REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 6540/2020

(1) REPORTABLE: NO
(2) OF INTEREST TO THE JUDGES: NO
(3) REVISED.

[redacted]

DATE 27 OCTOBER 2025 SIGNATURE

In the matter between:

MOKGADI MONYEMORATHO	**FIRST APPLICANT**
JOSIAS SELEPE	**SECOND APPLICANT**
ESTHER CHOKWE	**THIRD APPLICANT**
and	
POLOKWANE MUNICIPAL MANAGER	**FIRST RESPONDENT**
POLOKWANE MUNICIPALITY	**SECOND RESPONDENT**

JUDGMENT

MORGAN AJ

INTRODUCTION

[1] This is a review application concerning the lawfulness and fairness of actions taken by the Polokwane Municipal Manager and the Polokwane Municipality ("the respondents") on 8 October 2020, when the applicants' informal trading structures were demolished and their trading activities halted without prior notice. The three applicants are long-standing informal traders in Polokwane who allege that the respondents' conduct on that day violated their right to just administrative action under Section 33 of the Constitution and the Promotion of Administrative Justice Act 3 of 2000 (PAJA), as well as various constitutional rights including their rights to dignity and to earn a livelihood.

[2] The applicants seek to review and set aside the respondents' decision or conduct, and they ask this Court to grant the relief set out in their draft order (which includes the establishment of a dispute resolution committee for informal traders and an appropriate cost order).

[3] The respondents oppose the application, maintaining that their officials acted lawfully in an effort to enforce municipal by-laws, that the applicants were trading without permits, and that "reasonable notice" to comply was given before the operation. The central question is whether the respondents' actions were lawful, reasonable and procedurally fair as required by law, or whether the applicants' constitutional and statutory rights were unjustifiably infringed.

[4] The application was launched in two parts. In Part A, the applicants obtained an interim interdict on 22 October 2020, on an urgent basis, restraining the respondents from interfering with the applicants' trading pending finalisation of this review (Part B), with the costs of Part A reserved. Part B – the present review – is now before this Court for determination. The judgment that follows sets out the background facts, the procedural history of the matter (including the Part A proceedings), the issues for determination, the applicable legal framework, an analysis of the respondents' conduct against that legal framework, and finally the order of the Court.

THE MATERIAL FACTS

[5] The applicants are individual informal traders who have been trading in the Polokwane city area for many years. The first and second applicants have each been trading for over 22 years in Polokwane. They, along with many others in the informal trading sector (the majority of whom are women), rely on street trading as their primary source of income to support their families and meet basic household needs. The applicants operated small street stalls or structures in designated trading areas in the Polokwane CBD, selling their wares to earn a modest living.

[6] It is common cause that prior to 8 October 2020, the applicants were known to the municipal authorities as longstanding street traders operating in the city. It is also not disputed that on 8 October 2020 the Polokwane Municipality – acting through its officials or contractors and apparently at the direction of the first respondent (the

Municipal Manager) – conducted an enforcement operation described as a "cleaning campaign" in the Polokwane CBD.

[7] During this operation, officials ordered the applicants to cease trading immediately and proceeded to demolish or dismantle the applicants' trading stalls/structures without warning. The ostensible reason given by the officials at the time was that the applicants (and others) did not possess valid trading permits. As a direct result of the operation on 8 October 2020, the applicants' ability to trade was brought to an abrupt halt – their structures and stalls were torn down and their means of earning a livelihood effectively destroyed on the spot.

[8] The applicants describe the events of 8 October 2020 as having been done without any prior notice to them and without affording them any opportunity to remove their goods or remedy the alleged non-compliance. The respondents for their part contend that traders who were "not compliant" with municipal requirements were targeted for removal, and they aver that notice was given to traders to either "move out" or comply with the by-laws before the operation was carried out.

[9] The applicants emphatically deny that any effective notice or warning was given to them. Indeed, the respondents have provided no proof of any written or individual notices given to these applicants prior to the demolition of their stalls. It appears that whatever "notice" the respondents rely on may have been minimal or of a general nature at best – falling far short of the kind of clear, personal notice one would expect before evicting traders from their workplaces. In substance, the applicants were

caught by surprise on 8 October 2020, with no chance to make representations or avoid the harm.

[10] Following the incident, the applicants made multiple attempts to engage with the municipal authorities to resolve the dispute administratively. They sought to negotiate a restoration of their trading rights or some form of remedy for the sudden loss of their stalls. Those attempts, however, proved fruitless – the respondents were not willing to provide relief or an amicable solution at that stage. Left with no alternative, the applicants approached this Court on an urgent basis. As noted, they initiated Part A urgent proceedings shortly after the incident, in which they successfully obtained an interim interdict to prevent further interference by the respondents and to allow them to resume trading pending this review.

[11] The interim order granted on 20 October 2020 by Phatudi J (as he then was) provided immediate, albeit temporary, relief to the applicants. The matter then proceeded as a standard review application (Part B) under Rule 53, with the applicants seeking final relief in the form of a review and setting aside of the respondents' decision/action of 8 October 2020 and ancillary relief. The respondents delivered answering papers opposing the review, and the applicants filed replying papers. The Part B application was argued before me (sitting as a review court) on the merits.

PROCEDURAL HISTORY

[12] It is convenient to set out briefly the procedural history, including the Part A proceedings, to understand how the matter reached this point. As mentioned, on

22 October 2020 the applicants obtained an interim interdict in Part A. In that interim order, the respondents were interdicted from preventing or obstructing the applicants in conducting their informal trading at their usual sites, pending the final determination of Part B. The effect was to restore the status quo ante (i.e. allowing the applicants to continue trading) until the legality of the respondents' actions could be reviewed. The costs of Part A were reserved for later determination.

[13] Subsequent to the interim relief, the review (Part B) was prepared in the normal course. The Municipal Manager (first respondent) provided a record of the decision as required by Rule 53 (to the extent any formal record existed). The applicants delivered a supplemented founding affidavit raising the substantive grounds on which the 8 October 2020 decision is challenged. Broadly, the applicants' review grounds are that the respondents' actions were ultra vires (beyond the authority of the empowering provisions or not in compliance with the relevant prescripts), procedurally unfair (taken without prior notice or hearing), unreasonable and irrational (especially given the respondents' own role in preventing traders from becoming compliant), and unconstitutional (infringing several rights in the Bill of Rights).

[14] The relief sought in Part B (as set out in the Notice of Motion and the draft order) includes: (a) reviewing and setting aside "the decision taken by the respondents on or about 8 October 2020 in Polokwane to prohibit the applicants from trading by demolishing their structures/stalls without notice or opportunity to remedy the alleged non-compliance"; (b) directing the respondents to establish a dispute resolution

committee to address issues affecting informal traders in Polokwane; and (c) a costs order against the respondents on the scale as between party and party, including the reserved costs of Part A.

[15] The respondents delivered an answering affidavit opposing the review. In essence, the respondents did not dispute the factual occurrence of the 8 October 2020 operation, but they defended it as a lawful enforcement of municipal laws. They raised two main points in opposition: first, that the applicants were allegedly not specifically "targeted" in the operation (the respondents contend they were simply enforcing the law generally against all illegal traders); and second, that the applicants (and others) had been given reasonable notice beforehand to comply with the by-law requirements (i.e. to obtain permits or cease trading) and thus cannot complain of surprise.

[16] The respondents also suggested that because the applicants admittedly did not hold valid permits at the time, they were trading unlawfully and the respondents were entitled – if not obliged – to act against them. Some legal points were raised (for example, a suggestion that the application might be defective or that the applicants lacked a certain standing), but those were not pursued in oral argument and do not merit attention here, as the focus of the hearing was squarely on the merits of the review.

[17] The applicants filed a replying affidavit refuting the respondents' factual assertions, particularly disputing that any genuine notice was given. They maintain that neither the applicants nor the vast majority of affected traders were personally informed prior

to the crackdown. The stage was thus set for this Court to determine whether the respondents' decision and conduct on 8 October 2020 falls foul of the constitutional and statutory standards for administrative action, and what relief should follow.

ISSUES FOR DETERMINATION

[18] The following key issues arise for determination in this review:

1. Did the respondents act within the scope of their lawful powers in dismantling the applicants' stalls and stopping their trading on 8 October 2020? In particular, did the decision to "remove and demolish" the applicants' trading structures have a legal basis in any empowering provision (such as a municipal by-law or statute), and if so, was it executed in accordance with the prescripts of that law? This issue involves examining whether the respondents exceeded their authority or failed to comply with applicable provisions of the Polokwane Municipal Street Trading By-Laws and the Businesses Act 71 of 1991 (if applicable), as well as the principle of legality under the Constitution.
2. Was the process by which the respondents acted (the manner and timing of the decision and its implementation) procedurally fair as required by Section 33 of the Constitution and PAJA? This entails asking whether the applicants were given adequate notice of the intended enforcement action and a meaningful opportunity to make representations or to remedy any alleged non-compliance before their stalls were torn down. If not, the question arises whether the circumstances justified a departure from the ordinary requirements of procedural fairness.

3. Was the decision to summarily demolish the stalls and evict the applicants without notice a reasonable and rational exercise of public power, proportionate to the objectives sought? Here, I must consider the rationale offered by the respondents – e.g. maintaining urban order and enforcing permit requirements – against the impact on the applicants and the availability of less drastic means. The inquiry is whether the respondents' conduct was so unreasonable that no reasonable decision-maker in their position would have taken the same course of action, or whether it lacked a rational connection to legitimate governmental purposes (such as regulating street trading).

4. Did the respondents' actions infringe the applicants' constitutional rights, and if so, are such infringements justified under the general limitations clause (Section 36 of the Constitution)? Rights implicated may include the right to just administrative action (Section 33), the right to human dignity (Section 10) – given that the manner of removal potentially affronted their dignity, the right to freedom of trade, occupation and profession (Section 22) – as the ability to work and earn a living was impeded, and the right not to be arbitrarily deprived of property (Section 25) – since the applicants' stalls and stock (their property) were seized or destroyed without due process. The right of access to courts (Section 34) is also relevant in light of the concern against "self-help" by authorities. I must determine if the conduct breached these rights and, if so, whether any law or justification permits such breach.

5. If the respondents' conduct is found wanting on any of the above grounds, what is the appropriate relief? Specifically, should the decision of 8 October 2020 be

reviewed and set aside (and what the effect of such setting aside is), and should ancillary relief be granted to ensure a fair resolution going forward (such as the establishment of a dispute-resolution committee for informal trading issues)? Additionally, the issue of costs – including the reserved costs of Part A – must be decided, particularly whether a punitive or attorney-client costs order is warranted or if standard party-and-party costs suffice.

[19] Each of these issues will be addressed in turn, though they are interconnected and will be discussed together where appropriate under the legal analysis.

LAW AND APPLICATION

[20] It is uncontested that the respondents undertook an operation to enforce street trading by-laws on 8 October 2020. The legality of their actions depends firstly on whether they had the authority in law to do what they did, and secondly on whether they exercised that authority properly. Under the Polokwane Street Trading By-Law and the Businesses Act, the municipality does have powers to regulate and even remove illegal traders or structures. For instance, as described above, an official may impound goods of a trader who trades unlawfully.

[21] However, the manner in which the respondents acted here raises serious questions. The decision essentially taken was to prohibit the applicants from trading, with immediate effect, by demolishing their stalls. In substance, this was an administrative decision to revoke or terminate the applicants' ability to operate in that space. Even if the applicants had no formal permits, the City in effect decided to eliminate their de

facto right or permission to trade that had been tolerated for years. This kind of decision – to exclude a person from a public trading space – is one that must be made in accordance with both the empowering law and the Constitution.

[22] The Street Trading By-Law does not explicitly authorize the demolition of structures without notice. It permits removal and impoundment of goods, and if a trader fails to remove an unlawful structure after due instruction, the Municipality may remove it and perhaps even dispose of it (with certain procedures to follow).

[23] Crucially, such drastic action is ordinarily preceded by an order or notice to the trader to relocate or cease the unlawful conduct. In the present case, no evidence was presented that any individual compliance notice or order was served on the applicants ahead of 8 October 2020. The respondents' claim that "reasonable notice" was given remains unsubstantiated. The applicants' version – that they were caught unawares – is more credible and consistent with the chronology (they scrambled to court immediately afterwards, which suggests genuine shock at being summarily evicted).

[24] Even assuming *arguendo* that the respondents had some general plan or announcement of a crackdown (for example, a public notice that unpermitted traders must vacate by a certain date), such general notice would still fall short of the specific, procedurally adequate notice required before depriving individuals of their livelihood. Proper notice in administrative law means giving affected persons sufficient information about the proposed action and a reasonable opportunity to respond or

correct course. The lack of any clear prior warning to these traders renders the action procedurally irregular. It violated the express duty to act fairly. The disposal or destruction of a person's trading goods or structures without giving them a hearing is in breach of Section 6(2)(c) of PAJA (procedural unfairness).

[25] Moreover, the respondents' own conduct prior to the incident undermines the lawfulness and fairness of the enforcement. The evidence shows that the Polokwane Municipality had ceased processing any applications for trading permits as of January 2020. The respondents concede in their papers that "They stopped processing the permit application [on] 17th January 2020."

[26] This moratorium (or administrative paralysis) lasted for many months – in fact, the applicants allege it had been going on for 3–4 years, a claim the respondents do not effectively refute. The upshot is that even if an informal trader wanted to comply with the by-law and obtain a valid permit during 2020, the City had closed that door. There was "no legal and administrative way" for the applicants to regularize their status.

[27] This is a classic bureaucratic Catch-22: the traders are told they are non-compliant by not having permits, yet the municipality's own decision not to process permit applications ensured that non-compliance was inevitable. In these circumstances, to suddenly descend upon traders and punish them for lacking permits (permits the City itself refused to issue) is palpably irrational and unfair. It smacks of entrapment or at least a failure by the City to consider a obviously relevant fact – namely, that the usual pathway to compliance was blocked by the City's own administrative choices.

An elementary principle of administrative justice is that an authority must take into account the material circumstances surrounding its action. Here, a material consideration was that traders could not obtain permits at that time because the City had suspended the issuance or renewal process.

[28] The respondents have not offered any satisfactory explanation for halting permit processing (perhaps it was due to COVID-19 lockdown complications or an internal policy shift), but whatever the reason, they cannot then blithely treat all unpermitted traders as willful criminals and summarily demolish their stalls.

[29] he unreasonableness of the respondents' conduct is evident when balancing their stated purpose against the means employed. The respondents' aim, presumably, was to enforce compliance with trading regulations and to keep the city clean and orderly – a legitimate objective in the public interest. Noble ends do not justify unconstitutional means.

[30] In this Polokwane operation, the means chosen were drastic: an unannounced blitz that instantly deprived traders of their workplaces and stock. This was not a case of a carefully calibrated enforcement (such as issuing fines or notices, or engaging with trader leadership to find solutions); it was a shock-and-awe tactic. The harm to the traders was not merely theoretical – it was immediate and extensive: the applicants lost their only source of income overnight.

[31] Our law requires that when an administrative action will significantly affect someone's rights or livelihood, the administrator should consider less invasive alternatives and only resort to extreme measures if no other avenue is effective and lawful. Here, alternatives certainly existed: the City could have given written compliance notices with a deadline, called the traders (who were known to them) to a meeting, or even sought a court order if necessary to enforce the by-law. The fact that the respondents chose to proceed unilaterally without due process suggests an unreasonable disregard for the applicants' rights. It was, in a word, disproportionate.

[32] The respondents' argument that the applicants "were not targeted" specifically, but just happened to fall among those removed for non-compliance, is neither here nor there. Whether or not the respondents intended to single out these particular applicants is irrelevant to the legal analysis. What matters is the effect of the conduct and whether due process was afforded. By the respondents' own admission, those traders "not compliant" (i.e. without permits) were the ones removed. Given that the City had made it impossible to be compliant, this category likely included all informal traders operating at that time.

[33] The applicants were thus part of a class of people effectively purged from the city streets that day. Even if one accepts that the motive was to enforce a rule uniformly, the execution was arbitrary in the sense that it made no distinctions – it did not consider individual circumstances, nor did it give individuals a chance to say, for example, "I have applied for a permit and am waiting" or "I trade here with permission

from an official" or any other representation. Therefore, the decision-making process failed to accommodate the "balancing act" that administrative law demands.

[34] As the applicants' heads of argument correctly pointed out, "There must be [a] balancing act between the intention of the respondent and the actions taken. In the absence of same, such act or conduct is not justified in law." Here, the respondents' intentions (enforcing the law) and their actions (demolition without notice) were not properly balanced; the latter overshot what was necessary to achieve the former, especially without attempts at voluntary compliance.

[35] I am of the view that the respondents did not comply with the requirements of procedural fairness. No credible notice was given to the applicants prior to stripping them of their trading sites. There was also no opportunity to be heard – not before, not during, and not even after the fact (until the court intervened). PAJA Section 3(2) stipulates that "administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair."

[36] At minimum, fairness requires notice of the nature and purpose of the proposed action, a chance to make representations, and a clear statement of the administrative decision afterwards (with reasons on request). None of these hallmarks are present in what transpired on 8 October 2020. The respondents' operation was a textbook case of procedural unfairness. As one learned author put it, procedural fairness is concerned with "the manner in which a decision is taken", and its essence is that people should be told what is proposed and given a chance to have their say before

decisions affecting them are made. By ambushing the applicants, the respondents denied them this entitlement.

[37] This failing alone is enough to set aside the decision under PAJA (Section 6(2)(c)). Indeed, our courts have consistently set aside administrative actions for want of fair procedure, even if the administrator believed the underlying merits justified immediate action. Only in truly urgent, exceptional circumstances (such as imminent danger to life or property) could skipping notice possibly be excused, and even then there is usually a post-deprivation hearing required. In the present case, the respondents never suggested that an urgent danger existed – the justification was routine enforcement, not an emergency. Thus, there was no valid reason to dispense with fair procedure.

[38] Having established the lack of lawfulness and fairness in the process, it follows that the applicants' constitutional rights were infringed. The right to just administrative action (Section 33) was breached in its procedural aspect and arguably its substantive aspect (since the decision was not reasonable). The right to human dignity (Section 10) is also implicated. The applicants were treated in a manner that showed little regard for their dignity – being evicted and having one's means of livelihood destroyed in public, without dignified engagement, can reasonably be inferred to impair one's sense of self-worth. The same can be said here.

[39] The right to freedom of trade, occupation and profession (Section 22), while subject to regulation by law, does not countenance arbitrary or irrational regulation. The respondents' actions effectively amounted to an absolute ban (at least temporarily)

on the applicants carrying on their chosen trade, at least in that location, without due process. This was an infringement not justified by any law of general application properly applied – rather it was a result of an improper application of a valid law. The right to property (Section 25) is relevant in that the applicants' stalls/structures (and possibly goods) were their property, and these were either destroyed or confiscated without compensation or a court order.

[40] Section 25 prohibits arbitrary deprivation of property. While the State can impound or remove property under lawful authority (such as a by-law) for valid reasons, doing so arbitrarily (i.e. without following the law's own procedures or without a hearing) renders the deprivation "arbitrary" in the constitutional sense.

[41] Here, the applicants were deprived of their trading infrastructure and possibly stock without a prior or contemporaneous judicial oversight or opportunity to challenge the deprivation – which offends the principle in Section 34 that disputes should be resolved by law and not brute force. The right of access to courts (Section 34) ties into the earlier discussion on self-help: by acting unilaterally, the respondents denied the applicants any chance to approach a court to contest the alleged by-law infractions before punishment was meted out. The respondents effectively usurped the judicial function by becoming the accuser, adjudicator, and enforcer all at once on the street.

[42] The respondents did not seriously attempt to justify these rights limitations under Section 36 of the Constitution. Had they done so, they would need to show that the law authorizing their conduct (the by-law) and its implementation satisfied the tests

of reasonableness and necessity in an open and democratic society. Given the availability of less restrictive means (notice, fines, engagement, court orders, etc.), such a justification would likely have failed. In truth, this case is less about lawful limitation of rights and more about unlawful conduct not sanctioned by the law in the manner it was carried out. Thus, I am of the view that the applicants' constitutional rights to fair administrative action and dignity (at least) were unjustifiably infringed by the respondents' actions on 8 October 2020.

[43] The respondents have not pointed to any internal remedy that the applicants failed to exhaust. There was no suggestion of an internal appeal or review within the municipal structure that was available. Indeed, it is hard to imagine an "internal remedy" for a situation where one's stall has been demolished – aside from requesting the Municipality to undo what it did, which the applicants tried to do informally, to no avail. The applicants promptly approached the Court for urgent relief, which was appropriate under the circumstances. PAJA Section 7(2) requires exhaustion of internal remedies only if those remedies exist; here, none were shown to exist for this kind of grievance. The applicants cannot be faulted for coming to court. On the contrary, they acted within their rights to seek judicial protection against what they perceived (correctly) as an unlawful deprivation. Their swift resort to legal action in Part A also mitigated their damages to some extent (allowing them to resume trading under court protection). It underscores that the courts are the refuge for those who are subjected to governmental self-help. The public interest is served by the courts affirming that disputes must be resolved through proper channels, not by might.

[44] In light of all the above, I find that the respondents' conduct on 8 October 2020 was unlawful, unconstitutional and invalid. It was unlawful because it was not authorized (in that form) by any empowering provision and violated the precepts of PAJA; it was unconstitutional because it breached the applicants' fundamental rights and the rule of law principle.

[45] The respondents' conduct exhibited a lack of procedural fairness, a lack of reasonable decision-making, and an indifference to the rights and welfare of the applicants. The Court's disapproval of this conduct is not just a technical legal finding but a substantive one: officials of the City must understand that they are servants of the law and must act within the constraints of the law, even when dealing with those who themselves may be in breach of a regulation. Respect for the dignity and rights of all persons, including informal traders, is a constitutional value. The applicants in this case deserved to be treated as human beings with whom the City could engage, not as a nuisance to be summarily swept away.

Order

[46] In the result, the following order is made:

1. The decision taken by the first and second respondents to prohibit the Applicants to trade instantly by demolishing their structures or stalls without any form of notice and provided a reasonable opportunity to redress the alleged non-compliance or prohibition is declared unlawful and is thus reviewed and set aside.

2. The first and second respondent are directed to forthwith establish and/or take steps to establish a dispute resolution committee to deal specifically and adequately with matters pertaining to informal traders within its area of jurisdiction, as is permissible in law and not adequately dealt with in its bylaws.

3. The first and second respondents are ordered, jointly and severally, one paying to absolve the other, to pay cost of the review application (Part A and B thereof) on party and party scale B.

[redacted]

M MORGAN

Acting Judge of the High Court of South Africa,

Limpopo Division, Polokwane

PARTIES REPRESENTATIVES

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Mr T E Buthane instructed by Buthane Rasemana Attorneys

FOR THE RESPONDENTS
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Date Heard: 9 September 2024
Judgment Delivered: 27 October 2025