



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

Case no: **11987/2024P**

In the matter between:

SIBUSISO RAYMOND NKOSI

APPLICANT

and

**KWAZULU-NATAL, MEMBER OF THE
EXECUTIVE COUNCIL: COOPERATIVE
GOVERNANCE AND TRADITIONAL AFFAIRS
MUNICIPAL MANAGER: ZULULAND
DISTRICT MUNICIPALITY
SPEAKER: ZULULAND DISTRICT
MUNICIPALITY
COUNCIL OF THE ZULULAND DISTRICT
MUNICIPALITY
NATIONAL FREEDOM PARTY
IVAN ROWAN BARNES
INDEPENDENT ELECTORAL COMMISSION**

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT

FIFTH RESPONDENT

SIXTH RESPONDENT

SEVENTH RESPONDENT

ORDER

The following order is issued:

The application is dismissed with costs on scale C.

JUDGMENT

Ainslie, AJ

Introduction

[1] The applicant is an erstwhile councillor, representing the National Freedom Party, the fifth respondent, in the Zululand District Municipality. He is challenging his removal as councillor as well as his termination as a member of the political party which lead to his removal. I shall refer to the fifth respondent as the NFP. The sixth respondent is the incumbent president of the NFP, Mr Ivan Rowan Barnes.

[2] The first respondent is the KwaZulu-Natal Member of the Executive Council (MEC): Cooperative Governance and Traditional Affairs responsible, statutorily, for declaring a vacancy on a municipal council within the province. The second and third respondents are respectively the municipal manager and speaker of the fourth respondent, the Zululand District Municipality. In removing the applicant as councillor, the first to fourth respondents acted in response to the information provided to them from the NFP, stating that the applicant's membership had been terminated. They have not opposed the application.

[3] The seventh respondent is the Independent Electoral Commission, referred to herein as the IEC. The IEC indicated, in correspondence to the applicant, that it acted in accordance with its statutory obligations. It advised the applicant that the correct course of action was to challenge his expulsion and seek an order that his membership be reinstated. The IEC's expressed view was that insofar as the applicant does not allege any duplicitous wrongdoing on its part, it will not oppose the application. It has not opposed the application.

[4] The applicant sought wide ranging relief against the respondents. He is seeking to have his termination as a member of the NFP set aside by way of a

declaration that he remains a member. He is simultaneously, and not subject to the reinstatement of his party membership, seeking his reappointment as a proportional representative councillor ('councillor') as against the first to fourth and seventh respondents.

Background

[5] The applicant points out that the NFP has over the years been 'fraught with leadership instability and turmoil', resulting in much litigation, some still pending. He outlines details of an Elective National Conference ('ENC'), in which elections took place in December 2023, including the appointment of the sixth respondent in his current position. Objections were raised and, according to the applicant, the election results were suspended pending an investigation. An investigation was held, and the subsequent report, dated 30 January 2024, found irregularities and determined that an ENC was to be reconvened. Apparently, according to the applicant, an ENC was never reconvened, and the sixth respondent continues to hold office, wrongly he submits, as president.

[6] However, this aspect, the applicant makes abundantly clear, is the subject of separate litigation, whether it had reached finality was disputed during argument. Be that as it may, this court is not seized with the issue of the legitimacy of the sixth respondent's role as president of the NFP. This court must assume legitimacy, although raised, until such time it is held otherwise. At that point, should it occur, the validity of the decisions made by the sixth respondent will, as a matter of course, be reviewed and/or are reviewable.

[7] The applicant, furthermore, in his replying affidavit, denies that the sixth respondent is authorised to depose to the answering affidavit. However, no application was made in terms of rule 7 of the Uniform Rules, as is required if he wishes to oppose the authority, as set out clearly in *ANC Umvoti Council Caucus and Others v Umvoti Municipality*.¹ Nothing turns on this allegation in the absence thereof.

¹ *ANC Umvoti Council Caucus and Others v Umvoti Municipality* 2010 (3) SA 31 (KZP).

[8] While the applicant sought relief on a number of heads, the crux of the matter is that the sixth respondent, Mr Barnes, the current incumbent president of the NFP, set in motion the removal of the applicant as councillor, after his party membership was terminated. According to the applicant, his membership of the NFP is not terminated, alternatively it was wrongfully terminated.

[9] As for the wide ranging relief as against the other respondents, counsel for the applicant rightly conceded, at the outset, that the relief sought for reappointment as councillor flows from his membership of the NFP. It was conceded that should the applicant be reinstated as a member of the NFP, his reappointment as councillor would flow from his position within the NFP.

[10] Thus, unless and until the applicant is reinstated as a member of the NFP, the relief as sought against the first to fourth and seventh respondents is unnecessary, even incompetent. It was evident that the first, second, third, fourth and seventh respondents were acting in accordance with their lawful statutory obligations and responsibilities in accordance with the information and instructions received from the NFP as regards the applicant's membership. They therefore acted in accordance with and in terms of items 18² and 19³ of Schedule 1 of the Local Government: Municipal Structures Act 117 of 1998.

[11] This court therefore has to decide only whether the applicant 'remains a member of the fifth respondent'.⁴ The issue is whether the applicant's membership was lawfully terminated. If it was lawfully terminated, then the application must fail. If, on the other hand, his membership was not lawfully terminated, and it is reviewable -

² Item 18(1)(b) of Schedule 1 of the Local Government: Municipal Structures Act 117 of 1998 provides: '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.'

³ The relevant part of item 19 of the Municipal Structures Act provides:

'Causes of vacancies on lists

A person who is a candidate on a party list ceases to be a candidate and a vacancy arises in the list when the party withdraws the person's name by written notice to the chief electoral officer, or when that person-

...

(e) ceases to be a member of the party for which that person was listed as a party candidate'.

⁴ The first part of prayer 2 of the notice of motion.

should the decision to terminate his membership be referred back to the NFP or should the applicant's membership be reinstated by this court?

[12] The applicant states his membership of the NFP was summarily terminated by the sixth respondent based on a false claim that he joined another political party. He claims that his right to be heard was violated, and that he was, incorrectly, not afforded an opportunity to challenge the allegations made against him. The applicant assigns unlawful, vicious and vindictive motives to the sixth respondent.

[13] I should mention also that the applicant states that the National Executive Committee ('NEC') had no power to terminate the membership of any member of the party, nor, he avers, was any such resolution ever taken. He submits that his termination was simply a unilateral decision of the sixth respondent and is unlawful. This is denied by the sixth respondent, and on behalf of the NFP.

[14] The applicant admits in his founding papers that, on or about 26 March 2024, he received the letter of termination from the sixth respondent ('the termination letter'). However, in his replying affidavit, this is recanted as an error, saying that he only became aware of his termination through social media in early May 2024. The exact date is unclear, cited in one instance as 3 or 4 May 2024 and at another as 6 May 2024.

[15] What is clear is that he had knowledge of the termination letter before launching this application, in August 2024. He therefore was aware of the NFP's stated grounds for his termination. This is relevant to the dispute of fact that arises in this application, which, as will be seen, impacts the decision of this court. The timeline, between the applicant's awareness of the termination letter and the launching of this application, too is relevant.

[16] The termination letter states that at a special NEC meeting, of the same date, the applicant's membership was terminated immediately. The basis for the termination is indicated in the first paragraph of the letter as 'your defection to another political party effectively terminated your membership.' It then states that it is terminated in terms of clause 3.6.1 to 3.6.1.4 of the NFP constitution. This includes

clause 3.6.1.1, which provides that membership terminates when a member submits a written resignation. This provision is obviously not applicable, as it is common cause that the applicant did not submit a written resignation.

[17] The issue is then whether the applicant had paid his membership fees in terms of clause 3.6.1.2, whether he had become a member of another party in terms of clause 3.6.1.4, declared an intention to resign or intention to join another party in terms of clause 3.6.1.5, or encouraged or canvassed other members to resign or join another party in terms of clause 3.6.1.6.

[18] On becoming aware of the termination letter, the applicant's erstwhile attorneys purportedly addressed correspondence to the NFP on 6 May 2024. Interestingly, this letter⁵ states that the applicant had instructed the attorneys' offices to write the letter to enquire as to the 'veracity' of the termination letter. If true, it states, the applicant intended to take the necessary legal steps as he had never been made aware of 'any complaint, charge or had disciplinary action levelled against him'.

[19] He sets out in his letter that this termination would be a contravention of, and in violation of, natural law and specifically the *audi alteram partem* rule. The letter denies that the applicant ever defected to another political party, states that he remains a card-carrying member of the NFP and remains a councillor in terms of the court order of 22 April 2024, to which I revert below. Should the letter be authentic, it says, the NFP is instructed to issue a withdrawal within 24 hours, failing which the applicant will approach the court.

[20] I pause to mention that there is no evidence, in the founding papers, of this letter having been e-mailed to, or received by, the NFP. In fact, the sixth respondent states in the answering affidavit, that it was only on receipt of the application papers that he first became aware that the termination was disputed. There is no further correspondence to the NFP subsequent to 6 May 2024 before the launch of the application.

⁵ Annexed to annexure SRN11 to the founding affidavit, Vol 2, page 109, marked SR1.

[21] There was however correspondence addressed to the other respondents demanding reinstatement as counsellor, on the basis that a) he was alive, b) had not resigned, c) was still a card-carrying member of the NFP and d) to his knowledge, had not been expelled from the party. It is odd that he should say that he has not been expelled, when the termination letter was already within his knowledge, in which his membership had been terminated. It is true that he was not expelled, but he was aware that his membership had been terminated. The applicant refers in particular to the court order, alluded to above, which he attaches to his correspondence. He specifically states that 'should anyone seek to undermine the Court Order . . . we will be forced to approach the court to seek a contempt of court order'.

[22] However, his reliance on the court order appears to be misplaced.

(a) The relevant court order, granted on 19 April 2024, by Notyesi AJ, addresses the municipality's conduct in preventing the applicant from participating in the proceedings of council and its committees. It refers to the IEC declaration of 4 April 2022, presumably stating that the applicant is the proportional representative of the NFP.

(b) It is apparent that when the order was granted, the applicant was a member of the NFP, and he was the NFP's proportional representative. He was therefore entitled to attend and participate in council proceedings.

(c) That changed, as from 26 April 2024, when the NFP advised those parties that the applicant's membership of the NFP was terminated.

(d) I pause to mention that the relief sought by the applicant herein, quite correctly, does not include any contempt related relief.

[23] What is evident, is that by no later than 6 May 2024, the applicant was aware that the NFP was of the view that the applicant was no longer a card-carrying member of the NFP and that he had defected to another political party, with all that a defection entailed. His reinstatement or, more correctly, the setting aside of the decision to terminate his membership was, in essence, predicated on the above.

The legal framework

[24] It is trite that a political party is a voluntary association governed by its constitution⁶ in line with the principles of legality. *Ramakatsa and Others v Magashule and Others*⁷ held:

'I do not think that the Constitution could have contemplated political parties could act unlawfully. On a broad purposive construction, I would hold that the right to participate in the activities of a political party confers on every political party the duty to act lawfully and in accordance with its own constitution. This means that our Constitution gives every member of every political party the right to exact compliance with the constitution of a political party by the leadership of that party.'

[25] It is then to the NFP constitution that the court must refer. Interpretation of documents, including a voluntary association's constitution, has seen 'significant developments' with the state of the law now accepted as set out in *Natal Joint Municipal Pension Fund v Endumeni Municipality*⁸ 'being the process of attributing meaning to the words used... having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole.' Where more than one meaning can be inferred, each possibility must be weighed, in an objective process, wherein a sensible meaning is to be preferred.⁹ With the above in mind, I turn to examine the NFP constitution.

[26] Under clause 3, titled 'Membership', it states that a member may not be a member of another political party¹⁰ and has the right to submit proposals or statements through the appropriate structures and the duty to abide by the NFP constitution, pay their annual membership fees and renew their membership annually.

⁶ *Crouwcamp v Civic Independent and Others* [2014] ZASCA 98 and *De Lille v Democratic Alliance and Others* [2018] ZAWCHC 57.

⁷ *Ramakatsa and Others v Magashule and Others* [2012] ZACC 31; 2013 (2) BCLR 202 (CC) para 16.

⁸ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13, 2012 (4) SA 593 (SCA).

⁹ *Natal Joint Municipal Pension Fund* above at para 18.

¹⁰ Clause 3.1.4 of the NFP constitution.

[27] The NFP constitution, at clause 3.6, provides for the termination¹¹ of membership of the party. Membership terminates on a written resignation; failure to pay the prescribed annual membership fees on the due date save for an indulgence of three months during which time membership will be suspended; when a member is expelled after a disciplinary hearing and all subsequent appeals are exhausted; or, lastly, when a member becomes a member of another party, publicly declares his resignation or intention to resign or intention to join another party, or canvasses or encourages members to join another party.

[28] Not unexpectedly, the NFP constitution also provides that when membership terminates for a member who is a public representative, they also lose their office with immediate effect.¹²

[29] As was argued at the hearing of the matter, the NFP constitution differentiates between termination and expulsion. Membership is terminated after expulsion following a disciplinary hearing, and any appeals. That flows logically if disciplinary proceedings can result in expulsion. Clause 15 which details the Disciplinary Procedure, sets out the powers of the presiding officers of the disciplinary proceedings, which includes the power to impose a sanction of expulsion.¹³

[30] Consideration then must be given to the other scenarios in clause 3.6. It seems logical that on resignation membership is immediately terminated, without

¹¹ Clause 3.6 'Termination' states:

'3.6.1 Membership of the Party shall end when:-

3.6.1.1 a member submits a written resignation to the Party;

3.6.1.2 a member fails to pay the prescribed annual membership fees on due date, save for the provision of section 3.5.1.1 above;

3.6.1.3 a member is expelled from the Party after the finalization of a disciplinary hearing and all subsequent appeals, if applicable;

3.6.1.4 a member becomes a member of another party,

3.6.1.5 a member publicly declares his or her resignation or intention to resign from the Party or intention to join another Party;

3.6.1.6 a member canvasses or encourages other members to resign from the Party or to join another Party;

3.6.1.7 a member is convicted, and such conviction is confirmed after an appeal if applicable, of a serious criminal offence as described in Schedules 1, 2, 5, 6 and 7 of the Criminal Procedure Act 51/1977, in an open court of law.'

¹² Clause 3.6.2 'A member, who ceases to be a member of the Party, loses all privileges of Party membership and, if that member is a public representative, he or she also loses the office which he or she occupies by virtue of his or her membership, with immediate effect.'

¹³ Clause 15.3.8(h)(v) of the NFP constitution.

more. It seems sensible too that if a member has failed to pay membership fees, after the expiry of the three months' period of grace in which the membership is suspended, that membership is automatically terminated without more. What then about joining another party or canvassing for another party? It seems to me that clause 3.6 of the NFP constitution, envisages automatic termination without more, as was submitted by counsel for the NFP and sixth respondent. It would be extraordinary to have a member of the party defected to or canvassing for another party, without the ability to immediately terminate the member's membership. The question requires no value judgement; it is purely factual. If true, then automatic termination should follow.

[31] But that is not where the enquiry ends. Clause 16 of the NFP constitution, 'Conduct and sanctions', was not relied on in argument. It, at first, admonishes party members that they are 'expected to comply in every aspect with the Standard of Conduct', but then it continues to list the 'kind of behaviour that shall result in an investigation' and for which a disciplinary tribunal shall be instituted. And there, listed at subclauses (h), (i) and (p) are the same or similar provisions that are listed in sections 3.6.1.4 to 3.6.1.6. Most relevant is (p) which states quite simply 'joining another political party'. It is noteworthy that the list does not include the failure to pay membership fees.

[32] The provisions then as to the immediate consequences of joining another political party are ambiguous, possibly incompatible, between subclause 3.6 and subclause 16.1. However, the provisions of subclause 3.6 is set out under the heading termination while subclause 16.1 details the standard of conduct. As a consequence, it is unclear: Is a disciplinary tribunal to be held or is membership summarily terminated?

[33] The answer, it appears to me, lies in subclause 5.2.6.2(i) of the NFP constitution which sets out the functions and powers of the NEC. It provides, in particular, that the NEC has the power to dismiss any member, in consultation with its president 'after due consideration of the facts presented to it' subject only to

ratification by the National Working Committee (NWC).¹⁴ Thus, where the facts are known, and presented to the NEC, and it has consulted with its president, the NEC is indeed empowered to terminate membership of a member. Thereafter the decision is to be ratified by the NWC.

[34] With reference to the NFP constitution at subclause 5.1.2, the NWC must convene at least four times every year and more often when necessary. It has the functions and power to ratify change or rescind any decision taken by any of the structures or office bearers of the NFP.¹⁵ It is evident, that since the date of termination, there have been subsequent NWC meetings.

[35] I pause to mention that under clause 5.4, the president shall have the power to take decisions on behalf of the party when the NEC is unable to do so.¹⁶

Analysis of the facts

[36] The answering affidavit sets out that the applicant actively campaigned for the Umkhonto Wesizwe Party (MK party), attempted to dissuade NFP members from supporting the NFP and attempting to canvass such members for the MK party. It does not reveal how this fact came to the attention of the NEC and / or the sixth respondent. It states simply that this was known as at the date of the meeting deciding on the termination.

[37] The applicant denies that he ever defected or supported or canvassed for another party. In argument this court was invited to accept the applicant's version on the basis that the answering affidavit provided only a bald denial. I cannot agree.

¹⁴ '5.2.6 The National Executive Committee will have the Functions and Powers to:-
 5.2.6.1 Operate as the highest organ of the NFP between General National Conferences with the authority to lead the organization, subject to the provisions of this Constitution;
 5.2.6.2 Generally to:-
 ...

i) In consultation with the President, be able to suspend, demote, dismiss or restore any member or Party structure after due consideration of the facts presented to it, subject to ratification by the NWC'

¹⁵ Clause 5.1.3.3 of the NFP constitution.

¹⁶ Clause 5.4.1.1(e)(iii) of the NFP constitution

[38] The applicant was well aware that a dispute of fact was likely to arise before launching this application, but chose to litigate by way of application. He also chose which issues to raise and what relief was sought. He furthermore chose to litigate rather than to exhaust internal remedies available to him.

[39] As stated above, the letter which was, according to him, sent to the NFP, on 6 May 2024 enquires as to the veracity of the termination letter and demands withdrawal within 24 hours. He does not ask for reasons, or an opportunity to challenge any evidence which may have been presented. Admittedly, the termination letter refers also to his conduct prior to and during his deployment as a councillor, which would undoubtedly require a disciplinary hearing. That does not detract from the main thrust, that his membership was terminated as the applicant defected to another political party.

[40] Although the applicant quotes from clause 5.2.6.2 (i) of the NFP Constitution, which provides that the NEC has the powers to dismiss any member,¹⁷ he denies that the NEC has such powers. He does not mention the provision that provides the president with powers to make decisions for the party when the NEC is unable to do so. Nor does he provide any evidence of having made submissions, as members have the right to do according to the NFP constitution,¹⁸ or addressed any further correspondence to the NFP, or request minutes of the meeting or any of the other internal remedies available to him. He took no further steps from 6 May 2024.

[41] The termination letter makes it evident that the case the applicant has to prove is that he is a card-carrying member of the NFP, that his fees are paid and were paid when due, in accordance with the provisions of the NFP's constitution and that he had never canvassed for or become a member of another political party. Granted that the last would be difficult to prove, it is not an impossibility. Some confirmatory affidavits from those who were canvassing with the applicant for the NFP or those who were with him, alternatively closely related to him, who could deny

¹⁷ See para 33 above.

¹⁸ Clause 3.2 of the NFP constitution. Including: '3.2.1.2 to receive and impart information on all aspects of NFP policy and activities, to offer constructive criticism of any member, official, policy programme or activity of the NFP within its structures'.

any such allegation, would have stood him in good stead. He failed to provide any such evidence.

[42] In the answering affidavit the NFP named the party the applicant defected to, and more fully, albeit still with some brevity,¹⁹ addressed the reasons for the termination, including that membership fees were not paid. It states that not only was the termination letter sent, but WhatsApp, emails and telephone calls were made to the applicant. The applicant never responded. He denies there were any attempts, he denies also that he blocked cell phone communications. These early attempts were made, the sixth respondent states, with the intention of holding disciplinary proceedings. In the absence of any response, the issue was then raised in the NEC meeting.

[43] Yet, in the circumstances where the applicant was already well aware of the reasons given for his termination on launching the application, very little attention was given to the facts relating thereto, while much attention was given to the consequences of that termination in terms of the first to fourth respondents and the seventh respondent. It is not surprising that the answering affidavit dealt so perfunctorily with the response to the allegations.

[44] Moreover, nowhere in the founding affidavit does the applicant state that his membership fees were paid and up to date. It is raised for the first time in the replying affidavit. In fact, he does not refer to that aspect of the termination letter at all.²⁰ *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd and Others*²¹ provides that, although the rule is that all the necessary allegations an applicant wants to rely on must appear in the founding affidavit, a distinction can be drawn between what is known when the founding affidavit was prepared and new material that comes to light only in the answering affidavit.²²

¹⁹ The answering affidavit addresses the termination in 4 paragraphs (paras 8 (8.1, 8.2, 8.5), 27, 38 and 39) which is the response to the applicant's similar number of sentences relating to the facts set out in the termination letter.

²⁰ It is only in the replying affidavit that he states that his membership fees have always been paid, but the records are kept at the branch.

²¹ *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd and Others* [2012] ZASCA 49; 2013 (2) SA 204 (SCA).

²² *Finishing Touch 163 (Pty) Ltd* above para 26.

[45] The payment of membership fees was in issue from the outset; it was not new material. Yet even if, giving the applicant the benefit of the any doubt, in his replying affidavit, the applicant provides no proof of payment of his membership fees, not a bank statement, electronic funds transfer proof of payment or even a cash receipt, just an assertion that his fees were paid.

[46] It is unfortunate that little relevant evidence to support the allegations was provided. In oral argument, this court was requested to find that the answering affidavit contained only unproven allegations, which the NFP and sixth respondent had a duty to provide evidence to support. Absent such evidence the allegations cannot stand and that the applicant's allegations should be preferred. I cannot agree. More so in light of the applicant likewise failing to provide evidence to support his allegations.

[47] The essence of the applicant's case is that his termination was unlawful in that the decision was substantively and procedurally irrational as contemplated by the principle of legality, and the violation of the applicant's right to be heard. But such a right, despite its crucial importance, is not inviolable²³. The application of the *audi alteram partem* principle must be keep procedure strictly apart from the merits and 'has a twofold effect. It satisfies the individual's desire to be heard before he is adversely affected; and it provides an opportunity for the repository of the power to acquire information which may be pertinent to the just and proper exercise of the power.'²⁴

[48] It is evident that the NFP constitution is ambiguous in terms of the procedure to be followed for a defection to, or support of, another party. It is not clear as to whether a disciplinary tribunal is strictly required or whether the member's joining of another political party automatically terminates membership of the NFP. It may be that this is intentional and depends on the circumstances.

²³ *South African Roads Board v Johannesburg City Council* 1991 (4) SA 1 (A) at 13C-E.

²⁴ *Psychological Society of South Africa v Qwelane and Others* [2016] ZACC 48; 2017 (8) BCLR 1039 (CC) paras 34-35.

[49] As the NFP constitution provides for termination either through a disciplinary procedure, giving effect to the *audi alteram partem* principle, or automatic termination, the facts for each scenario must be considered.

(a) Two aspects come to mind, the first, if a member is openly canvassing for another party, it would appear to me that it is tantamount to a resignation, even without submitting a resignation letter. The very act says 'I have left that party'. Should such a member be required to submit a resignation letter first? They should, but the NFP constitution obviously makes provision for circumstances when a resignation letter is not submitted.

(b) The second aspect, how many messages, telephone calls and correspondence, from the party leadership is required? How long should the party wait to see if the member is going to respond? What would a reasonable time be in the circumstances? Surely, after a reasonable time, and reasonable attempts, the conclusion can be drawn that the termination has been effected by the member, and the party is simply giving effect to the member's own decision by recording his membership as terminated.

[50] In either scenario, a member should have recourse to gainsay any evidence. To not have an opportunity to gainsay evidence, if the member wanted such opportunity, would be ultra vires and would leave the NFP vulnerable to the very tactics the applicant complains have been employed here. It would indeed violate the principle of legality, as put forward by the applicant, if a challenge was brought within a reasonable time and the lack of response to the party's communication is explainable.

[51] And perhaps the applicant simply jumped the gun in bringing this application, and that opportunity could have arisen merely in making submissions to the NEC or to the NWC before it ratified the decision of the NEC. There is nothing in the NFP constitution which would have prevented him from doing so, had he chosen that path. Considering also the time between the applicant having knowledge of his termination and the launching of this application, there was indeed sufficient time to engage with the party, if it was simply mistaken. In light of the finding below, this recourse may still be available to the applicant.

[52] Unlike the ambiguity referred to above, the NFP constitution is unambiguous on the consequences of membership fees not being paid. Save for the proviso that the member is at first suspended for three months after the fees become due, if not paid, membership will be terminated. It is evident from the termination letter, and in the answering affidavit, that the non-payment of fees was a further and distinct reason for termination of the applicant's membership. Even if the applicant may have been successful on the issue of his defection, he cannot succeed on the issue of non-payment of fees.

[53] Counsel for the applicant referred this court to *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*²⁵ where the following was held:

'A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed.'

[54] Despite the applicant's knowledge that the termination letter includes unpaid fees, it was not mentioned in the founding affidavit. It was raised in the answering affidavit, and the applicant disputed this fact in his reply. The onus therefore fell on the applicant to seriously and unambiguously address this dispute. His replying affidavit has failed to do so.

Conclusion

[55] In light of *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*²⁶ the court is required to consider whether the facts admitted by the respondent together with the facts alleged by the respondent justify an order as sought. I do not find that an order is justified.

²⁵ *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* [2008] ZASCA 6; 2008 (3) SA 371 (SCA) para 13.

²⁶ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634H-I: 'It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order.'

[56] In consequence, I cannot find that the applicant has made out a case for the relief sought. Should the applicant have simply failed to make out a proper case, and his membership fees were indeed paid, he has recourse to the NEC and the NWC, to reconsider or appeal the decision on the basis of an administrative error. But on the papers, I cannot find that to be the case.

[57] If successful in that regard, the same recourse is available to him regards his defection and/or support of another party. I am satisfied that in light of the sixth respondent's submissions regarding his attempts to contact the applicant, bolstered by this judgment, the applicant would be afforded the opportunity to gainsay any evidence against him. But the evidence before this court is insufficient to grant the relief sought in that regard.

[58] There is no reason why costs should not follow the result. The application as instituted, on the face of it, appeared to be sufficiently complex as to require the employment of senior counsel. The scale of costs award on scale C is therefore justified.

Order

[59] Based on the above, the following order is granted:

The application is dismissed with costs on scale C.

AINSLIE AJ

Heard: 25 August 2025

Delivered: 17 September 2025

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