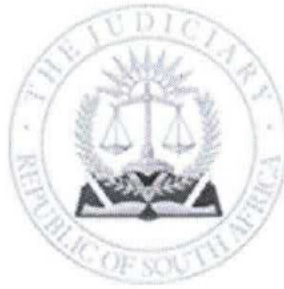


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 33481/2021

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
16/9/2025	
DATE	SIGNATURE

In the matter between:

BLUE CHIP FLIGHT SCHOOL (Pty) Ltd

Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be ____ September 2025.

JUDGMENT

MAKHOB A J

- [1] The Applicants are the Respondents in the main application. The Respondents are the Applicants in the main action.
- [2] In this judgment the applicants will be referred to as the “municipality” and the Respondents “the flight schools”.
- [3] The flight schools operate from Wonderboom National Airport which is the property of the municipality. The municipality council adopted a budget in terms of municipality finance management Act 56 of 2003.
- [4] On 20 July 2021, the flight schools obtained an interim interdict against the municipality in adopting its 2021, 2022 budget. The interim order was granted in the main application and makes provision for the flight schools to appeal and for the municipality to entertain the appeal against its decision to adopt its 2021/2022 budget.
- [5] The interim order is applicable pending the final determination of the appeal and a review application against the decision on appeal.
- [6] The municipality seeks an order in the following terms:
 - 6.1. Declaring that the interim order granted by this court on 20 July 2021 is unconstitutional, unlawful, nullity, unenforceable, and not capable of being lawfully implemented.
 - 6.2. That the decision of a municipal council to adopt a budget in terms of the local government: Municipal Finance Management Act 56 of 2003 (“the MFMA”) is not appealable in terms of Section 62 of the Local Government: Municipal Systems Act 32 of 2000 (“the Systems Act”).
 - 6.3. Setting aside the interim order.
- [7] Counsel for the Applicant submits that the interim order is not final in effect, and it is not appealable. This court is competent to revisit its interim orders to the extent

of varying or setting them aside. This court has jurisdiction to entertain this application.

- [8] The background to this matter is that the municipality adopted its 2021/2022 budget on 27 May 2021. This budget makes provisions for, amongst others, training fees payable by flight schools operating at the Wonderboom National Airport ("the airport"). The Flight Schools operate training facilities at the airport and are aggrieved by the introduction of these fees.
- [9] Aggrieved by the introduction of the training fees, the flight schools obtained the interim interdict on 20 July 2021.
- [10] Counsel for the municipality submitted further that the decision to adopt a budget does not fall under what is contemplated in Section 62 of the Systems Act and it is for this reason not appealable under that Section.
- [11] Counsel argued further that, as a result the municipality cannot lawfully comply with the interim order. The interim order is not capable of being lawfully implemented. The interim order ought not to have been granted in the first place, reason being it is a nullity and it must be set aside.
- [12] Counsel for the municipality further argued that the decision to adopt the 2021/2022 budget was not taken in terms of a power or duty delegated to the city's municipal council. The decision was taken in terms of the city's municipality council's original powers sourced directly from the constitution.
- [13] Counsel for the flight schools contended as follows:
- 13.1. The municipality dealt with the appeal by means of a letter dated 10 May 2022, which is attached as "FA6" to the answering affidavit¹.
- 13.2. In paragraph 3.4 of the letter, it is claimed that the issue raised in the appeal are not appealable in terms of Section 62(1) of the Systems Act and that the city does not have the necessary powers to appoint an appeal authority to

¹ Caselines: B001-317

adjudicate upon the appeal. It stated that, it therefore will not prosecute the appeal.

13.3. Whether that decision is right or wrong is immaterial for purposes of the present application. The decision constitutes the outcome of the appeal, within the required 180 days on 28 September 2022, the flight school lodged their review application, which is attached to the Answering Affidavit as "JB1"².

13.4. This court can therefore safely accept that the interim interdict presently operates pending the review as ordered in 1(b) of the interdicts. This is so because the Section 62 appeal does not exist anymore. It has been disposed of in its entirety.

[14] In an application for a declaration of rights in terms of Section 21 of the superior act, the court will not exercise its discretion and instead will decline a declaratory order if the question raised is hypothetical, abstract and academic³.

[15] It is trite principle that a court should not decide issues that are solely for academic issues⁴.

[16] I am of the view that the application by the municipality is now academic and moot because the appeal process has been dealt with and what is remaining is the review proceeding in terms of paragraph 1(b) of the interim order.

[17] In the premises I make the following order:

17.1. The application is dismissed with costs and such costs to include the costs of two counsel, on Scale B.

² Caselines: B009-15

³ Shoba v Police Murder and Robbery Unit 1995(4) SA1 (A) at 145

⁴ Absa Bank Ltd v Keet 2015 (4) SA 474 (SCA) at par 3.



D. MAKHOBA

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Date of Hearing: 25 August 2025

Judgment delivered: 16 September 2025

Appearances

For the appellants: Adv K. Tsatsawana SC

Adv Thulelo M. Makola

For the respondent: Adv D. Van Den Bogert SC

Adv F.J. Nel