



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Not Reportable

Case no: 511/2025

In the matter between:

SEKHOANE BENJAMIN SEHOLE

Applicant

and

KGATELOPELE LOCAL MUNICIPALITY

1st Respondent

THE SPEAKER OF COUNCIL: MR MOSALA LEUTLWETSE

2nd Respondent

THE MAYOR: MRS IRENE WILLIAMS

3rd Respondent

THE MUNICIPAL MANAGER: MR WILLIE BLUNDIN

4th Respondent

Neutral citation: *Sekhoane Sehole v Kgatelopele Local Municipality and Others*
(511/2025) 16 January 2026.

Coram: MAMOSEBO J *et* STANTON J.

Heard: 20 August 2025.

Delivered: 16 January 2026.

Summary: Application for variation of order – Rule 42(1)(b) of the Uniform Rules of Court – Application must be brought within reasonable time – Courts are generally *functus officio* on matters once they have given judgment and order – A case must be made out for variation.

ORDER

1. The order granted by this Court on 26 July 2024 is varied in terms of Rule 42(1)(b) of the Uniform Rules of Court.
2. The aforementioned order at paragraph 4 which read "The first respondent is ordered to reinstate the applicant in the previously held position of Director: Technical Infrastructure and Community Services", is varied and replaced with:

"The first to fourth respondents are ordered to reinstate the applicant in the previously held position of Director: Technical Infrastructure and Community Services with his backdated remuneration from 01 September 2023 to date of reinstatement (05 September 2024), a period of 12 months, to the total amount of R1 098 817.32 less tax."

3. The respondents are to pay mora interest in the amount specified in paragraph 2 (above) from 01 September 2023 within 20 days of the grant of this order.
4. The first to fourth respondents are ordered to pay the costs of this application jointly and severally, the one paying, the other to be absolved.

JUDGMENT

Mamosebo J (Stanton J concurring)

- [1] On 26 July 2024 this Court granted an order favourable to the applicant in these terms:

- '1. It is declared that the fourth respondent, Mr Blundin, in his capacity as the Municipal Manager, lacked the authority to terminate the applicant's services.
2. The termination of the applicant's services on 31 August 2023 by the fourth respondent was unconstitutional, invalid and of no force and effect and is reviewed and set aside.
3. The first to fourth respondents are ordered to reimburse the applicant's salary deductions made by the first respondent in July and August 2023.
4. The first respondent is ordered to re-instate the applicant in the previously held position of Director: Technical Infrastructure and Community Services.
5. The first to the fourth respondents are ordered to pay the costs of this application on a scale between attorney and client, jointly and severally, the one paying the other to be absolved.'

[2] The parties seem to have attached divergent interpretations to the judgment and order. The applicant's reading and understanding of the judgment is that he is reinstated to the position he was in prior to the unlawful termination of his services on 31 August 2023 inclusive of his benefits and salary. To the contrary, the respondents only attach a narrow view that the applicant was reinstated to his position without more.

[3] In this application, much was made with regards to reference to Rule 41(1)(b) of the Uniform Rules of Court, but nothing turns on it as the applicant explained it as a typing error. The applicant seeks a variation of prayer 4 of the order in terms of Rule 42(1)(b) of the Uniform Rules of Court in the following terms:

'Prayer 4 of the court order is varied to read that "the First to Fourth Respondents are ordered to reinstate the applicant in the previously held position of Director: Technical Infrastructure and Community Services with back-pay from the date of the unlawful termination, 1 September 2023 to date of reinstatement 5 September 2024 (12 months) totalling R1 098 817.32 less tax;" and

That the respondents are to pay the amount of R1 098 817.32 together with mora interest from 1 September 2023 within 20 days of the grant of this order.'

- [4] Three grounds of opposition to the variation application were raised by the respondents: First, that the application is not urgent; secondly, that the variation application was brought out of time; and thirdly, that the order sought to be varied does not expressly state that the applicant be remunerated his salary and benefits after the declaration of invalidity of the fourth respondent's decision and its setting aside.
- [5] In as far as the first ground is concerned, Mr Mothibi for the applicant, submitted that there is nothing in the papers intimating that this application is urgent. The applicant did not bring this application on an urgent basis. The applicant had brought a contempt of court application on an urgent basis which was struck off the roll due to lack of urgency. The relief sought in the contempt of court application was to address the reinstatement issue and the applicant was reinstated in October. *In casu*, the applicant is merely seeking clarity on the ambiguity claimed by the respondents.
- [6] The respondents' contention that the application ought to have been brought within 20 days but was brought out of time is not substantiated. The rule does not prescribe a time limit within which the variation application is to be brought, it must however be brought within reasonable time as has been the case in common law.¹ I am satisfied that the application was brought within a reasonable time and the attack on this ground stands to fail.
- [7] Rule 42(1)(b) deals with variation and rescission of orders and stipulates:
- '(1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary:
- (b) an order or judgment in which there is ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;'
- [8] The issue that stands for determination is whether the applicant has met the requirements, either in terms of Rule 42(1)(b) or the common law, for variation.

¹ See *Mnguni and Another v Absa Bank Ltd and Others* (8294/2012) [2013] ZAGPPHC 81 (14 March 2013) para 7; see also *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA) para 4 – 7.

- [9] Mr Thys, for the respondents, argued that the applicant was prohibited by the principle of peremption from bringing this application as he has acquiesced to the judgment and cannot be seen to be approbating and reprobating. Counsel acknowledged that while peremption traditionally applied to appeals, this case presents a compelling opportunity for the court to affirm that peremption applies equally to rescission/variation of judgments, thereby reinforcing consistency and finality in our legal system.
- [10] It was argued on behalf of the respondents that the applicant has accepted the 26 July 2024 order which he now seeks to vary. He previously approached the court for an order to compel compliance with the 26 July 2024 order by the Municipality which was subsequently followed by the institution of the contempt of court proceedings against the Municipality for failing to reimburse him for the months of July and August 2023. Since the applicant only sought reimbursement for the two months, his conduct amounts to peremption.
- [11] In *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others*², the Constitutional Court elucidated:
- ‘It is trite that the doctrine of peremption finds application across our legal landscape. The doctrine tells us that “[p]eremption is a waiver of one’s constitutional right to appeal in a way that leaves no shred of reasonable doubt about the losing party’s self-resignation to the unfavourable order that could otherwise be appealed against”. The principle that underlies this doctrine is that “no person can be allowed to take up two positions inconsistent with one another, or as is commonly expressed, to blow hot and cold, to approbate and reprobate”. Notwithstanding this, our law does allow for some flexibility where policy considerations exist that militate against the enforcement of peremption. **Although the doctrine has its origin in appeals, the doctrine and its principles do apply equally in the case of rescission.**’ (Own emphasis added.)
- [12] This Court’s order dealt with two distinct issues for consideration and conflating them leads to undesirable results. First, it dealt with the lack of authority of the Municipal Manager to terminate the services of the applicant,

² [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) para 101.

thereby reviewing and setting his decision aside as unlawful and unconstitutional. Secondly, a separate decision to deduct from the applicant's salary by way of recovering the difference between his remuneration based on Midpoint to a total amount of R905 626.00 per annum and R859 002.00 per annum. The reimbursement for the two months was found to have been implemented following the MEC's and HOD's decisions which were found to be unlawful. The contention that the applicant is attempting to enforce two conflicting positions is not correct. From these facts, peremption does not arise.

- [13] The respondents accept that reinstatement refers to placing an unfairly dismissed employee back into their previous position. It is unfathomable how an order of reinstatement, following a finding that termination of the services was unlawful and the applicant should be reinstated in the position in which he was before the termination took effect, can be understood otherwise. The Constitutional Court in *Equity Aviation Services (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others*³ pronounced:

'The ordinary meaning of the word "reinstate" is to put the employee back into the same job or position he or she occupied before the dismissal, on the same terms and conditions.'

- [14] The basic principles applicable to the interpretation of documents in general are applicable to construing a judgment or order.⁴ In *Natal Joint Municipal Pension Fund v Endumeni Municipality*⁵ the following illuminating remarks bear repeating:

'Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into

³ 2009 (1) SA 390 (CC) para 36; See also *Consolidated Frame Cotton Corporation Ltd v President of Industrial Court and Others Ltd; Consolidated Woolwashing and Processing Mills v President of Industrial Court and Others* 1986 (3) SA 786 (A) at 798B – D.

⁴ *Member of the Executive Council for Health, Eastern Cape Province and Another v Y.B obo S.B* (428/2020) [2024] ZAECHC 36 (19 November 2024) para 24.

⁵ 2012 (4) SA 593 (SCA) para 18.

existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.'

[15] The 26 July 2024 order was meant to put the applicant in the position he would have been but for the unlawful termination of his services by the fourth respondent. This means that he should be put back in his position of Director: Technical Infrastructure and Community Services. Differently put, the applicant was to return to his position as if the termination on 31 August 2023 never happened. This would encapsulate not only occupying the position he held but also earning his salary and benefits according to his appointment letter.

[16] Evidently, the applicant has made out his case for the order of 26 July 2024 to be varied in order to reflect the intention of the Court and remove the perceived omission. I reiterate that the fact that the termination of services was found to be unlawful entitles the applicant to the relief sought.⁶

[17] On the question of costs there is no reason why costs should not follow the result.

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

1. The order granted by this Court on 26 July 2024 is varied in terms of Rule 42(1)(b) of the Uniform Rules of Court.
2. The aforementioned order at paragraph 4 which read "The first respondent is ordered to reinstate the applicant in the previously held

⁶ *Kubeka and Others v Ni-Da Transport (Pty) Ltd* (2021) 42 ILJ 499 (LAC); [2021] 4 BLLR 352 (LAC) para 38.

position of Director: Technical Infrastructure and Community Services", is varied and replaced with:

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MC MAMOSEBO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the Applicant:
On instructions of:

Adv. GI Mothibi
RAMS Attorneys
c/o Motlhamme Pino Attorneys

For the 1st to 4th Respondents:
On instructions of:

Adv. JM Thys
Morwaagae Attorneys.