



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CIRCUIT LOCAL DIVISION, THEMBALETHU)**

Case No: 267/25

In the matter between

THABANG MOTJAMELA

APPLICANT

AND

GEORGE LOCAL MUNICIPALITY

RESPONDENT

Date of Hearing : 03 November 2025

Date of Delivering : 03 November 2025

JUDGMENT

THULARE J

ORDER

- (a) The application for leave to appeal and the application for recusal are both temporarily suspended and postponed pending the report as envisaged in (b).
- (b) It appears to the court that the applicant is by reason of mental illness or intellectual disability not capable of understanding the proceedings to make a proper case, therefore the court directs that the matter be enquired into and be reported on.
- (c) The enquiry shall be conducted and reported on by the Head of George Hospital or by another psychiatrist delegated by the Head concerned.
- (d) The applicant shall present himself to the Head of George Hospital or to the psychiatrist delegated by the Head, within ten (10) days of this order, for arrangements to be made for the enquiry and report and shall subject himself to all the directions of the Head or his delegatee.
- (e) The Registrar of the Circuit Court, Thembaletu, is directed to provide the Head of George Hospital with a certified copy of the entirety of the court file in these proceedings, as well as a file containing copies of emails which the applicant sent or ccd to her in relation to this matter.
- (f) The application for leave to appeal and application for recusal are postponed to Tuesday 20 January 2026 for the report.
- (g) Costs in the application.

[1] This is an application for application for leave to appeal, accompanied by an application for recusal in respect of the application for leave to appeal. On 20 October 2025 this court made an order against the applicant in terms of which he

was to apply to the head of any court in which he intended to issue process, before he could institute proceedings, as envisaged in the Vexatious Proceedings Act, 1956 (Act No. 3 of 1956). The applications are also accompanied by a complaint to the Judicial Services Commission (the JSC) against the presiding judge. The complaint will be dealt with by the JSC. This judgment will only deal with the applications for leave to appeal and recusal.

[2] The Uniform Rules of Court (Rule 49(1)(b)) requires that the statement of the grounds of appeal must be clearly and succinctly set out in clear and unambiguous terms so as to enable the court and the other side to be fully informed of the case the applicant sought to make out, which case the other side was to meet, in opposing the application for leave to appeal. This requirement is peremptory [*Songono v Minister of Law and Order* 1996 (4) SA 384 (ECD) at 385J-386A]. Instead of filing a notice as envisaged in Rule 49(1)(b) which concisely and succinctly set out the grounds of appeal, the applicant filed a founding affidavit wherein he restated parts of his case on the merits of the case which resulted in the order against him and included the affidavit of the complaint to the JSC. The procedure adopted by the applicant was criticized in *Songono*. On this basis alone, the application fell to be dismissed [*Xayimpi v Chairman Judge White Commission* [2006] 2 AllSA 442 (E) at para 8 (d), p 446]. However, in the light of the view that I take of the applicant, I deem it not in the interests of justice to reach a final decision at this stage. The substance of the dispute between the applicant and the Municipality was settled. It was the applicant who does not understand this simple truth or refused to understand and/or accept it.

[3] The applicant was advised by Legal Aid South Africa in 2020, that his case on the merits had no prospects of success. He simply ignored the advice and pursued the same case, in person, through the Labour Court, Labour Appeal Court, the Constitutional Court and re-consideration by the Constitutional Court. He pursued the same case through the High Courts and attempted to pursue it through the Criminal Courts. Under the circumstances, I am unable to attribute his failure to comply with Rule 49(1)(b) solely to him simply being a layman. The constitutionality of section 2(1)(b) of the Vexatious Proceedings Act, 1956 (Act No. 3 of 1956) was settled by the Constitutional Court, having considered amongst others the right of access to courts and section 34 of the Constitution of the Republic in *Beinash and Another v Ernst & Young and Others* [1999 \(2\) SA 116](#) (CC). The case was also cited and discussed in the judgment to which the applicant is seeking leave to appeal. Without more, the applicant is still raising the same question which has now been settled in law.

[4] The reasons for recusal also underpin the complaint to the JSC and are given against an acknowledgement and appreciation that they are subject to another process and simply dealt with for the sake of a complete picture. The application against the applicant was heard on Thursday 28 August 2025 and judgment was reserved. The next Monday on 1 September 2025, whilst judgment was still pending, there was a protest at the courthouse by members of the public, which called for back-up police and security enforcements at the court. During heightened security regulating access to the courthouse, my attention was drawn to a standoff with security and a member of the public who insisted on access to the High Court Registrar but refusing to subject themselves to be searched. I called for the person to my chambers to understand the issues as the matter was reported for

my intervention. It was the applicant. The applicant recorded his displeasure in his observation that Judges, Magistrates and other Officers of the court are not being searched and relied on the Constitutional provisions of equality and non-discrimination to insist on being treated the same way. I indicated to the applicant that I understand the law to make a difference between equality and similarity, and that it was unfair discrimination, and not simply discrimination generally, which was prohibited. Security arrangements around officers of the court, especially in the Western Cape cannot be discussed with the public as it may on its own present a security risk. I implored the applicant to support the courts in ensuring the security of personnel and court users including himself, by amongst others subjecting himself to being searched and to raise his issues further with the Court Administration. In my view we had an understanding when the applicant left. In his complaint to the JSC, the applicant alleges amongst others that I threatened him with consequences, ostensibly about the then reserved judgment, during our interaction. Whilst the applicant raised concerns with the Judge President about my intervention in what he saw as administrative and not judicial matters immediately after our interaction, the alleged threat only arose after the judgment. On recusal, it was said:

[13] The key issue for consideration and determination is whether the conduct complained of by SAP created a reasonable apprehension of bias on the application of the test laid down by the Constitutional Court in *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* (the SARFU test), namely:

... (t)he question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the Judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel.

[5] An application for recusal of a Judge from proceedings is not a simple matter. This is one matter where I have a duty to intervene to ensure fairness to the applicant and due process. Fairness can follow if I am also satisfied that the applicant is mentally capable of participating meaningfully in the proceedings in which he is involved in and that he understands. The application for leave to appeal and the application for recusal can be fair proceedings only if the court is satisfied that the applicant can understand and participate meaningfully. This is a decision that I do not take lightly. I take cognizance that in criminal proceedings the Legislature had given the courts the power to direct an enquiry into the mental illness or intellectual disability where it appears to the court that an accused may not be capable of understanding the proceedings, and that there is no similar provision in respect of civil proceedings. I also take note that directing the evaluation has the tendency to implicate the applicant's constitutional rights. My sense of justice is overwhelming for me to ensure that I am satisfied that the applicant understands the court process, the consequences of his actions and that he is competent to litigate. I am bound to ensure that he was not prejudiced in legal proceedings because the court did not protect his right to dignity, if it is found that he required mental health care.

[6] Section 173 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) (the Constitution) provides:

173 Inherent power

The Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa each has the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.

It would be intolerable and could lead to great uncertainty if Courts could be approached and continue to entertain multiplicity of matters, ranging from voluminous emails to court support staff and almost daily applications instituted by persons whose mental and intellectual disability are in doubt, and judges in the civil courts could do nothing and actually do nothing about it. The system would be unsustainable. The administration of justice would be in disrepute if legitimate cases could not find available dates expeditiously because judges were bogged down by cases which did not deserve to be on the rolls in the first place. It is appropriate to exercise inherent power in a situation in which there is a vacuum because legislation and rules regulating a particular situation, like the present, have not been passed [*S v Pennington and Another* 1997 (4) SA 1076 (CC) para 22]. At para 23 in *Pennington* the court said:

[23] The power is to protect and regulate the process of this Court taking into account the interests of justice. When this power is exercised it should be done in a way which accords with the requirements of the Constitution and as far as possible with the procedure ordinarily followed by this Court in similar cases.

Sections 77, 78 and 79 of the Criminal Procedure Act, 1977 read with section 27 of the Mental Health Care Act and its regulations provide procedure ordinarily followed by the courts in cases where persons appearing before the courts, appear to the courts to not be capable of understanding the proceedings so as to make a proper case, and where the court direct that the matter be enquired into and reported on. The applicant continued to send numerous emails to court support staff, to the extent that he disrupts their daily schedules, which affects functioning of the courts. Registrars and Secretaries continue to have to attend to his emails and court visits. Judges should never be put to a position where they are forced to advise their secretaries and registrars to ignore emails from any litigant, or to

refuse to attend to any member of the public, but this is becoming inevitable with the applicant unless there is intervention.

[7] The underlying grievances are the same and it seems the applicant would not stop litigating, lodge complaints and writing emails, and intimidating everyone into submission through his conduct. It is difficult to determine whether the applicant cannot understand, or he is refusing to understand the orders of the courts, what was expected of him, and the consequences of his conduct. It appears to me that the applicant is by reason of mental illness or intellectual disability not capable of understanding the proceedings. The order of the court takes the path into uncharted territory. Where a court moves in that direction, the facts before the court justifying an order as proposed with its drastic consequences must be convincing. The facts must set out a basis from which the conclusion is drawn that the person is mentally unsound. Ordinarily, sending multiple emails, however unwelcome and irritating this may be, and instituting multiple applications and other legal proceedings on the same cause of action may amount to deviant behaviour, but cannot always be assumed to have its source in a mental disorder. In this matter there are more than just multiple emails and the institution of court proceedings. The applicant pursued a case knowing it had no merit. He disregarded legal advice when he did so. He did not follow the rules of litigation. It is not only in respect of Rule 49, but throughout the process of litigation that he expected the courts to deal with his matters as exceptions. On the main reason for his application for leave to appeal as it stands, other than simply seeking a reconsideration of the merits by other judges, the applicant pursues a legal point which is already settled in law and sets out no facts or law which makes it warrant reconsideration. Judgments should dispose of disputes, and where there are

underlying causes for matters not to be finalized by judgments, courts have a duty to investigate the causes, and intervene to ensure expeditious finality.

[8] The applicant is simply becoming a liability to the proper functioning of the courts. In my view there was a sufficient foundation to require this court to seek a psychiatric assessment. Court proceedings remain a formal process through which legal disputes are resolved by invoking the court's authority to enforce legal rights through application of the law. Through institution of legal proceedings disagreements are resolved, laws are upheld, and accountability is established. Once specific issues are addressed, that should be the end of the matter. Litigation must reach finality when the issues are determined. I appreciate that one cannot assume that all deviant behaviour has its source in a mental disorder [*Chaplin v Fine and Another* (A115/2019) [2020] ZAWCHC 139 (21 July 2020)]. The applicant should be free to pursue his displeasure with any court order again up to the constitutional court if he so elects and was granted leave, and with the JSC if there was cause for complaint, but such attention must be free of doubt of his mental health. For these reasons the order is made.

DM THULARE

JUDGE OF THE HIGH COURT