



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case No: 2880/2024

In the matter between:

**INDEPENDENT SOUTH AFRICAN NATIONAL CIVIC
ORGANISATION (ISANCO)**

1st Applicant

BAKOENA STEPHEN RAMOSIE

2nd Applicant

TSHOKOLO STOFFEL SIBEKO

3rd Applicant

and

LENWABO NQONQO

1st Respondent

MATJHABENG LOCAL MUNICIPALITY

2nd Respondent

MOLAHLEHI JACOB RANTSO

3rd Respondent

MANGALI ELISA MAHLAKU

4th Respondent

ELECTORAL COMMISSION OF SOUTH AFRICA

5th Respondent

JUDGMENT BY: MHLAMBI, J

HEARD ON: 19 SEPTEMBER 2024

DELIVERED ON:

30 JANUARY 2025

[1] The applicant seeks an order in the following terms:

1. That the first respondent's actions in refusing to execute the Local Government, Municipal Structures Act, 117 of 1998 concerning ISANCO vacancies at Matjhabeng Local Municipality be declared unlawful and set aside.
2. That the first respondent be directed and ordered to execute the Local Government, Municipal Structures Act, 117 of 1998 by declaring vacancies of two PR Councillors of ISANCO as per ISANCO letter dated 12 March 2024 under section 27(6) of the Local Government, Municipal Structures Act 117 of 1998.
3. Ordering the first respondent to facilitate reinstatement of the second applicant and the third applicant as ISANCO PR Councillors within the Matjhabeng Local Municipality Council of the second respondent with immediate effect.
4. Ordering the first respondent to facilitate back pay remunerations of the second applicant and third applicant as of the last date of payment of their salaries in May 2022 to the date of their reinstatement as first applicant's PR Councillors in the council of the second respondent within seven (7) working days from granting this order.
5. The first and second respondent's/or any other parties opposing this application shall pay costs of the application, jointly and severally, with the first and second respondent; and
6. Granting of further and/or alternative relief, as it may be necessary.

[2] The first applicant is an independent civic organization registered in terms of the Electoral Laws of the Republic of South Africa, with its principal place of business being Old Traffic Building, Corner Jan Hofmeyer Road, and Arrarat, Doorn,

Welkom. The second applicant is the first applicant's president, who served as its secretary general until his election as the president on 09 June 2023. He was a PR Councillor at Matjhabeng Local Municipality from 01 November 2021 until May 2022. The third applicant is the first applicant's Free State Provincial Chairperson, who was a PR Councillor at the Matjhabeng Local Municipality with effect from 01 November 2021 to May 2022.

- [3] The first respondent is the second respondent's Municipal Manager at its principal place of business at 319 Stateway, Welkom Free State. The third and fourth respondents were PR Councillors, with the second respondent. The fifth respondent is the MEC of the Free State Department of Cogta, and the sixth respondent is the Electoral Commissioner of South Africa as defined in section 3(1) of the Electoral Commission Act 56 of 1996.

- [4] On 26 January 2024, the third and fourth respondents received from the office of the first applicant's president, notices confirming their expulsion as members of the first applicant in which they were instructed to submit their letters of resignation to the Council Speaker, Municipal Manager, and the party Secretary General's office, resigning as the first applicant's PR Councillors and vacating their seats in the Matjhabeng Municipality within seven (7) working days from the date of receipt of the notices. A letter dated 12 March 2024 was dispatched from the same office to the first respondent, informing him of the decision to remove and withdraw the third and fourth respondents as the first applicant's PR Councillors with the second respondent. The second and third applicants were to be reinstated to occupy the two vacated seats. (more of this later).

- [5] A letter dated 22 March 2024 was sent to the applicants demanding immediate changes of the council's party public representative and that the first respondent should communicate the same to the fifth respondent. When the applicants failed to respond, the respondents threatened legal action as per their letter of 10 April 2024.

- [6] On 07 April 2022, the Council Speaker had to convene a special council meeting to debate the motion. However, the speaker called off the meeting due to certain developments that concerned the first applicant's removal of the second and third

applicants and the first applicant's internal disputes serving before the courts. On 21 June 2022, the applicants communicated their dissatisfaction to the respondents regarding the removal of the first applicant's representatives from the second respondent, and the matter was challenged in the Free State High Court.

- [7] The first and second applicants opposed the motion. As their answering affidavit was filed late, the respondents applied for the condonation of its late filing. In the interests of justice, the applicants did not oppose the application. I am satisfied that the delay period was short and that good cause was shown for the fact that the relevant papers were not filed on time. The application for condonation is granted.
- [8] The respondents opposed the application on the basis that:
1. The first and second applicants lacked legal standing to represent the third applicant. The notice of motion stated that "the above-named applicant" intended to apply to the court for the relief set out in the notice of motion and did not indicate whether such relief was applied for by the first applicant (ISANCO), the second applicant, or the third applicant. In terms of prayers 3 and 4 of the revised notice of motion, relief was sought regarding the reinstatement of the second applicant, Mr Ramotsie, as well as the third applicant, Mr Sibeko, as ISANCO PR Councillors within the Municipal Council and that the first respondent be ordered to facilitate their back pay remunerations from the last date of the payment of their salaries in May 2022 to the date of their reinstatement.
- [9] According to the applicants, the remuneration of the second and third applicants related to their rights, which could not be enforced by the first applicant, ISANCO, on their behalf. The first applicant's constitution did not empower ISANCO or any of its structures to institute such legal proceedings on behalf of any of its members. It is also not the first and second applicants' cases that they were duly authorized to depose to the founding affidavits in support of the relief on behalf of the third applicant or that they were authorized to institute these proceedings on his behalf. The third applicant did not depose to a confirmatory affidavit or any
-

other affidavit to support the relief sought on his behalf. The first and second applicants were own-interest litigants and did not act in any representative capacity on behalf of the third applicant.

- [10] They contended that the relief regarding prayers 3 and 4 of the revised notice of motion was inconsistent with the other relief. The court was requested in prayers 1 and 2 of the revised notice of motion, to direct the Municipal Manager to declare vacancies of the two ISANCO councillors' seats in the Municipal Council according to section 27(1)(c) of the Municipal Structures Act. This section provides that the Municipal Manager must notify the Chief Electoral Officer within 14 days after the councillor has ceased to hold office. In writing, the Chief Electoral Officer must declare the persons whose names are at the top of the first applicant's party list to be appointed to fill the vacancies.
- [11] The first applicant can, therefore, not dictate who should be appointed other than in terms of the provisions of Schedule 1. The relief prayed for in prayers 3 and 4 of the revised notice of motion was inconsistent with the provisions of the Municipal Structures Act, and the applicants failed to make out a case for granting such relief.
- [12] The filling of vacancies in the Municipal Council is regulated by Item 18 of the Local Government: Municipal Structures Act No. 117 of 1998 (the Act), which provides as follows:
- "(1) (a) If a councillor elected from a party list ceases to hold office, the chief electoral officer must, subject to item 20, declare in writing the person whose name is at the top of the applicable party list to be elected in the vacancy.*
- (b) Whenever a councillor referred to in paragraph (a) ceases to hold office, the municipal manager concerned must within 14 days after the councillor has ceased to hold office, inform the chief electoral officer accordingly.*
- (c) If the municipal manager of the municipality concerned does not inform the chief electoral officer of the vacancy referred to in*

paragraph (a), the MEC for local government in the province, must inform the chief electoral officer of the vacancy within 14 days where the municipal manager does not.

(2) Where a party list has become exhausted, item 17, adjusted as may contextually be necessary, applies to the supplementation of the list, and if the party fails to supplement its list, or if the party has ceased to exist, the vacancy must remain unfilled.”

- [13] Section 27(1)(c) of the Act provides that a councillor vacates office during a term of office if that councillor was elected from a party list referred to in Schedule 1 or 2 and ceases to be a member of the relevant party.
- [14] It is, therefore, crystal clear that the first two prayers in the notice of motion cannot be granted as they do not comply with the provisions of the Act. In terms of the Act, the first respondent can only inform the chief electoral officer, who, in turn, must, subject to Item 20 of Schedule 1, declare in writing the person at the top of the applicable party's list to be elected in the vacancy.
- [15] In its founding affidavit, the applicants briefly stated that the second respondent wrongfully declared the ISANCO PR councillors vacancy on 11 May 2022 to protect the removal of the Executive Mayor at the expense of the removal of ISANCO councillors as those councillors were initiators who filed a motion of no confidence against the second respondent's Executive Mayor. In response, the respondents stated in the answering affidavit that on 22 March 2022 the first applicant informed the second respondent's municipal manager, Ms Zingisa Tindleni, that the membership of both the second and the third applicants was terminated and that the third and fourth respondents should replace them as council members.
- [16] On 09 May 2022, the municipal manager informed the IEC of the two vacancies and requested the IEC to facilitate the process for filling the vacant posts. On 17 May 2022 the IEC confirmed that the vacancies should be filled by the third and fourth respondents. The third and fourth respondents were elected as councils and filled the ISANCO vacancies.

- [17] It would appear that there is a tussle for the leadership of the first applicant which led to litigation in the High Courts and has as yet not been resolved. The respondents referred in their answering affidavit to the latest court case relating to the dispute that arose surrounding the status of the second applicant to represent the first applicant. The application served before Naidoo, J on 20 June 2023 in the Free State High Court when she dismissed the application and ordered, amongst, that the second applicant should be directed to personally pay the costs of the applicant, who happens to be the first applicant in this application.
- [18] They further pointed out that the second and third applicants do not seek relief declaring their removal as councillors to have been unlawful and void, in the absence of which they are not entitled to be reinstated. Such relief would be founded on the principle of legality or the review of an administrative decision. The applicants unreasonable delayed the institution of such an application for more than two (2) years after their removal as councillors. In the absence of an order for reinstatement, the issue of the facilitation of back pay remunerations falls by the way side. It is evident that the relief sought in prayers 3 and 4 lack merit and should be rejected.
- [19] It is trite that the successful party is entitled to the costs.
- [20] I therefore make the following order.

Order:

1. Condonation is granted for the late filling of the first and second respondents' answering affidavit.
2. The application is dismissed with costs to be paid by the applicants, jointly and severally, the one paying the other to be absolved which shall include counsel fees on scale B.



MHLAMBI, J

On behalf of the Applicant: Mr AJ Kleingeld

Instructed by: Kleingeld Attorneys Inc
42 Totius Street
Langenhoven Park
Bloemfontein

On behalf of the Defendant: Adv. CD Pienaar

Instructed by: Honey Attorneys
Northridge Mall
Kenneth Kaunda Road
Bloemfontein