respondents was also affected via email at 10h48 but once again with no reference to the fact that it is an urgent application requiring urgent attention.

[11] The fourth respondent, Mr M Swanlow, the acting municipal manager, responded at 13h25, indicating that 'we will abide by the court's decision'.

[12] It is clear that there were serious issues with the manner in which service was effected on the various parties. Apart from having to comply with the provisions of Uniform rule 4 relating to service, or to seek condonation for the failure to do so, a party wishing to apply for a rule nisi that operates as an interdict against any branch of national or provincial government, must comply with section 35 of the General Law Amendment Act 62 of 1955 (the GLAA). In terms section 35 of the GLAA, no court is permitted to issue a rule nisi that operates as an interdict unless notice of the intention to apply for such rule is served on the relevant government functionary at least 72 hours before the hearing. I will return to this issue later.

The applicant's case

[13] From the facts set out by the applicant in his founding affidavit, it appears that he was appointed as the mayor of the uMvoti Municipality on 21 June 2023. On 16 May 2024, the applicant received a letter dated 14 May 2024 from the first respondent, Mrs B N Sithole-Moloi, addressed to Mr M P Khathide, the Deputy-Director: Local Government Branch. In this letter, Mr Khathide is informed that the first respondent received a request for assistance from the majority of councillors of the uMvoti Local Municipality concerning a council meeting. The councillors had apparently submitted motions for the removal of the speaker and the mayor, and requested both the speaker and the acting municipal manager to convene a meeting, but both failed to convene such a council meeting to deal with the motions.

[14] The letter further informed Mr Khathide that the first respondent is obliged to designate a person to convene and preside over the special council meeting of the uMvoti Municipal Council to consider the motions that had been submitted. Mr Khathide was informed that he had accordingly been designated in terms of section 29(1A) of the Local Government: Municipal Structures Act 117 of 1998 (the Act) to convene and preside over the meeting, which was scheduled for Friday, 17 May 2024 at 10h00 in the town hall.

[15] The applicant alleged that the first respondent 'did not comply with the proper time limit' and the meeting was postponed to 21 May 2024. It appears that Mr Khathide issued a notice of the special council meeting on 16 May 2024, which stated that the meeting called for 17 May 2024 had been rescheduled to be held on 21 May 2024 at 10h00.

[16] The applicant sent a letter to Mr Khathide (and not the first respondent) on 16 May 2024, setting out the reasons for his opposition to the meeting. The applicant furthermore alleged in his founding affidavit that on 12, 17 and 22 April 2024, a series of motions were delivered to the speaker, calling upon him to convene a council meeting to deliberate on a motion to remove him (the applicant) as mayor and another motion to remove the speaker.

[17] The applicant alleged that both motions delivered on 12 April 2024 to the speaker were defective as signatures were missing and they were not done in the correct format. On 17 April 2024, new motions were filed with the speaker, which were allegedly again defective. On 22 April 2024, the councillors delivered motions directly to the acting municipal manager to call a special council meeting to deal with the motions to remove the mayor and speaker. None of these alleged defective motions were attached to the application papers.

[18] The applicant thereafter dealt with a number of meetings which had been called for 30 April 2024, 2 May 2024 and 3 May 2024, which were apparently poorly attended because a number of councillors were unavailable to attend as they had to attend to 'party business'. On 3 May 2024, the applicant sent a letter to the first respondent, informing her that the speaker had called three meetings in succession, but that there was no quorum and that the proposer and seconder of the meetings were not present. He concluded the letter by stating:

'I am of the opinion that there would be no need for me to call any special meetings as the Speaker has complied with his duties in terms of the Umvoti Municipality's standing Rules and Orders.'

[19] It is, in my view, clear from what I have related so far that the majority of councillors wanted to move motions to remove the applicant and the speaker from

their positions. Allegations are made by the applicant regarding the councillors' motions and subsequent failure to attend meetings called by the speaker, yet they have not been joined by the applicant to these proceedings, whereas they would clearly have a direct and substantial interest in the relief sought by the applicant.¹

[20] The applicant proceeded to make allegations against the first respondent, accusing her of acting with *mala fides*, 'actuated by malice', and *ultra vires*. He further alleged that she 'fraudulently' stated in her letter of 14 May 2024 to Mr Khathide that the speaker failed to convene a meeting to discuss the motions. The applicant also alleged that the first respondent was informed on 3 May 2024 by the acting municipal manager that the three meetings were aborted due to a failure by councillors to attend. He also alleged that it was obvious from the first respondent's conduct that 'she is intent on achieving her illegal ends, namely to remove the Speaker and Mayor and for this purpose the First Respondent who is an ANC Party member is quite happy to use the IFP to achieve her ends'.

[21] It furthermore appears from the papers that the first respondent wrote to the speaker on 29 April 2024 to enquire about his failure to deal with the removal motions. He replied to that letter on 2 May 2024, and set out the events regarding the alleged failed meetings. The first respondent, in a letter dated 14 May 2024, then informed the speaker that she had received a petition signed by the majority of councillors of the uMvoti Municipality, requesting her to designate a person to convene and chair a meeting of the Municipal Council in terms of section 29(1A) of the Act. She *inter alia* referred to documents and the representations submitted by the speaker and documentation relating to the notice of agenda of the meetings. The agenda did not include the motions as required by the Standing Rules. She also dealt with the acting municipal manager's responses and concluded that the speaker and acting municipal manager had refused to convene a Special Meeting as requested. She accordingly made the decision to designate Mr Khathide to call and chair the special meeting. This decision of the first respondent will, of course, stand until reviewed and set aside,² a

¹ D E van Loggerenberg *Erasmus: Superior Court Practice* (RS 23, 2024) at D1 Rule 10-3 to 10-4. ('*Erasmus*').

² *Oudekraal Estates (Pty) Ltd v City of Cape Town and others* 2004 (6) SA 222 (SCA); *MEC for Health, Eastern Cape and another v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute* [2014] ZACC 6; 2014 (3) SA 481 (CC).

course of action which the applicant makes no mention of. It appears that the first respondent has been engaging with the applicant and the speaker since at least 29 April 2024 regarding this issue.

[22] One aspect of the first respondent's letter of 14 May 2024 is of particular significance in my view. She states in para 6 that 'the Speaker has made an attempt to stop or prevent the majority of Councillors from proceeding with the request by bringing a High Court application on 25 April 2024, however the Court removed the matter from the roll and ordered the Speaker to pay the costs'.

[23] The applicant has failed to disclose anything about this court application in his founding affidavit, which in my view amounts to a material non-disclosure. Bearing in mind that the majority of councillors petitioned the first respondent to call a special meeting and that the speaker, less than a few weeks before, had apparently tried to stop them from proceeding with their request for a meeting, their absence as respondents in these proceedings and the applicant's obvious failure to join them, has become even more pronounced and is, in my view, a fatal omission by the applicant.

[24] The applicant in his founding affidavit referred to certain portions of the first respondent's letter of 14 May 2024 as 'absurd', in particular the allegation that the speaker is frustrating councillors and refusing to call a special meeting, and referred to the so-called attempts that have been made to hold the meetings in the beginning of May 2024. The applicant, however, fails to grasp the significance of what the acting municipal manager stated in his letter of 3 May 2024, as mentioned above, namely that there is no need to call any special meeting as the speaker 'has complied with his duties'. The impression is created that councillors got three chances to attend a special meeting and because the meetings for some reason did not proceed, that is the end of the matter: the speaker has done his job and too bad if the meetings did not proceed.

[25] The applicant furthermore alleged that the first respondent 'directed Mr Khathide to call a meeting, which was initially set for 17 May 2024 and later postponed to 21 May 2024'. The applicant also alleged that in terms of section 29(1A) of the Act, and in the absence or refusal of the municipal manager or the acting municipal

manager to call a meeting as requested, then the first respondent, 'make call and share the meeting'. It is assumed that the applicant was attempting to say that the first respondent may call and chair the meeting.

[26] Section 29(1A) of the Act reads as follows:

'If the speaker or acting speaker refuses to call a meeting of the council as requested in terms of subsection (1), the municipal manager, or in the absence or refusal by the municipal manager, a person designated by the MEC for local government in the province, may call and chair the meeting.'

It is, in my view, clear from the wording of section 29(1A) that the first respondent will designate a person who may call and chair the meeting. The first respondent is clearly not the person who is to call and chair the meeting. From the correspondence attached to the applicant's affidavit, it is clear that the first respondent did in fact designate Mr Khathide to call and chair the meeting. The applicant, however, failed to cite Mr Khathide as a respondent, despite the fact that he issued the notices to call the meeting for 17 May 2024 and thereafter for 21 May 2024.

[27] The applicant further alleged that the first respondent is not permitted to interfere, that she was encroaching on powers she cannot exercise, and that she makes a false allegation that the speaker is to blame. He also alleged that her entire purpose is to convene a meeting on her terms and through her own agenda, which cannot be allowed. The applicant also alleged that the first respondent 'distorts section 29 for an ulterior purpose' and that she is bound by section 105 of the Local Government: Municipal Systems Act 32 of 2000 (which deals with the provincial monitoring of municipalities by the first respondent) and cannot rely on 'Section 109 of the Structures Act'. This is presumably another error and was meant to refer to section 29 of the Act. The applicant also stated that, if anything, the matter should be referred back to the speaker or acting municipal manager for them to reconvene a meeting.

[28] The applicant only deals with the question of urgency, under that heading, in the last paragraph of his founding affidavit. For the sake of expedience, I will simply quote it in full:

'For most of the reasons above this matter is urgent. In addition thereto I wish to add that defective motions are supposed to be withdrawn. This was not done. The First Respondent is

acting ultra vires and not warranted to hold a special meeting based on those motions to remove the Speaker and myself. This will have life threatening consequences on us. We will lose our jobs and livelihood due to procedural irregularities that were not rectified. I am therefore in a position of facing irreparable harm should this unorthodox meeting of the 21st May 2024 be allowed to sit. The balance of convenience favours me as the First Respondent for reasons as stated above cannot hold a special meeting on those motions. I have a *prima facie* right to bring this application and have the meeting stopped. I respectfully submit that there is no other remedy accept approach this Honorable Court for relief.’ (Exact wording used.)

[29] There are no specific reasons mentioned by the applicant, only the various allegations referred to above. The applicant furthermore mentions the requirements of an interim interdict, but only in passing, with no substance and to merely pay lip service to the particular requirements.³ The applicant makes no mention of the requirements of the GLAA and provides no reasons why condonation should be granted for the clear non-compliance with the Uniform Rules of Court. It is trite that condonation is not merely for the asking and that a case must be made out by the applicant.⁴

[30] This last quoted paragraph concluded the applicant’s founding affidavit. Nothing whatsoever is said about the issue of costs, despite the fact that the applicant sought costs on a punitive scale, which order was granted as part of the rule nisi.

The applicant’s second application

[31] Subsequent to the order granted on 20 May 2024 by R Singh AJ, the applicant brought another urgent application on 23 May 2023 under the same case number, before the same judge, this time seeking the following relief:

‘1. That the Application be heard on an urgent basis and that the Rules and forms of normal service be and is hereby dispensed herewith.

2. That a rule *nisi* be and is hereby issued calling upon the Respondents to show cause on the 6 th day of August 2024 why an order in terms of (1) above should not be made.

³ See *Setlogelo v Setlogelo* 1914 AD 221 at 227 and *Breedenkamp and others v Standard Bank of South Africa Ltd and another* 2009 (5) SA 304 (GSJ) paras 42-44 where the requirements for an interim interdict are set out.

⁴ *Grootboom v National Prosecuting Authority and another* [2013] ZACC 37; 2014 (2) SA 68 (CC) para 23.

2.1 That the meeting convened by the First Respondent on Tuesday 21st May 2024 at the Umvoti Municipal offices in contravention of the court order under case number 7940/ 2024P issued by this Honorable Court on the 20th May 2024 be and is hereby declared null and void and is accordingly set aside;

2.2 That the First Respondent is hereby declared in contempt of the court order under case no 7940/24p issued on the 20th May 2024.

2.3 That the First Respondent pay the costs of this application on the attorney and own client scale.

3. Further and/or alternative relief.

4. That para 2.1, 2.2 and 2.3 above operate as an interim interdict.'

[32] The second application was brought about as a result of Mr Khathide having proceeded with the meeting on 21 May 2024 at 10h00. The court order of 20 May 2024 was only served by the sheriff of the high court on Mr Khathide at 11h51. The second application was opposed by the first respondent and fortunately, no relief was granted apart from adjourning the matter to 6 August 2024 and directing the filing of further affidavits by certain dates. I do not intend to address this application in any detail as it should in my view simply fall away in light of the setting aside of the order granted on 20 May 2024.

The application to anticipate

[33] The first respondent filed a notice to anticipate the rule nisi issued on 20 May 2024. Mr Khathide attested to the first respondent's answering affidavit.

[34] Uniform rule 6 makes provision for two possible scenarios where an order was granted in the absence of a person or party, namely, where it was granted without notice or where it was granted in his or her absence in an urgent application.

[35] Uniform rule 6(8) states that 'any person against whom an order is granted *ex parte*⁵ may anticipate the return day upon delivery of not less than twenty-four hours' notice'. Furthermore, '[t]he provisions of this subrule only apply where an order has been granted against a person *ex parte* and where a return day has been fixed. The

⁵ Without notice to anyone.

subrule comes to the aid of a person who has been taken by surprise by an order granted *ex parte*'.⁶

[36] Uniform rule 6(12)(c) states that '[a] person against whom an order was granted in such person's absence in an urgent application may by notice set down the matter for reconsideration of the order'. Uniform rule 6(12) deals with urgent applications. *Erasmus* states that '[t]he absence of the aggrieved party has been termed the "underlying pivot" to which the exercise of the power under the subrule is coupled'.⁷ Its purpose 'is to afford an aggrieved party a mechanism designed to redress imbalances in, and injustices and oppression flowing from an order granted as a matter of urgency in his absence [and] to address the . . . prejudice because of an absence of *audi alteram partem* when the order was made'.⁸

[37] A court dealing with a reconsideration application, 'should do so with the benefit not only of argument on behalf of the party absent during the granting of the original order but also with the benefit of the facts contained in affidavits filed by all the parties'.⁹ *Erasmus* further states that¹⁰

'the court has a wide discretion and the factors which may determine whether an order falls to be reconsidered, include the reasons for the absence, the nature of the order granted and the period during which it has remained operative. Other factors to be taken into consideration will be whether an imbalance, oppression or injustice has resulted, and, if so, the nature and extent thereof, and whether alternative remedies are available [and] the convenience of the parties...'

[38] Mr Khathide confirmed what was already apparent from the applicant's own papers, namely that the first respondent had been given 20 minutes to respond to the application. He emphasised that a vast number of legal documents are processed daily by the first respondent's office and that the legal department had not even seen the application papers by the time the matter was heard. He referred to the GLAA and pointed out that the application papers made no case out as to why the required notice

⁶ *Erasmus* at D1 Rule 6-47.

⁷ *Erasmus* at D1 Rule 6-60.

⁸ *Ibid* at D1 Rule 6-62.

⁹ *Ibid*.

¹⁰ *Ibid* at D1 Rule 6-63.

period of 72 hours was shortened or why condonation should be granted for the lesser notice period. I have already alluded to these issues above.

[39] Mr Khathide stated that had the first respondent been given sufficient time to respond, several issues would have been brought to the court's attention. He indicated that the order obtained by default against the first respondent interdicted her from holding the special council meeting on 21 May 2024. She was, however, never about to hold a meeting, as she had designated him in terms of section 29(1A) of the Act to call and chair the meeting in question. Mr Khathide stated that the first respondent, as a matter of law, could no longer reverse her own decision of 14 May 2024 to designate him to call and chair the meeting. He further referred to the letter dated 16 May 2024, addressed by the applicant to him, in which he raised various issues in an attempt to stop the meeting, and which was attached to the applicant's papers. He stated that the applicant knew very well that he was in charge of the meeting. It follows that the relief sought to stop the meeting should have been directed to him, as the first respondent was *functus officio*.

[40] Mr Khathide alluded to the previous application brought to stop the councillors from calling for a special council meeting aimed at removing the applicant and the speaker. It appears that the matter was brought under case number 6682/2024. He stated that the application was unsuccessful. Despite a diligent search in the registrar's office and enquiries with the previous judge who dealt with the matter, this file cannot be located. As mentioned above, the applicant has failed to disclose these proceedings in his founding affidavit. Mr Khathide stated that it was patently clear that the speaker and the acting municipal manager had no intention or desire to call the meeting or to ensure that it was held. Importantly, in my view, he questions why the applicant would feel aggrieved by the assistance of the first respondent to ensure that the meeting is held.

[41] Mr Khathide also stated that the first respondent's reasons for designating him to call the meeting were set out in her letter of 14 May 2024 (annexure PGM 15 to the founding affidavit) and whether the applicant agrees with those reasons or whether those reasons were reasonable, are for a court reviewing the decision to decide, and should not be decided in an urgent application. It was further stated that the only relief

the applicant may perhaps procedurally have been entitled to by way of an urgent interdict, was against himself, as he was delegated to hold the meeting. The order granted by default was, in law, ineffective and unenforceable against the first respondent. Mr Khathide confirmed that the court order of 20 May 2024 was served on him after the meeting had concluded, and, which as mentioned above, led to the further application on 23 May 2024, where the applicant sought *inter alia* that the meeting be declared null and void. The court did not grant any interim relief.

[42] Mr Khathide pointed out that the applicant, however, brought another application on 28 May 2024, with the speaker as the second applicant, under a new case number, before a different judge. The applicant sought to interdict the first respondent from removing the applicant and the speaker from office pursuant to the decisions taken at the meeting on 21 May 2024. It was alleged that the relief was similar to that sought but not argued on 24 May 2024. The first respondent was given two hours' notice, but despite opposing the relief and asking time to file an answering affidavit, the relief sought was granted on an interim basis. This is the other matter referred to above, where I likewise made an order discharging the rule nisi issued by Keshav AJ on 28 May 2024.

[43] In closing, Mr Khathide stated that the applicant is abusing the process of the court and is thwarting the process in which the majority of councillors have voted to remove him and the speaker from their positions.

The applicant's reply

[44] The applicant raised a point *in limine* in respect of Mr Khathide's authority to depose to the answering affidavit on behalf of the first respondent, despite pointing out that Mr Khathide is the person who 'is instructed by the first respondent at all material times'. Much was made of the first respondent not deposing to a confirmatory affidavit. The applicant also stated that it is not 'court protocol' for Mr Khathide to depose to the affidavit as he is not one of the respondents. This is, in my view, clearly incorrect, as the person who can make an affidavit in support of an application need not be the applicant himself but can be any person who can provide the necessary material to

support the application.¹¹ I cannot see why this would not be the same position for a respondent.¹² The applicant has attached all the relevant correspondence to his founding affidavit, which clearly sets out the position of Mr Khathide and in essence speaks for itself. Had the applicant chosen to review the first respondent's decision to designate Mr Khathide, I would have expected her to attest to an affidavit, but this is not what the applicant did. In my view, there is no merit in this point raised.

[45] The applicant stated further that there was no need to anticipate the return date simply because the order was granted in the first respondent's absence, as the papers had been served before the application was heard. I have referred to the relevant authorities above. Uniform rule 6(12)(c) makes provision for this exact situation. The applicant's apparent ignorance of this provision surprises me, especially as a similar situation arose in *Mavundla v Umvoti Local Municipality and others*,¹³ where Chetty J dealt with an application for reconsideration, and ended up discharging a rule nisi granted on an urgent basis in favour of the same applicant as in the present matter, in the absence of the respondents in that matter.

[46] The applicant alleged that the matter was only heard at 14h00 as the applicant was requested by the judge to re-serve the papers, as the first respondent's employee had not written the time when he had received the papers, which was subsequently done. The applicant alleges that 'even then the first respondent was not keen to appear before the Honourable Court'. This was apparently because she 'had the mindset that nothing must stop the meeting, it must proceed on the defective motions and be finalised and the decisions must be executed'. As mentioned above, the alleged defective motions were not attached to the founding papers and were likewise not attached to the replying affidavit. The correspondence attached to the applicant's affidavit makes it clear, as shown above, that the first respondent designated Mr Khathide to call the meeting after she received a petition from the majority of

¹¹ *Erasmus* at D1 Rule 6-9, where the author deals with who can execute an affidavit.

¹² See *Drift Supersand (Pty) Limited v Mogale City Local Municipality and another* [2017] ZASCA 118; [2017] 4 All SA 624 (SCA) para 31 where the SCA held that: 'This might be an acceptable way of placing non-contentious or formal evidence before court, but where, as here, the evidence of a particular witness is crucial, a court is entitled to expect the actual witness who can depose to the events in question to do so under oath'.

¹³ *Mavundla v Umvoti Local Municipality and others* [2017] ZAKZPHC 35. See in particular what was held at paras 49 and 50.

councillors. The fact that the first respondent's employee had only apparently added the time he received the papers on the page included to show proof of receipt, still does not mean that the papers came to the attention of the first respondent or the legal department, for that matter.

[47] The applicant's response to the allegation of non-compliance with the GLAA is as follows:

'Enough Counsel have come up with the 100 year old General Law Amendment Act but none have succeeded. This Honourable Court cannot be fooled. Urgent applications can be brought and the normal rules and forms of service dispensed with as long as there is no great prejudice to the other party- *Mphelo v Minister of Defence and Another* (4190/ 2014) ZAFSHC 186 (16 October 2014). The First Respondent is grasping at straws. She does not address the issue as to why she acted unlawfully.'

The disrespectful tone aside, the applicant in *Mphelo*¹⁴ actually included a specific paragraph in the notice of motion, seeking condonation for the non-compliance with the provisions of section 35 of the GLAA and addressed the reasons for the non-compliance in the founding papers. The court granted condonation because there was no prejudice to the respondents. In the present matter, the applicant has not even mentioned the provisions of the GLAA, let alone made out a case or asked for condonation for the clear non-compliance.

[48] The remainder of the applicant's reply contains a number of argumentative, insulting, and disrespectful allegations and remarks which have no place in court papers. Despite it being common cause that there was no appearance on behalf of the first respondent, the applicant maintains that no order was granted by default and that the application papers made out a clear case which satisfied the court who granted the order. The applicant asked that the rule nisi be confirmed and that the first respondent be ordered to pay the costs of the application as well as the anticipation on an attorney and own client scale.

[49] Before me at the hearing of the matter, counsel for the first respondent, Mr A De Wet SC, referred to a number of issues, many of which I have already touched on above. He referred to the obvious failure of the applicant to address or comply with the

¹⁴ *Mphelo v Minister of Defence and another* [2014] ZAFSHC 186.

provisions of the GLAA. He submitted that none of the councillors who requested the meeting and whose rights were being affected, had been cited as respondents. It was also submitted that the first respondent may, and had in this instance, designated Mr Khathide to call and chair the meeting and that this was a classic case of the first respondent being *functus officio* as far as the meeting was concerned. It was further submitted that the applicant should be ordered to pay the costs of the application on a punitive scale for the following reasons: his failure to comply with the GLAA, that he in essence obtained relief against persons not cited, that the first respondent was given insufficient time to respond, and that he was silent on the previous application brought against the councillors in which no relief was granted.

[50] Ms Pillay, appearing on behalf of the applicant, submitted that the applicant had a right to approach the court as the first respondent cannot hold a meeting on defective motions. She conceded that no mention was made in the founding papers of the previous application brought against some of the councillors. When asked why the councillors had not been joined, it was simply submitted that the first respondent called the meeting and that the councillors had already been to court in the previous application and were made aware of their defective motions. No proper answer was forthcoming, perhaps because there is no explanation for what is, in my view, a clear case of non-joinder of the councillors. Despite a concession that the defective motions were not attached to the papers, I was urged to consider the effect of allowing the meeting of 21 May 2024 to stand, which was held based on these defective motions. It was submitted that I should not discharge the rule as the applicant had the right to approach the court. If there was, however, a problem with urgency, I should discharge the rule with no order as to costs.

[51] Mr De Wet in reply submitted that the first respondent only needs to be asked to hold a meeting and does not have to be provided with motions. It was submitted that the first respondent explained in the correspondence attached to the applicant's affidavit what prompted her to decide to designate someone to call a meeting, which she did after receiving a request from the councillors for a meeting.

Findings and conclusion

[52] Having considered the papers and the submissions made, I was of the view that the order of 20 May 2024 had to be set aside. I was called upon to reconsider the order of 20 May 2024. I would not have condoned the applicant's non-compliance with the GLAA nor the extreme short service on the first respondent. I am further of the view that the applicant has failed to join the councillors, who clearly had a direct and substantial interest in the relief being sought. The applicant has further failed to join Mr Khathide who, on the applicant's own case, was the person who called the meetings, after being designated to do so in terms of section 29(1A) of the Act. I am furthermore of the view that the applicant's failure to disclose the previous urgent application is material and, on its own, would justify a punitive cost order. The applicant also failed in my view to establish any of the requirements for an interim interdict. For instance, what was stated in respect of the balance of convenience makes no sense, nor does the statement in respect of alleged irreparable harm. Even if what the applicant stated in the last paragraph, quoted above, somehow establishes the requirements, I would not have exercised my discretion in the applicant's favour, especially bearing in mind all the shortcomings mentioned. I have furthermore taken all the points raised on behalf of the first respondent on the issue of costs, as mentioned above, into account in exercising my discretion to award punitive costs.

[52] It is for these reasons that I made the order.

E BEZUIDENHOUT J

Date of hearing: 19 June 2024

Date of reasons: 16 August 2024

The reasons were handed down electronically by circulation to the parties' legal representatives by email and released to SAFLII. The date and time for hand down is deemed to be 12h00 on 16 August 2024.

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