

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

Not reportable

Case no: 2264/2024

In the application for leave to appeal of

NGWATHE LOCAL MUNICIPALITY

MUNICIPAL MANAGER: NGWATHE LOCAL MUNICIPALITY

MUNICIPAL COUNCIL: NTWATHE LOCAL MUNICIPALITY

and

AFRIFORUM NPC

FEZILE DABI DISTRICT MUNICIPALITY

PREMIER, FREE STATE PROVINCE

EXECUTIVE COUNCIL, FREE STATE PROVINCE

MEC FOR COOPERATIVE GOVERNANCE AND

TRADITIONAL AFFAIRS, FREE STATE PROVINCE

MEC FOR FINANCE, FREE STATE PROVINCE

MEC FOR ECONOMIC, SMALL BUSINESS DEVELOPMENT,

TOURISM AND ENVIRONMENTAL AFFAIRS,

FREE STATE PROVINCE

THE NATIONAL COUNCIL OF PROVINCES

MINISTER OF COOPERATIVE GOVERNANCE AND

TRADITIONAL AFFAIRS

MINISTER OF FINANCE

MINISTER OF WATER AND SANITATION

MINISTER OF FORESTRY, FISHERIES AND

First Applicant

Second Applicant

Third Applicant

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

Sixth Respondent

Seventh Respondent

Eighth Respondent

Ninth Respondent

Tenth Respondent

Eleventh Respondent

THE ENVIRONMENT

Twelfth Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Thirteenth Respondent

Neutral citation: *Ngwathe Local Municipality and Others v Afriforum NPC and Others* (2264/2024) [2025] ZAFSHC 251 (19 August 2025)

Coram: Daffue J

Heard: 12 August 2025

Delivered: This application for leave to appeal was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 19 August 2025.

Summary: Applications for leave to appeal by local municipality, its municipal manager and municipal council against declaratory order, mandatory provincial intervention ordered in terms of s 139(4) and (5) of the Constitution and structural interdict – no reasonable prospects of success and no compelling reasons – applications dismissed.

ORDER

1 The application for leave to appeal by the Ngwathe Local Municipality and the Municipal Council: Ngwathe Local Municipality, cited as first and third applicants herein, is dismissed with costs, inclusive of the costs of first respondent's senior and junior counsel on scale C and B respectively.

2 The application for leave to appeal by the Municipal Manager: Ngwathe Local Municipality, cited as second applicant herein, is dismissed with costs, inclusive of the costs of first respondent's senior and junior counsel on scale C and B respectively.

JUDGMENT

Daffue J

[1] Two separate applications for leave to appeal served before me. In the one application, the Ngwathe Local Municipality and the Municipal Council: Ngwathe Local Municipality were represented by Adv WR Mokhare SC, instructed by Rampai Attorneys. In the other application, *ie* that of the Municipal Manager: Ngwathe Local Municipality, Adv MC Louw appeared on behalf of Peyper Attorneys. In the main application Mr Louw appeared for all the applicants, cited as first, second and third respondents respectively, having been instructed by Peyper Attorneys. The applicant in the main application, Afriforum NPC, is cited as first respondent in the applications for leave appeal. It is still represented by Advv FJ Erasmus SC and P Eilers, instructed by Hurter Spies Attorneys.

[2] No application for leave to appeal has been brought by any of the other respondents in the main application and in particular the parties referred to in that application as the provincial respondents. The same applies to the national respondents. In light of the failure by these parties, and in particular the provincial respondents, to file applications for leave to appeal, no other deduction can be made than that they accepted their fate, acquiesced in the judgment and are prepared to act in accordance with the

orders granted. Their acquiescence is not surprising, bearing in mind the stern words expressed by the Honourable Deputy Minister of Cooperative Governance and Traditional Affairs quoted in paragraphs 1 and 2 of the main judgment.

[3] The test for leave to appeal has recently been restated in *Ramakatsa and Others v African National Congress and Another*.¹ I quote from the judgment:

'[8] . . . The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.'

[4] Mr Mokhare's submissions focused on the requirements of s 139(1) of the Constitution which deals with the situation when a provincial executive may intervene in the affairs of a municipality. This subsection is immaterial as the provincial executive refused and/or failed to intervene in Ngwathe's affairs. Mr Mokhare also relied on ss 138 to 147 of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA). Section 139(1) of the MFMA clearly states that if 'a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments' the provincial executive must act as provided for in the section. It clearly failed to do so as indicated in the main judgment.

[5] Mr Mokhare submitted that the facts in *Premier, Gauteng and Others v Democratic Alliance and Others*² (*Premier Gauteng v DA*) and those in *Premier of the Western Cape and Others v Overberg District Municipality and Others*³ (*Overberg*) were no different from the facts *in casu* and that I failed to follow these judgments. His submission is incorrect. In *Premier Gauteng v DA*, the province dissolved the Tshwane council due to a political deadlock 'caused by the walkouts of the ANC and EFF councillors', but the Constitutional Court held that 'the Municipal Council was both willing and, in certain circumstances, able

¹ *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA (31 March 2021)

² *Premier, Gauteng and Others v Democratic Alliance and Others* [2021] ZACC 34; 2021 (12) BCLR 1406 (CC); 2022 (1) SA 16 (CC).

³ *Premier of the Western Cape and Others v Overberg District Municipality and Others* [2011] ZASCA 23; 2011 (4) SA 441 (SCA).

to fulfil its obligations, but was prevented from doing so by factors beyond its control.’ It specifically referred to ‘the recalcitrant councillors.’ Consequently, the Court found that the dissolution of the Tshwane council was too drastic and inappropriate given the availability of less restrictive means to break the deadlock which could have been resorted to.⁴

[6] The Constitutional Court, referring to the power of the provincial government to intervene in terms of s 139(1) of the Constitution on the one hand and a municipality’s autonomy on the other, stated the following in *Premier, Gauteng v DA*:⁵

‘Importantly, “[i]t needs to be stressed that the potential prejudice and urgency lie not in the harm suffered by the Municipality or the municipal councilors, but in the continued disruption of basic essential services to the people and communities the Municipality is supposed to serve.’

Later in the judgment the Court emphasized that ‘the Legislature sought to provide protection to the citizenry both against local government’s failure to fulfil executive obligations, and provincial government’s interference in local government (and the citizenry’s choice of local government).’⁶

[7] The *Overberg* case is completely distinguishable on the facts. In *Overberg* the provincial executive at least tried to follow a proactive approach. In that case the provincial executive relied on an incorrect legal opinion to the effect that it had no alternative than to dissolve the council in light of its failure to approve an annual budget. The Supreme Court of Appeal held that it ‘failed to consider less drastic means, . . . to meet the desired end of an approved budget.’⁷ Instead of following a proactive approach *in casu*, the provincial respondents merely stood by, witnessing the collapse of Ngwathe without intervening on a discretionary basis.

[8] Mr Louw, whilst echoing Mr Mokhare’s submissions, also relied on s 139(1) of the Constitution and the fact that intervention and the council’s dissolution was the last resort which was inapplicable in this case. According to him, this court over-emphasised Ngwathe’s past failures, instead of accepting that it had taken various steps and adopted various programs in order to improve. Mr Louw’s key argument was that even if it was

⁴ Footnote 2 paras 127-131.

⁵ *Ibid* para 51.

⁶ *Ibid* para 89.

⁷ Footnote 3 para 37.

accepted that intrusive intervention was appropriate, it ought not to have included the dissolution of Ngwathe's council as an appropriate measure. I am satisfied that there is no sound rational bases to grant leave to appeal. Another court would not reasonably come to a conclusion that I was wrong in respect of Ngwathe's financial crisis, its managerial woes and its inability to provide proper basic services to its community.

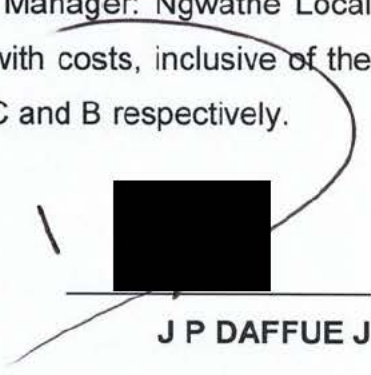
[9] The applicants' submission that leave to appeal should be granted as there are compelling reasons for such an order is without substance. I refer to *Premier, Gauteng v DA, Overberg* as well *Mafube Business Forum and Another v Mafube Local Municipality and Others*,⁸ *Unemployed People's Movement v Eastern Cape Premier and Others*⁹ and *Democratic Alliance v Premier of the Free State Province and Others*¹⁰.

[10] I have considered the submissions of counsel but have not been convinced on proper grounds that the applicants have prospects of success on appeal. I am satisfied that there is no sound, rational basis to arrive at such a conclusion.

[11] Therefore, the following orders are issued.

1 The application for leave to appeal by the Ngwathe Local Municipality and the Municipal Council: Ngwathe Local Municipality, cited as first and third applicants herein, is dismissed with costs, inclusive of the costs of first respondent's senior and junior counsel on scale C and B respectively.

2 The application for leave to appeal by the Municipal Manager: Ngwathe Local Municipality, cited as second applicant herein, is dismissed with costs, inclusive of the costs of first respondent's senior and junior counsel on scale C and B respectively.


J P DAFFUE J

⁸ *Mafube Business Forum and Another v Mafube Local Municipality and Others* [2022] ZAFSHC 86 (28 April 2022).

⁹ *Unemployed People's Movement v Eastern Cape Premier and Others* [2020] ZAECGHC 1; 2020 (5) BCLR 573 (ECG); 2020 (3) SA 562 (ECG).

¹⁰ *Democratic Alliance v Premier of the Free State Province and Others* [2024] ZAFSHC 338 (22 October 2024).

Appearances

For the First and Third Applicants:

Instructed by:

WR Mokhare SC

Rampai Attorneys

Bloemfontein

For the Second Applicant:

Instructed by:

MC Louw

Peyper Attorneys

Bloemfontein

For the First Respondent:

Instructed by:

FJ Erasmus SC and P Eilers

Hurter Spies Inc

c/o Hendré Conradie Inc

Bloemfontein

For the Second to Thirteen Respondents:

No Appearance