

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 136722/2025

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: YES/NO
26/09/2025	
DATE	SIGNATURE

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA

First Applicant

UMKHONTO WE SIZWE PARTY

Second Applicant

and

PRESIDENT CYRIL MATAMELA RAMAPHOSA

First Respondent

MINISTER SENZO MCHUNU

Second Respondent

ACTING MINISTER FIROZ CACHALIA

Third Respondent

JUSTICE MBUYISELI MADLANGA ADCJ

Fourth Respondent

ADVOCATE SESI BALOYI SC

Fifth Respondent

ADVOCATE SANDILE KHUMALO SC

Sixth Respondent

JUDGMENT

THE COURT (MOLOPA-SETHOSA ADJP, TOLMAY J and MOKOSE J)

Background

[1] The applicants approached the Court to challenge the following decisions by the first respondent (the President):

- a) the decision to establish a Judicial Commission of Inquiry ("the Madlanga Commission") to investigate allegations made by Lieutenant-General Nhlanhla Mkhwanazi ("Lt-Gen Mkhwanazi") of collusion between organised crime syndicates and public office bearers, including the second respondent ("Minister Mchunu");
- b) the decision to place Minister Mchunu on leave of absence;
- c) the decision to appoint the third respondent ("Minister Cachalia") as the Acting Minister of Police; and
- d) the announcement of the above decisions on 13 July 2025 and/or 1 August 2025.

[2] The parties were requested to address the court first on the question of urgency. In the applicants' heads of argument, it was contended that urgency is no longer in dispute. The respondents, in their heads, adopted the opposite stance. This issue must therefore be decided first.

[3] The impugned decisions were taken on 13 July 2025. This included placing Minister Mchunu on special leave. On 14 July 2025, the applicants issued a media statement. Thereafter, the applicants launched an urgent application in the Constitutional Court, asserting that it had exclusive jurisdiction, alternatively seeking direct access. The Constitutional Court dismissed the application on 31 July 2025, on the basis that it does not have exclusive jurisdiction and refused direct access. On 1 August 2025, the third

respondent was appointed as Acting Minister of police.

[4] On 4 August 2025, the applicants addressed a letter to the President seeking certain information. The letter records their views that *“irrespective of any answers the President might give to the above list of questions, the impugned conduct remains illegal and irrational and unconstitutional”*. Therefore, the applicants are seemingly of the view that, irrespective of a response by the President, they regard his decision as unlawful.

[5] On 12 August 2025, this application was launched. Prayer 1 of the notice of motion reads: “that the application be heard of one as urgency in terms of rule 6(12)(a) of the Uniform Rules of Court”.

[6] Counsel for the applicants stressed, in his submissions, that the matter is inherently urgent. Whilst judicial notice may be taken of inherent urgency, a party must still make out a case and grounds relied on for urgency. The applicants’ founding affidavit makes some general statements about urgency, that catastrophic events will eventuate, which poses a threat to our democracy. These averments are based on what the applicants say are *“very serious and unprecedented allegations of executive and judicial capture”*. This argument was pressed vigorously in oral argument.

[7] In their replying affidavit, the applicants invoke the doctrine of *res judicata*, asserting that because the Constitutional Court did not strike the matter for lack of urgency, this Court is precluded from doing so. It must be noted that the Constitutional Court did not refer this matter to the High Court to be heard on an urgent basis. The discretion to decide urgency remains with this Court.

Applicable legal principles

[8] Each urgent application must be determined on its own facts and merits. To establish whether urgency exists, one needs to establish the harm that the applicants will suffer if the matter is not attended to on an urgent basis. The Court is obliged to consider the facts put forward to establish whether grounds for urgency exist.

[9] In *East Rock Trading 7 (Pty) Ltd and another v Eagle Valley Granite (Pty) Ltd and others*,¹ it was explained that urgent procedures are not there for the taking. Whether a matter is urgent depends on whether substantial redress can be obtained in due course.²

[10] The well-known authority of *Luna Meubel*,³ applied in *Mogalakwena Municipality v Provincial Executive Council, Limpopo*,⁴ explains as follows:⁵

"It seems to me that when urgency is in issue the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent. Once such prejudice is established, other factors come into consideration. These factors include (but are not limited to): whether the respondents can adequately present their cases in the time available between the notice of application to them and the actual hearing; other prejudice to the respondents and the administration of justice; the strength of the case made by the applicant; and any delay by the applicant in asserting its rights. This last factor is often called, usually by counsel acting for respondents, self-created urgency."

[11] The applicants placed reliance on this Court's decision, *Apleni v President of the Republic of South Africa and Another (Apleni)*,⁶ to assert urgency. They allege that, akin to *Apleni*, their case is inherently urgent for the following reasons:

"It involves the multiple violations of human rights of the applicants, their supporters and the public at large; there are serious allegations of bias, improper motives and abuse of state power on the part of the President and there are serious allegations of the unnecessary waste of taxpayers' money and public resources."

¹ 2012 JOL 28244 (GSJ) at para 6.

² *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC* (GJ Case 2023/067290, 1 August 2023) at paras 5-8.

³ *Luna Meubel Vervaardigers (Edms) Bpk v Makin* 1977 (4) SA 135 (W) at 137A-G.

⁴ *Mogalakwena Municipality v Provincial Executive Council, Limpopo (Mogalakwena)* 2016 (4) SA 99 (GP).

⁵ *Mogalakwena* id at para 64 endorsing *Luna Meubel Vervaardigers (Edms) Bpk v Makin* n 3.

⁶ [2018] 1 All SA 728 (GP) (25 October 2017).

[12] In *Apleni*, the applicant, who was the Director-General of the Department of Home Affairs, was placed on “precautionary suspension” in September 2017 by the second respondent, the Minister. They sought a declaratory order that the Minister lacked authority to suspend him, and that the suspension was unconstitutional, invalid and of no force and effect. In the alternative, the applicant contended that even if the Minister did possess such authority, the suspension was irrational because the Minister did not have justifiable reason to believe, *prima facie* at least, that he had engaged in the serious misconduct alleged. The applicant further contended that the process followed in effecting the precautionary suspension was procedurally unfair. The court accepted that the application was urgent. It stated: “*Where allegations are made relating to abuse of power by a Minister or other public officials, which may impact upon the rule of law, and may have a detrimental impact upon the public purse, the relevant relief sought (should) ‘normally’ be urgently considered*”.⁷

[13] In the context of this case, emphasis should be placed on the use of the word “normally”. This word choice points to the fact that the urgency of a matter will still depend on the specific circumstances of the case.

Evaluation

[14] In any event, despite the arguments of the applicants to the contrary, there is no indication in the present matter that the rule of law is under threat and that there will be serious human rights abuses if the impugned decisions remain in place pending the determination of a review in due course. The decisions were taken in an attempt to ensure good governance and accountability. The allegations made by Lt-Gen Mkhwanazi are indeed serious and require urgent attention. However, how setting aside the impugned decisions on an urgent basis will protect our democracy is unclear. This matter requires careful judicial consideration, and rushing it through an urgent court will not be in the interests of justice. At least the country can rest assured that something is indeed being done to protect the public from any further malfeasance. If the President’s decisions turn

⁷ *Id* at para 10.

out to be unlawful in the long run, the court is empowered to grant a just and equitable remedy in due course.

[15] Furthermore, the President's decisions have already been implemented. The proverbial horse has bolted. The Madlanga commission commenced with its work yesterday. Minister Mchunu was placed on leave of absence, and Acting Minister Cachalia was appointed and has assumed office. In the first applicant's papers, nothing is said that could conceivably reflect negatively on the suitability of Justice Madlanga or Acting Minister Cachalia to fulfil their obligations in terms of the President's decisions.

Order

[16] The following order is made:

1. The matter is struck from the roll due to lack of urgency.
2. Costs will be costs in cause.



LM. MOLOPA-SETHOSA
ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA


RG. TOLMAY
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

SNI. MOKOSE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date heard: 18 September 2025

Date of Judgment: 26 September 2025

Appearances

For First Applicant:

D C Mpofu SC and K D Monareng
instructed by KMNS Incorporated c/o
Nkome Attorneys Incorporated.

For Second Applicant:

M A Qofa-Lebakeng and L Ndabula
instructed by T Mpumlwana & Associates
c/o Nkome Attorneys Incorporated.

For First and Third Respondent:

N H Maenetje SC; N Muvhangha and N
Rasalanavho instructed by the State
Attorney, Pretoria.

For Second Respondent:

T G Madonsela SC; M Rantho and M
Tsele instructed by RS Bhila Attorneys
c/o Shai Attorneys Inc.