



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

Reportable/ Not Reportable

Case no: 2025-146665

In the matter between:

CHARLES MARUPING PHUTI

Applicant

and

GAMAGARA LOCAL MUNICIPALITY

1st Respondent

LEBOGANG SEETILE

(1ST RESPONDENT'S MUNICIPAL MANAGER)

2nd Respondent

MEC: COOPERATIVE GOVERNANCE, HUMAN SETTLEMENTS

AND TRADITIONAL AFFAIRS (NORTHERN CAPE)

3rd Respondent

Neutral citation: *Charles Maruping Phuti v Gamagara Local Municipality and 2 Others* (Case no 146665/2025) (16 January 2026)

Coram: TYUTHUZA AJ.

Heard: 30 September 2025.

Delivered: 16 January 2026.

Summary: Review – Principle of legality – Appointment of senior municipal managers – Interpretation of applicable Regulations – Recruitment process not compliant with Regulations – Appointment unlawful – Review unsuccessful.

ORDER

1. The application is urgent, and the rules relating to forms, service and time periods, as prescribed by the Uniform Rules of Court are dispensed with.
2. The application is dismissed.
3. There is no order as to costs.

JUDGMENT

Tyuthuza AJ

Introduction:

- [1] On 26 August 2025, the Applicant launched this application on an urgent basis wherein he sought the following relief:
- 1.1. The rules relating to forms, service and time periods, as prescribed by the Uniform Rules of Court be dispensed with, and this matter be heard as an urgent application.
 - 1.2. Declaring the decision by the First Respondent's Council ("Council"), on 5 August 2025, to readvertise the position of Director: Corporate Services, to be unconstitutional and inconsistent with the principle of legality, therefore *ab initio* null and void, and as a consequence, setting same aside.
 - 1.3. Ordering the Second Respondent to implement and give immediate effect to the decision made by the Council, on 12 May 2025, to appoint

the Applicant as the First Respondent's Director: Corporate Services, with effect from 1 July 2025.

1.4. In the alternative:

1.4.1. Reviewing and setting aside the decision by the Council on 5 August 2025.

1.4.2. Ordering the Second Respondent to implement and execute the decision made by the Council on 12 May 2025.

1.5. Ordering the First Respondent and any other Respondents opposing this application, to pay the costs thereof, jointly and severally, the one paying the other to be absolved.

[2] On 1 September 2025, the First and Second Respondents ("the Respondents") opposed the application. The Third Respondent, namely, the Member of the Executive Council; Cooperative Governance, Human Settlements and Traditional Affairs ("the MEC"), did not oppose the application.

[3] On 10 September 2025, the First Respondent, namely, Gamagara Local Municipality ("the Municipality"), launched its conditional counter-application, wherein it sought the following relief:

3.1. That the non-compliance with the Uniform Rules of Court with regard to timeframes, forms and service be dispensed with, and the application be heard as one of urgency.

3.2. That, on principles of legality, the decision of the erstwhile Council, taken on 12 May 2025 to appoint the Applicant as Director: Corporate Services, be declared unlawful and in contravention of the Local Government: Municipal Systems Act, 32 of 2000 ("the Act"), and consequently null and void.

3.3. That the decision of the Council taken on 12 May 2025 be rescinded and set aside.

3.4. That the First Respondent, namely, Charles Maruping Phuti (Applicant in the main application) be ordered to pay the cost of the application.

[4] The counter-application is conditional upon the Court finding that the decision taken on 12 May 2025 to appoint the Applicant is valid (but voidable), and that the resolution taken on 5 August 2025 to rescind the aforesaid appointment and re-advertise the post, is invalid.

[5] The Applicant opposed the counter-application.

[6] The matter was set down for hearing on 12 September 2025, but on 12 September 2025, it was postponed to 30 September 2025.

Relevant Background:

[7] During October 2008, the Applicant was appointed as the Deputy Director: Corporate and Community Services of the Municipality and he remains employed as such.

[8] On or about 1 May 2023, the then Director of Corporate Services, Lebogang Seetile (the Second Respondent), was appointed as the Municipality's Municipal Manager. Consequently, the position of Director of Corporate Services became vacant.

[9] On 4 May 2023, the Council resolved to appoint the Applicant as the Acting Director: Corporate Services with effect from 1 May 2023, for a period of three months. In confirmation thereof, the Applicant received an appointment letter on 4 May 2023 and remains acting in the position.

[10] On or about 16 June 2024, the Municipality advertised the position of Director: Corporate Services. It is common cause that the Applicant applied for the position and was subjected to the recruitment and selection processes, as

prescribed by the Act and the Regulations on Appointment and Conditions of Employment of Senior Managers, 2014¹ ("the Regulations").

- [11] On 15 August 2024, the Applicant was subjected to a screening process within the contemplation of regulation 14(1) of the Regulations.

- [12] On 2 September 2024, the South African Local Government Association (SALGA) issued a screening report to the Second Respondent. On 6 September 2024, the Applicant was interviewed by the selection panel. On 18 September 2024 SALGA issued another screening report.

- [13] On 25 November 2024 the Applicant was subjected to a competency assessment test and according to the assessment report dated 26 November 2024, the Applicant's overall competency is levelled as "COMPETENT". Subsequently, the selection panel recommended that the Applicant be appointed as the Director: Corporate Services.

- [14] On 12 May 2025, the Council resolved to accordingly appoint the Applicant with effect from 1 July 2025. The MEC was informed on 10 June 2025 of the Council's decision to appoint the Applicant as Director: Corporate Services.

- [15] On 25 June 2025, the MEC addressed a letter to the Municipality's Mayor, wherein he stated *inter-alia*:

'3. After careful consideration of the APORSSs, I have concluded that the appointments was not in accordance with the prescribes of the Regulations on Appointment and Conditions of Employment of Senior Managers.

3.1. Regulations 14(1) states that the screening of the shortlisted candidates must take place within 21 days. However, the finalized screening report was issued 30 days after the prescribed time frame.

¹ GN 21 GG 37245, 17 January 2014 as amended by GN 890 GG 45181, 20 September 2021.

3.2. Regulation 15(1) states that the interviews must be conducted within 21 days of screening the candidates. The interview was conducted on 06 September 2024, before the finalised screening report was issued, dated 18 September 2024 this is in contravention with the Regulations.

4. In light of the above, it evidently indicate that there was flaws in the recruitment, selection and appointment processes that, is in contravention with the prescribes of the Regulations. Thus, it is advisable that the municipality re-advertised the position of Director: Corporate and Community Services to avoid any possible litigations.'
(Sic.)

[16] Subsequently, the Municipal Manager prepared a report, erroneously dated 3 August 2025, which served before Council on 5 August 2025. In the abovementioned report, the Municipal Manager advised the Council that the MEC refused to provide concurrence under the provisions of regulation 17(4) due to non-compliance with the Regulations. The Municipal Manager then recommended that the resolution of 12 May 2025 appointing the Applicant be rescinded and that the Council authorise the re-advertisement of the position Director: Corporate Services.

[17] On 5 August 2025, the Council resolved to rescind the Applicant's appointment and to re-advertise the position Director: Corporate Services.

[18] On 8 August 2025, the Applicant was informed that the Council had resolved to restart the recruitment process and to re-advertise the position of Director: Corporate Services, due to a procedural non-compliance with regulations 14 and 15.

Applicant's case:

[19] The Applicant's case concerns the rationality of the decision of the Municipality on 12 May 2025 ("12 May resolution"), to appoint the Applicant with effect from 1 July 2025 as a Director: Corporate Services, and the decision on 5 August

2025 ("5 August resolution"), to rescind the appointment and re-advertise the position.

- [20] The nub of the Applicant's case is that the 5 August resolution, rescinding his appointment, is unconstitutional and offends the principle of legality, in that it is irrational, amounts to self-help and as such is invalid and unlawful.
- [21] The Applicant asserts that his appointment complied with section 56 of the Act and that the selection and recruitment process complied with regulations 14 and 15.
- [22] The Applicant submits that the MEC's interpretation of regulations 14(1) and 15(1) is fundamentally flawed. That the timeframe prescribed by regulation 14(1) concerns the screening of shortlisted candidates and not a screening report. The shortlisting took place on 29 July 2024, whilst the Applicant's screening took place on 15 August 2024, thus within the twenty-one days from finalisation of the shortlisting process.
- [23] The Applicant further submits that the screening report was issued by SALGA on 2 September 2024 and the interviews were conducted on 6 September 2024, within 21 days from date of which the Applicant was screened, thus the interviews on 6 September 2024 were not premature. The Applicant submits that there was compliance with regulation 15(1).
- [24] The Applicant avers that the decision to re-advertise the position is irrational in that it was informed by the flawed interpretation of regulations 14(1) and 15(1), that he was subjected to the recruitment and selection process prescribed by the Act, and as such, was recommended to be appointed on account of having met all the requirements of the Act and having scored the highest during the interviews.
- [25] It is submitted that the 5 August resolution was solely informed by the MEC's reasoning insofar as his refusal to concur with the Applicant's appointment. The Applicant submits that the resolution is unlawful and infringes on the principle of legality.

Respondents' case:

- [26] The Respondents' case is that the appointment was made in contravention of section 56 of the Act, and that there was non-compliance with regulations 14(1) and 15(1). The Respondents submit that the mandatory screening in terms of regulation 14(1) had not been properly and fully completed by the time interviews were held on 6 September 2024. Thus, the selection process which led to the decision of 12 May 2025 was fatally flawed.
- [27] The Respondents submit that there was non-compliance with regulation 17(1), in that the Council had not satisfied itself that candidates met the relevant competency requirements for the post. Thus, the decision to appoint the Applicant for the post Director: Corporate Services was not compliant with the Act and thus null and void.
- [28] It is the Respondents' case that the 12 May resolution was unlawfully taken, thus the decision to rescind it, was lawful. On the basis that the recruitment process was flawed and tainted, the Respondents vehemently dispute that the Applicant is entitled to be appointed to the position.
- [29] The Respondents seek the review and setting aside of the 12 May resolution on the basis of irregularities in the recruitment process.

Urgency:

- [30] At the onset, urgency was an issue between the parties, but at the hearing of the matter, the parties were *ad idem* that the application be entertained on an urgent basis.
- [31] It is common cause that the procedure set out in Rule 6(12) is not there for the taking. Before a court makes a finding on the merits of an urgent application, the court must first consider whether the application is indeed so urgent that it must be dealt with on the urgent court roll. Where an applicant fails in convincing the court that he/she will not be afforded substantial redress at a

hearing in due course, the matter will be struck from the roll. This will enable the applicant to set the matter down again, on proper notice and compliance.²

[32] This matter arises as a result of the intervention of the MEC. Based on the reasons issued by him, the Council on 5 August 2025 resolved to rescind its resolution of 12 May 2025, and re-advertise the position of Director: Corporate Services. Until then it is evident that the Council and the Municipal Manager were satisfied with the appointment of the Applicant as Director: Corporate Services.

[33] The Applicant submitted that the decision of 5 August 2025 was irrational and unduly influenced by the MEC's flawed reasoning, and amounts to an unlawful attempt to self-help.

[34] In *Apleni v President of the Republic of South Africa and Another*³, the Court acknowledged that allegations concerning the abuse of power by public officials, warrant prompt judicial attention. The Court held as follows:

'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 ought normally to be urgently considered.'

[35] Further in *Letsholonyane v Minister of Human Settlements and Another*⁴ it was stated:

'When political heads are alleged to have subverted the rule of law, or undermined the express provisions of valid agreements or binding procedures, and unleashed lawlessness on the people they are supposed to lead, courts of law should hasten, when called upon, to intervene – on good cause. Failure by the courts in that situation would lead to a perpetuation of the lawlessness, and embolden those in power to continue acting with impunity.'

² *Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd* 2006 (4) SA 292 (SCA) para 9.

³ [2018] 1 All SA 728 (GP) para 10.

⁴ [2023] ZALCJHB 147; [2023] 8 BLLR 796 (LC); (2023) 44 ILJ 1740 (LC) para 30.

- [36] The recruitment process that led to the impugned decisions was long, having started in June 2024 and being ultimately concluded in May 2025. The advertised position had attracted twenty-four candidates. It goes without saying that once this position is re-advertised, it will again be a long process which is likely to attract a big pool of candidates, which might in turn lead to the appointment of a different person. If the matter were to be heard on the normal roll, it would most likely only be heard in a year's time and by then the Respondents might have appointed another person to the position. I am of the view that any further delay in this matter will be prejudicial to the Applicant. As such, I am satisfied that this matter is urgent.

Applicable legislation:

- [37] The issues raised in this matter have necessitated a consideration of the Local Government: Municipal Systems Act and the relevant Regulations.
- [38] The appointment of senior managers in the municipality is regulated by section 56 of the Act. The Act prescribes that the appointment of the senior manager is the responsibility of the municipal council upon consultation with the municipal manager.⁵
- [39] The Act further prescribes that a person appointed as a senior manager must at least have the skills, expertise, competencies and qualifications as prescribed.⁶ The section envisages that candidates who are best qualified for the job must be recruited for the position. Section 56 further nullifies any appointment made in contravention of the Act.⁷
- [40] The Regulations set out the general requirements for the appointment of senior managers. For purposes of this application, regulations 14 and 15 which deal with the screening of candidates and interviews are of importance.

⁵ Section 56(1)(a).

⁶ Section 56(1)(b).

⁷ Section 56(2)(b).

- [41] Regulation 14 details what the process of screening entails and prescribes that the process must take place within 21 days from the finalisation of the shortlisting. It further provides that a written report of the outcome of the screening process must be compiled by the municipal manager before the interviews take place.⁸
- [42] In terms of regulation 15(1), the interviews must take place within 21 days of screening. Regulation 14 and 15 are couched in peremptory terms, thus non-compliance therewith would be in contravention of the Act.
- [43] Regulation 16(1) dictates that the candidates recommended for appointment to the post of a senior manager must undergo a competency assessment.
- [44] In terms of regulation 17(1), before deciding on an appointment, a municipal council must satisfy itself that:
- (a) the candidate meets the relevant competency requirements for the post, as set out in Annexures A and B to the regulations;
 - (b) the screening of the candidate has been conducted in terms of regulation 14; and
 - (c) that the candidate does not appear on the record of staff members dismissed for misconduct as set out in Schedule 2 to the Regulations.
- [45] Regulation 17(3)(b) provides that a municipal council must within 14 days submit a written report to the MEC for local government regarding the appointment process and outcome.
- [46] In terms of regulation 19, if no suitable candidate has been identified, the municipal council: (a) must inform all shortlisted candidates that their applications were unsuccessful; and (b) may re-advertise the post.

⁸ Regulation 14(2).

- [47] It then follows that if the recruitment process is flawed, any person appointed from that process, would be appointed unlawfully.

Analysis:

- [48] The crisp question is the interpretation of regulations 14 and 15, and whether the MEC's interpretation thereof is flawed. It is established law that courts adopt a purposive and holistic approach when interpreting regulations.⁹
- [49] It is common cause that the Applicant applied for the position and was shortlisted on 29 July 2024. It is evident from the screening report dated 2 September 2024 (2 September 2024 report) that the screening comprised of criminal checks, driver's licence checks, employment character references, fraud listing, academic qualifications, matric checks and identity verification in respect of the candidates, and that the "employment character reference verification in respect of two candidates was only partially fulfilled". On 18 September 2024 another report was issued (18 September 2024 report), which recorded that the references had been received from all three sources in respect of all the candidates.
- [50] Interviews of the shortlisted candidates were conducted on 6 September 2024, prior to the issuing of the 18 September 2024 report. Thus, it is clear that the selection panel only had the 2 September 2024 report before it during the interviews. It is the Respondents' case that the 2 September 2024 report was incomplete and entirely insufficient, and that it did not comprise of a full screening of all the shortlisted candidates. The deponent to the Respondents' answering affidavit is the current Municipal Manager of the Gamagara Local Municipality. He was part of the recruitment processes leading to the appointment of the Applicant. He avers that the selection panel was advised on 6 September 2024 that the screening report was incomplete and that a final report was yet to be received, but despite the advice, members of the panel

⁹ *Hospital Association of South Africa NPC v MEC for Health for the Free State Province* (A45/2015) [2016] ZAFSHC 223 (22 December 2016) para 38; see also *Municipal Employees Pension Fund v Natal Joint Municipal Pension Fund (Superannuation) and Others* 2018 (2) BCLR 157 (CC); (2018) 39 ILJ 311 (CC) para 38.

continued with the interviews in the absence of a complete screening report. In his report to the MEC, he makes no mention of the 2 September 2024 report and only mentioned the report submitted on 18 September 2024.

[51] Regulation 14(1) regulates the time within which the screening process of the candidates must take place after shortlisting. As alluded to, candidates were shortlisted on 29 July 2024, the “screening of the candidates was conducted on 15 August 2024”, and the reports were issued on 2 September 2024 and 18 September 2024, respectively. On a textual approach, one can easily conclude that there was compliance with regulation 14(1) in that the screening was conducted within the prescribed 21 days. This could also seem to be fortified by the fact that regulation 14(2) which specifically deals with the timeframes for the report merely provides that the report must be produced before interviews are conducted. The MEC’s interpretation of regulation 14(1) would be flawed as it purports to include the report in the timeframe for the screening so that the screening process, and the report on the outcome thereof, must both be completed within 21 days of the finalisation of the shortlisting. Further, it would seem as though the drafters would have expressly stated if the report was to be included in the 21-day period.

[52] On the other hand, a holistic and purposive approach which requires that regulation 14 be interpreted in the context of the other regulations brings another dimension to the issue. This becomes apparent when considering regulation 15(1) which dictates that interviews must take place within 21 days of “screening” candidates. If the production of the report on the screening process is excluded from the timeframes of the screening process itself, the following issues may arise:

- 52.1. For as long as the report is outstanding, especially where the screening process was outsourced, it is impossible to determine when and if the screening process has been concluded;
- 52.2 Consequently, for as long as the report is outstanding, one cannot ascertain that there was compliance with the timeframes in regulation

14(1) because it is the report that would, beyond doubt, prove the date on which the screening process was concluded;

52.3. Resultantly, it would be difficult to determine exactly when the clock starts ticking after the 21 days of screening the candidates within which interviews must be conducted in terms of regulation 15(1); and

52.4. Ultimately, ensuring compliance with regulation 15(1) would be difficult.

[53] In an attempt to deal with the issues raised in paragraph 52 above, one may argue that they are not valid issues at all. This is because the submission by the parties that the candidates were “screened on 15 August 2024” creates the impression that the process conducted on the 15th of August 2024 denotes the completion of screening for purposes of regulation 14(1). This would mean that screening has been conducted and all that remains is the report. Consequently, one would opine, as the Applicant does, that the 15th of August 2024 is when the clock starts ticking in relation to the timeframes for interviews for purposes of compliance with regulation 15(1). However, the Respondents’ submissions demonstrate that the aforementioned is not the case, more processes may be, and were undertaken post the 15 August 2024 processes. On the other hand, one may propose that SALGA could inform the mayor once the process is complete and that what remains is the compilation of the report. The interviews would then have to be conducted within 21 days from the date of completion provided by SALGA. Needless to mention the possible issues that may arise should the report subsequently prove otherwise in so far as the completion date is concerned, and that the Regulations do not seem to have envisaged this. It is therefore evident that excluding the report from the timeframes of the screening process leaves room for more practical difficulties, and this makes the MEC’s interpretation seem not far-fetched.

[54] In light of my stance discussed below on regulation 14(2), it seems both unnecessary and improper to make any conclusive findings on the proper interpretation of regulation 14(1). The impropriety emanates from the fact that there are no submissions from the main party responsible for the impugned

regulations, the Minister for COGTA, as he is not a party in these proceedings.¹⁰ The litigants have also not fully addressed this Court on the abovementioned possible practicality issues, understandably so because some of the outlined issues did not necessarily arise in *casu*. It is trite that, generally, a court should not decide more than is necessary for the purposes of disposing of a case.¹¹ As alluded to, what is undisputed with the facts in this case is that two reports were issued, the last being the 18 September 2024 report. Interviews were held on 6 September 2024 prior to that report being issued. On 6 September 2024, the panel sat with a report which still required certain information in respect of some of the candidates which were to be interviewed. Despite being aware that the report was incomplete as the report on the screening of two candidates was yet to be finalised, the panel conducted interviews. I have no doubt that conducting the interviews whilst being aware that a final report is yet to be obtained, and lacking verification of certain information was prejudicial to the affected candidates and jeopardised the purpose of the Regulations.

[55] Confronted with the issue of an incomplete report, the Applicant urged this Court to adopt an individualised approach to the interpretation and application of regulation 14(2). He averred that the first report was complete in so far as his screening is concerned, and that such report was accordingly utilised during his interview. I disagree with such an individualised approach. The anomaly in the Applicant's submission is that there would be a piecemeal approach, wherein interviews cannot be conducted in relation to certain candidates pending the full report on the outcome of their screening, while interviews proceed in relation to other candidates.

[56] Further, given that in this case the candidates were all interviewed irrespective of any incompleteness relating to certain candidates in the 2 September 2024 report, the Applicant's approach creates a situation where the recruitment process would be unlawful only in relation to the candidates whose screening

¹⁰ *Member of the Executive Council Local Government Environmental Affairs and Development Planning, Western Cape v Prince Albert Municipality and Another* (A231/2020) [2021] ZAWCHC 278 (21 September 2021) para 31.

¹¹ *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC) para 78; *S v Boesak* 2001 (1) SA 912 (CC) para 14.

outcome was not fully reported on before they were interviewed. Similarly, the recruitment process would be unlawful only if the candidate who is ultimately appointed was part of the candidates whose outcome of the screening was incomplete when they were interviewed. In other words, if interviews were conducted pending a full report on other candidates, but the report was complete in relation to the candidate who has ultimately been appointed, the recruitment process would be lawful. This is definitely not what the Regulations and the enabling legislation envisaged. The Applicant's interpretation cannot be endorsed.

- [57] The Applicant also submitted that the selection panel which remains the same throughout the recruitment process is involved in the screening process. Consequently, regulation 14(2) does not demand that the report be before the selection panel during interviews as the panel is privy to the issues arising in the screening process, concluded the Applicant. The Applicant's submission is unsustainable because the screening process can be outsourced and the panel would not be privy to issues arising in the process until the report is submitted to it as was the case here.
- [58] Accordingly, no matter the correct approach to regulation 14(1), it is evident that in this case there was non-compliance with regulation 14(2) as it is clear that on 6 September 2024, not all the candidates were fully screened. Regulation 14(2) is in peremptory terms and a lack of strict compliance therewith should not be overlooked.¹² Resultantly, any decision taken in contravention thereof is unlawful. In light of the above, I find that the resolution of 12 May 2025 appointing the Applicant is unlawful.
- [59] I find that the resolution of 12 May 2025 appointing the Applicant was premised on a process that was procedurally wrong, and that the resolution of 5 August 2025 to rescind the Applicant's appointment was not irregular and unlawful; and thus must stand.

Costs:

¹² *South African Municipal Workers Union v Letsimeng Local Municipality and Another* (J 75/2024) [2024] ZALCJHB 106 (5 March 2024) para 48.

[60] The general rule is that costs follow the result. This Court has a wide discretion in respect of costs, which must be exercised judicially, considering the requirements of law and fairness.¹³

[61] While the application is bad in law, I cannot find that it is *mala fide* or an abuse of process. The Applicant sought to vindicate his right to fair administrative action. Accordingly, I make no order as to costs.¹⁴

[62] Consequently, I make the following order:

1. The application is urgent, and the rules relating to forms, service and time periods, as prescribed by the Uniform Rules of Court are dispensed with.
2. The application is dismissed.
3. There is no order as to costs.


 T TYUTHUZA
 ACTING JUDGE OF THE HIGH COURT
 NORTHERN CAPE DIVISION

Appearances

On behalf of the Applicant:
On the instruction of:

Mr W.P. Schöltz
Schöltz Attorneys

On behalf of the Respondents:
On the instruction of:

Adv M.C. Louw
Peyper Attorneys Inc.

¹³ *Intercontinental Exports (Pty) Ltd v Fowles* [1999] 2 All SA 304 (A); 1999 (2) SA 1045 (SCA) para 25; see also *Kobusch and Others v Whitehead* 2025 (3) SA 403 (SCA) para 24.

¹⁴ See for example *South African Municipal Workers Union v Letsimeng Local Municipality and Another* (*Supra*) fn 12 paras 67–70.