



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

CASE NUMBER: 530/2025P

In the matter between:

JOSEPH BHEKI MABASO

APPLICANT

And

ETHEKWINI MUNICIPALITY

FIRST RESPONDENT

BONGUMUSA MBHELE:

CITY MANAGER (ETHEKWINI)

SECOND RESPONDENT

CYRIL XABA:

THE MAYOR ETHEKWINI MUNICIPALITY (KZN)

THIRD RESPONDENT

THE COUNCIL OF THE ETHEKWINI MUNICIPALITY

FOURTH RESPONDENT

KZN: MEC FOR COOPERATIVE GOVERNANCE

AND TRADITIONAL AFFAIRS

FIFTH RESPONDENT

JUDGMENT

P C BEZUIDENHOUT J:

[1] Applicant brought an application seeking:

1. Reviewing and setting aside the appointment of the selection panel purportedly done pursuant to regulation 12(4) of the Regulations on Appointment and Conditions of Employment of Senior Managers (GNR.21) published under GG27245 dated 17 January 2014 to recruit and select a city manager of First Respondent.
2. Reviewing and setting aside the appointment of Second Respondent as Municipal Manager for First Respondent.

The application is opposed by First to Fourth Respondents.

[2] Applicant is a principal clerk employed by First Respondent. He submits in his founding affidavit that as an employee of First Respondent he has an interest in whether or not the most senior person in the First Respondent has been lawfully appointed.

[3] It has been contended by Applicant that the selection panel for the appointment of a new manager was constituted as follows:

The Deputy Mayor, Three Executive Committee Members and Dr. Thandeka Ellenson Mosses, Katane institute CEO serving as an independent person a municipal manager was nominated and appointed and assumed his duties pursuant to the appointment on 1 October 2022.

[4] Heads of argument were filed by both Applicant and First to Fourth Respondents. At the commencement of the hearing counsel appearing on behalf of First to Fourth Respondents did not pursue what was contained in their heads of argument but submitted that there is a legal point which he has found which in his view will dispose of the matter and accordingly that was what was going to be submitted on behalf of First to Fourth Respondents. First to Fourth Respondents filed a notice in terms of Rules 6(5)(d)(iii) of the Uniform Rules of Court that a point of law was going to be raised on 30 October 2025 the day the matter was to proceed.

[5] This was objected to by Applicant's counsel as it was submitted that it was received late. Respondents counsel submitted they will withdraw the notice and argue the matter on the papers. The same issues can be raised on the papers.

[6] It was submitted on behalf of Applicant that in terms of circular number 7 of 2022 which was sent out by the MEC, the Fifth Respondent, set out that in terms of Regulation 12 that for the appointment of a Municipal Manager there may only be two councilors on the panel and in case of Senior Managers only one councilor and one person who is not a councilor. Regulation 12(3) referring to the panel in respect of municipal managers there had to be a minimum of 3 and maximum of 5 members. I was referred to the decision of the Majority of the Court in the case of the Member of the Executive Council Local Government Environmental Affairs and Development Planning, Western Cape v Prince Albert Municipality and George Charles Van Der Westhuizen where it was held in paragraph 37:

"Therefore, I agree with the appellant that the only sensible manner to read regulation 12(4)(c) is to interpret it not only as dealing with the mandatory third member, but also the optional fourth and fifth members of the selection panel. The constitution of the selection panel which appointed the second respondent consisted of four councilors and was therefore not in accordance with the prescripts of regulation 12(4)"

It also held in paragraph 6 of the said judgment:

"The validity and/or interpretation of regulation 12(4) will directly impact on the appointment of managers directly accountable to municipal managers throughout the country."

It continues to set out that it will apply to managers who are directly accountable to the municipal manager. Regulation 12(4) of the regulations in terms of the Local Government Municipal Systems Act 32 of 2000 (The Act) relates to the appointment and conditions of employment of senior managers. Regulation 12(4) reads as follows:

"The selection panel for the appointment of a manager directly accountable to a municipal manager must consist of at least three and not more than five members constituted as follows:

- (a) The municipal manager will be the chair person.
- (b) A member of a mayoral committee or councillor who is portfolio head of a relevant portfolio and
- (c) At least one other person who is not a councillor or staff member of the municipality and who has expertise or experience in an area of the advertised post.”

The appointment of the committee also appears at page 186 of volume 2 of the record of decisions which is as set out in paragraph 3 above.

[7] Reports for the selection process for the municipal manager’s post to the executive committee was prepared on 25 August 2022 as appears at page 239 and to the member of the executive council at page 250 of the papers. It was submitted that in the case of *Buffalo City v Asla Construction* 2019 (4) SA 331 (CC) it was held in paragraph 60 that the state had a higher duty to respect the law and to fulfil its procedural requirements. I was also referred to paragraph 66 of the said judgment where it held:

“When would the Gijima Rule apply? Gijima dictates that where the unlawfulness of the impugned decision is clear and not disputed, then this court must declare it as unlawful. If it is unlawful then section 172 of the Constitution must apply.”

[8] It was submitted that although it deals with senior managers the circular would also apply to municipal managers because why would they be so important to be treated differently. It must apply.

[9] On 29 August 2022 the fifth Respondent was informed in writing of the decision of the municipal council to appoint Mr. Mbhele as the municipal manager from 1 September 2022.

[10] It was submitted on behalf of Respondents that the appointment of municipal managers are treated differently and is specifically dealt with in section 54A of the Act. It was submitted that section 54A(7)(a) State:

“The municipal council must within 14 days inform the MEC for local government of the appointment process and outcome as may be prescribed.”

This was indeed done as appears at page 250 of the record and referred to in paragraph 9 above. It was further submitted that section 54A(7)(b) states:

“The MEC for local government must, within 14 days of receipt of the information referred to in paragraph (a) submit a copy thereof to the Minister.”

Section 54A(8) states:

“If a person is appointed as municipal manager in contravention of the section, the MEC for the local government must within 14 days of receiving the information provided for in subsection(7) take appropriate steps to enforce compliance by the municipal council with the section, which may include an application to court for a declaratory order on the validity of the appointment, or any other legal action against the municipal council.”

It then continues in subparagraph (9):

“Where an MEC for local government fails to take appropriate steps referred to in subsection (8) the Minister may take the steps contemplated in that subsection.”

[11] Section 54(10) of the Act states as follows:

“If the MEC for Local Government fails to respond to the appointment process and outcome within the timeframes, as contemplated in subsection (8), or the Minister fails to respond as contemplated in subsection (9), the appointment of the municipal manager or acting municipal manager will be deemed to be in compliance with Act. Provided the municipal council submit all relevant documents as prescribed.”

I have not been referred to any decision relating to this amended subsection (10). I have also not been able to find a case dealing directly therewith. There is no submission by any of the parties that the relevant documentation was not submitted to the MEC. As appear from paragraph 9 above the First Respondent was informed but did not respond nor did the Minister respond. Neither did they allege it was non compliant. Accordingly on a reading of this subsection it would appear that in terms thereof on the facts set out the appointment of the municipal manager was deemed to be in compliance with the Act.

[12] An application was commenced to join the Minister but Applicant withdrew such joinder.

[13] Regulation 12 appears in the Regulations published in the Government Gazette 37245 of 17 January 2014 which was issued in terms of the Act. It deals with the recommendations for the appointment of candidates to vacant senior manager positions. It also deals with the appointment of municipal managers in Regulation 12(3). If one reads the Act it is clear that it specifically distinguishes between senior managers and municipal managers. It would therefore appear to me that the provisions of Regulation 12(4) only deals with managers accountable to the municipal manager and not to municipal managers. Therefore the decision in the case of the Member of the Executive Council Local Government Environmental Affairs and Development Planning, Western Cape v Prince Abler Municipality and another does not deal with the appointment of a municipal manager and does not assist Applicant.

[14] It would therefore appear that even though there may have been more members or the committee dealing with the election process there were not more than 5. As neither First Respondent or the Minister took any further steps after being informed of the panel and of the appointment, The appointment of the municipal manager was therefore in terms of section 54A(10) of the Act deemed to be in compliance with the Act and the appointment can therefore not be attacked on the basis that the selection committee consisted of one person more than what was

allowed. Applicant also based his relief on Regulation 12(4) which does not refer to municipal managers.

[15] Counsel for Applicant appeared *pro bona* and in the circumstances I am of the view that costs should not follow the result and that no cost order should be made.

Accordingly the following order is made:

The application is dismissed.



P C BEZUIDENHOUT J.

JUDGMENT RESERVED:

30 OCTOBER 2025

JUDGMENT HANDED DOWN:

7 NOVEMBER 2025

COUNSEL FOR APPLICANTS:

M TITUS

Instructed by: Macgregor Erasmus Attorneys
Durban
Tel: 031 201 8955
Email: mpho@meattorneys.co.za
gaby@meattorneys.co.za
Ref: Mr M Titus/gb/MAB1/001
c/o: Grant & Swanepoel Attorneys
Pietermaritzburg
Tel: 033 342 0375
Email: saxon@gsalaw.co.za
sharika@gsalaw.co.za
Ref: S Pillay/SA/05M093924

COUNSEL FOR FIRST TO FOURTH

RESPONDENTS:

J NXUSANI SC

Instructed by: Ethekewini Municipality
Durban
Tel: 031 304 3655
Email: litigation@nhadebeattorneys.co.za
Ref: MSH/nn/EM/031/25
c/o: Ngwane and Associates Inc
Pietermaritzburg
Tel: 033 432 6895
Email: mecpa@kzncogta.gov.za

FIFTH RESPONDENTS:

Instructed by: KZN/ MEC for Cooperative Governance and Traditional Affairs
Pietermaritzburg
Tel: 033 897 5600
Email: mecpa@kzncogta.gov.za