



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

Not reportable

Case no: 2225/2024

In the matter between:

**SOUTH AFRICAN MUNICIPAL
WORKERS UNION
ARTHUR ITUMELENG MOGAECHO**

**FIRST APPLICANT
SECOND APPLICANT**

AND

MASILONYANA LOCAL MUNICIPALITY

FIRST RESPONDENT

**THE MAYOR OF MASILONYANA
LOCAL MUNICIPALITY:
DIMAKATSO ELIZABETH MODISE**

SECOND RESPONDENT

MICHELLE SELLO

THIRD RESPONDENT

**THE SPEAKER OF THE COUNCIL
OF MASILONYANA LOCAL MUNICIPALITY:
STEVEN MAKATA**

FOURTH RESPONDENT

**MUNICIPAL MANAGER OF
MASILONYANA LOCAL
MUNICIPALITY: MOJALEFA MATLOLE**

FIFTH RESPONDENT

Neutral citation: *South African Municipal Workers Union and Another v Masilonyana Local Municipality and Others* (2225/2024) [2025] ZAFSHC 223 (25 July 2025)

Coram: Reinders J

Heard: 5 December 2024

Delivered: 25 July 2025

Summary: Mandatory and declaratory relief – tabling of report of financial misconduct report – Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2014 (the Financial Misconduct Regulations) and the Local Government: Disciplinary Regulations for Senior Managers, 2010 (the Disciplinary Regulations).

ORDER

- 1 The fourth respondent is ordered to convene a special meeting of the council of the first respondent (the special meeting) within seven (7) days from service of this order.
- 2 The second respondent, *alternatively*, the fifth respondent, is ordered to table the report of allegations of misconduct against the third respondent (annexed to the founding papers as annexure 'FA 1') at the special meeting for consideration of the report.
- 3 Costs to be paid by the first respondent on scale B.

JUDGMENT

Reinders J

[1] The first applicant is the South African Municipal Workers Union (SAMWU), a registered trade union, whilst the second applicant is a former employee of the first respondent, Masilonyana Local Municipality (Masilonyana Municipality). The second, fourth and fifth respondents are respectively the mayor, the speaker of the council and the municipal manager of the Masilonyana Municipality. The third respondent is Ms M Sello, who acted in the position of municipal manager of the Masiloyana Municipality during January 2023.

[2] The applicants pray for certain mandatory and declaratory relief against the second, alternatively the fifth, respondent. In essence, the applicants seek this court to compel the second respondent to have a report of allegations of financial misconduct against the third respondent, tabled before the municipal council. The applicants place reliance on the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2014 (the Financial Misconduct Regulations) and the Local Government: Disciplinary Regulations for Senior Managers, 2010 (the Disciplinary Regulations). The notice of motion reads:

- '1. That the Second Respondent, *alternatively*, the Fifth Respondent, be ordered to table the report of allegations of misconduct against the Third Respondent (annexed to the founding papers as annexure "FA 1")("the allegations of misconduct") before the Municipal Council in terms of regulation 3(2) of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings of 2014 ("**Financial Misconduct Regulations**") and/or regulation 5 of the Local Government: Disciplinary Regulations for Senior Managers, 2010 ("**the Disciplinary Regulations**").
2. That the Second Respondent's refusal to table the allegations of misconduct before the Municipal Council be declared to be unlawful.
3. That the Second Respondent and/or the Fifth Respondent be ordered to pay the costs of this application, *alternatively*, that any party opposing the relief sought be ordered to pay the costs of this application.'

[3] The application is opposed by the respondents on a number of grounds, including an attack, *in limine*, on the *locus standi* of the second applicant. According to the respondents, its main opposition to the merits of the application pertain to the relief claimed by the applicants, to be of academic importance only, since the outcome of the reports on alleged financial misconduct have already served before the council.

[4] Regulation 5 of the Local Government: Disciplinary Regulations for Senior Managers, 2010 (the Disciplinary Regulations) provides:

- '(1) Any allegation of misconduct against a senior manager must be brought to the attention of the municipal council.
- (2) An allegation referred to in sub-regulation (1) must be tabled by the mayor or the municipal manager, as the case may be, before the municipal council not later than seven [7] days after the receipt thereof, failing which the mayor may request the Speaker to convene a special council meeting within seven [7] days to consider the said report.
- (3) If the municipal council is satisfied that –
- (a) there is a reasonable cause to believe that an act of misconduct has been committed by the senior manager, the municipal council must within seven [7] days appoint an independent investigator to investigate the allegations of misconduct; and
- (b) there is no evidence to support the allegation[s] of misconduct against the senior manager; the municipal council must within seven [7] days dismiss the allegation[s] of misconduct.
- (4) The investigator appointed in terms of sub-regulation (3)(a) must, within a period of thirty [30] days of his or her appointment, submit a report with recommendations to the mayor or municipal manager, as the case may be.
- (5) The report contemplated in sub-regulation (4) must be tabled before the municipal council in the manner and within the timeframe as set out in sub-regulation (2).

(6) After having considered the report referred to in sub-regulation (4), the municipal council must by way of a resolution institute disciplinary proceedings against the senior manager.

(7) The resolution in sub-regulation (6) must-

(a) include a determination as to whether the alleged misconduct is of a serious or a less serious nature;

(b) authorise the mayor, in the case of municipal manager, or municipal manager, in the case of the manager, directly accountable to the municipal manager to-

(i) appoint

(aa) an independent and external presiding officer; and

(bb) an officer to lead evidence; and

(ii) sign the letters of appointment.'

4.1 Regulation 3 of the Financial Misconduct Regulations states:

'(1) Any person must report an allegation of financial misconduct against-

(a) the accounting officer, a senior manager or the chief financial officer of a municipality, to the municipal council of the municipality, the provincial treasury and the national treasury;

(b) an official of a municipality other than its accounting officer, to that accounting officer;

(c) the accounting officer of a municipal entity, to the chairperson of the board of directors, the mayor and the accounting officer of the entity's parent municipality;

(d) an official of a municipal entity other than its accounting officer, to that accounting officer.

(2) The mayor, the accounting officer or chairperson of the board of directors, as the case may be, must table an allegation referred to in sub-regulation (1) before the municipal council or, board of directors in the case of municipal entities, not later than seven days after receipt thereof or at the next sitting of the council or the board of directors.'

[5] In the founding papers of the applicants, the second applicant (deposing to the affidavit) avers that during January 2023 he was employed by the Municipality as the Manager: Legal Services. He compiled a report, dated 12 January 2023. It was addressed to the mayor, the speaker and the councilors. It contained three complaints in respect of allegations of financial misconduct against Ms Sello. He requested the report to be tabled before the Council in terms of regulation 5 of the Disciplinary Regulations for Senior Managers. The report prompted a response from the mayor's office which second applicant states he received on 8 February 2023. The response itself bears no date. It is not, for

present purposes, necessary to summarize the contents of the letter in response, save to mention the letter stating, amongst others, that the allegations in the report are not substantiated with supporting details and that the mayor's office therefore concluded it to be baseless, speculative and unsubstantiated. The acting mayor concluded that the allegations by the second applicant did not meet the 'requirements' to be tabled in council.

[6] In opposing papers, the respondents contended that the applicants did not have the necessary *locus standi* to bring the application. The respondents suggested that, in particular, the second applicant (who was not resident in the municipality at the time of deposing to the founding affidavit and no longer in the employ of the municipality) conducts vindictive and oppressive litigation against them. Moreover, the municipality in any event is investigating the aforementioned alleged misconduct complained of by the second applicant. To that end the deponent, the present municipal manager, attaches documentation and preliminary reports to substantiate his evidence. According to the respondents the second applicant acts out of self-interest.

[7] In reply to the respondents' submissions that the applicants lack *locus standi*, the second applicant denies that he does not have an interest in the application, alleging that the second applicant was, at least at the time when he submitted the report, in the employ of the first respondent. In turn, in substantiation of SAMWU's *locus standi*, it is submitted it is a trade union and local community as envisaged in s 5 of the Municipal Systems Act¹ read with s 1 thereof.

¹ Section 5 reads:

'Members of the local community have the right—

- (a) through mechanisms and in accordance with processes and procedures provided for in terms of this Act or other applicable legislation to—
 - (i) contribute to the decision-making processes of the municipality; and
 - (ii) submit written or oral recommendations, representations and complaints -!0 to the municipal council or to another political structure or a political office bearer or the administration of the municipality;
- (a) to prompt responses to their written or oral communications, including complaints, to the municipal council or to another political structure or a political office bearer or the administration of the municipality;
- (b) to be informed of decisions of the municipal council, or another political structure or any political office bearer of the municipality, affecting their rights, property and reasonable expectations;
- (c) to regular disclosure of the state of affairs of the municipality including its finances;
- (d) to demand that the proceedings of the municipal council and those of its committees must be—
 - (i) open to the public, subject to section 20;
 - (ii) conducted impartially and without prejudice; and
 - (iii) untainted by personal self-interest; . . .'

[8] Relying on *Giant Concerts CC v Rinaldo Investments (Pty) Ltd*² counsel for the applicants argued that the first applicant likewise lacks *locus standi* as it failed to indicate how and to what extent they are being prejudiced by the respondents' actions. One of the complaints of financial misconduct, is the fifth respondent's failure to pay over to the employees' pension fund contributions to the fund. In my view prejudice in this regard, is self-evident.

[9] The submission by the applicants that the mayor had no discretion to decide under what circumstances and/or on what conditions allegations of misconduct must be tabled before council, is in my view correct. The mayor in this respect has no decision-making function. On the contrary, the regulations make it clear that such an allegation must be tabled before the municipal council. The municipal council will consider the veracity of the complaint and in terms of the regulations decide how the matter should be dealt with, if at all. In *Mashakane Media v Mbombela*³ the court considered the provisions of regulation 3(2) and held:

'In my view, the provisions of Regulation 3(2) are peremptory in nature. There is no decision to make on the part of the Mayor and/or the Municipal manager in respect of tabling the allegations to the council, they are simply obliged by the regulations, to table such allegations.'⁴

[10] What the affidavit on behalf of the five respondents does not address, is why there was no compliance at the time to table the report by second applicant. The papers in this respect are really silent. On the contrary, the respondents contend that the second applicant conducted vindictive and oppressive litigation against them or some of them. It is complained that the conduct of the applicants led thereto that the respondents were obliged to enter into expensive litigation. The second applicant, in the replying affidavit, made a tender that on receipt of confirmation that the complaint was tabled before council, the application would be reconsidered and possibly even withdrawn.

[11] As I understand the regulation, a duty is placed on a person to report an allegation of financial misconduct. It does not mean that there must be conclusive proof thereof. For that reason, when the report is before the council, the council will within the legal framework,

² *Giant Concerts CC v Rinaldo Investments (Pty) Ltd* [2012] ZACC 28.

³ *Masakhane Media (Pty) Ltd v City of Mbombela Local Municipality and Others* [2023] ZAMPMBHC 19.

⁴ *Ibid* para 20.

make a decision. The purpose hereof is obviously to ensure transparency and clean governance.

[12] There is therefore no good excuse by the respondents why the report dated 12 January 2023 was not tabled before the council, as the regulations prescribe. As mentioned, attached to the respondents' answering affidavit is documentation suggesting the investigation of the complaints and, in the affidavit itself, an exposition is given under oath of some of the findings. Counsel for the applicants, however, argued that at least one of these complaints was not properly dealt with. Counsel for the respondents responsibly did not attempt to convince me otherwise. This being the position, the relief claimed would not yield a result that is merely abstract, academical or hypothetical as was cautioned by the apex court in *JT Publishing Pty Ltd v Minister of Safety and Security*⁵ relied upon by the respondents.

[13] I reiterate that there is no discretion not to comply with the provisions of the mentioned regulations. The applicant did what he should have done, and I cannot conclude on the papers that there was no merit in his allegations as made in the report and that they were made *mala fide*. On the contrary, it is the respondents' view that these allegations are properly being investigated and that there are explanations for the irregular conduct of the then acting municipal manager.

[14] Counsel for both parties submitted that costs awarded should be on Scale B. The applicants requested that such order be made against the second and fourth respondents. In my discretion, I am not prepared to make such an order and deem the order that I intend on making, to be appropriate.

[15] Accordingly, I make the following order:

1 The fourth respondent is ordered to convene a special meeting of the council (the special meeting) of the first respondent within seven (7) days from service of this order.

⁵ *JT Publishing Pty Ltd and Another v Minister of Safety and Security and Others* [1996] ZACC 23; 1997 (3) SA 514 (CC) at 525A-F.

2 The second respondent, *alternatively*, the fifth respondent, is ordered to table the report of allegations of misconduct against the third respondent (annexed to the founding papers as annexure 'FA 1') at the special meeting for consideration of the report.

3 Costs to be paid by the First Respondent on scale B.


REINDERS J

Appearances

For the applicants:

T du Preez

Instructed by:

Kramer Weihman Inc, Bloemfontein

For the respondents:

JS Rautenbach

Instructed by:

Phatshoane Henney Attorneys, Bloemfontein.