



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

CASE NUMBER: 2025-073654

In the matter between:

ALLY KHOZA

JABU PRISULLA PHAKATHI

GREATERMAN MBONGISENI THWALA

ZANELE CHRISTINA MSIBI

BHEKI GIFT MADI

NTOMBINCANE PAULINE SHABALALA

SIZWE WILLIAM MNGOMEZULU

SIBUSISO ELIJAH MYAKA

VICTORIA FIKILE HADEBE

SIBUSISO SIZANI

NKOSIVUMILE ALEC ZULU

SOMBU BELLINAH BUTHELEZI

THEMBINKOSI NKOSINATHI DLAMINI

and

AMAJUBA DISTRICT MUNICIPALITY

FIRST APPLICANT

SECOND APPLICANT

THIRD APPLICANT

FOURTH APPLICANT

FIFTH APPLICANT

SIXTH APPLICANT

SEVENTH APPLICANT

EIGHT APPLICANT

NINTH APPLICANT

TENTH APPLICANT

ELEVENTH APPLICANT

TWELFTH APPLICANT

THRITEENTH APPLICANT

FIRST RESPONDENT

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| COUNCIL FOR AMAJUBA DISTRICT MUNICIPALITY | SECOND RESPONDENT |
| SIBUSISO EPHRAIM CELUMUTHI KUNENE | THIRD RESPONDENT |
| SIZAKELE MARIA KHOZA | FOURTH RESPONDENT |
| THEMBELIHLE ELVIS MTHEMBU | FIFTH RESPONDENT |
| SIPHAMANDLA OBERT ZULU | SIXTH RESPONDENT |
| ISAAC SHAKA SITHOLE | SEVENTH RESPONDENT |
| LEONARD NHLANHLA ZULU | EIGHTH RESPONDENT |
| SIZAKELE NTOMBENHLE NDLOVU | NINETH RESPONDENT |
| MBONGENI EDWARD HLATSHWAYO | TENTH RESPONDENT |
| MISIZWE NDABUKO ZULU | ELEVENTH RESPONDENT |
| SIMANGALISO KWAZI THWALA | TWELFTH RESPONDENT |
| ANDILE THANDO NKOSI | THIRTEENTH RESPONDENT |
| RICHMAN SIPHIWE LANGA | FOURTEENTH RESPONDENT |
| ELIJAH SIPHO KUNENE | FIFTEENTH RESPONDENT |
| ELIZABETH JOHANNA CECELIA CRONJE | SIXTEENTH RESPONDENT |
| MARJORIE TANDI DOROTHA MAKHOBA | SEVENTEENTH RESPONDENT |
| SHAIENDRA SINGH | EIGHTEENTH RESPONDENT |
| AFRICAN NATIONAL CONGRESS | NINETEENTH RESPONDENT |
| INKATHA FREEDOM PARTY | TWENTIETH RESPONDENT |
| ECONOMIC FREEDOM FIGHTERS | TWENTY-FIRST RESPONDENT |
| TEAM SUGAR SOUTH AFRICA | TWENTY-SECOND RESPONDENT |
| DEMOCRATIC ALLIANCE | TWENTY-THIRD RESPONDENT |
| ACTION SA | TWENTY-FOURTH RESPONDENT |
| ABANTU BATHO CONGRESS | TWENTY-FIFTH RESPONDENT |

JUDGMENT

P C BEZUIDENHOUT J:

[1] On 23 May 2025 Applicants brought an application against Respondents wherein they sought *inter alia* that the election of the Mayor and Deputy Mayor of the District Municipality on 20 May 2025 be declared unlawful and set aside and that the council meeting of the Amajuba District Municipality held on 20 May 2025 to elect the Mayor and Deputy Mayor be declared unlawful and set aside as well as all decisions taken at the said meeting.

[2] The application was opposed by First and Second Respondents which are the Amajuba District Municipality and the Council for the Amajuba District Municipality. At the hearing of the application on 23 May 2025 an order was taken by consent between Applicants and Second Respondent whereby a Rule *nisi* was issued with a return date on 24 July 2025 why and order should not be granted that the meeting and the election of the Mayor and Deputy Mayor be declared unlawful and be set aside and any decisions taken by the said meeting. It provided further for the filing of supplementary affidavits, filing of affidavits by Respondents and for the filing of a replying affidavit. The issue of costs was reserved.

[3] The matter is now before Court for the confirmation of the Rule *nisi* which is being opposed. It must therefore be decided whether the Rule *nisi* should be confirmed or discharged.

[4] Applicants contend that there are 29 councilors and accordingly before a vote can be taken there must be a quorum of fifteen councilors. Prince Ndadukho Zulu

who was the Mayor resigned during December 2024. Since then the Deputy Mayor Thembilishle Mthembu has been acting as Mayor.

[5] On 7 May 2025 First to Fifteenth Respondents constituting the majority of councilors wrote a petition in terms of section 29(1) of the Structures Act (the Act) requesting the speaker to convene a council meeting to deliberate on a no confidence motion against the speaker and to elect a new Mayor. The speaker did not act on the petition and never convened the meeting as requested. The Municipal Manager also did not act on the said letter.

[6] On 18 May 2025 the speaker of council issued a notice convening a special meeting on 20 May 2025 at 10H00 to elect the Mayor and Deputy Mayor of the District Municipality. It excluded the item requested for a motion of no confidence against the speaker.

[7] At the meeting it was discovered that Ninth Applicant was not appearing on the register for councilors and had been replaced by a certain Ndomiso Masondo as one of the councilors representing Team Sugar South Africa. This was irregular and unlawful as it was non-compliant with the procedures of replacement of councilors and had not been presented to the independent electoral commission. This was a fraudulent attempt to replace councilor Hadebe. This was queried and resulted in the meeting descending into chaos and Third to Sixteenth Respondents then walked out of the meeting. Shortly thereafter Applicants established that the councilors who had walked out of the meeting, Third to Sixteenth Respondents had moved to another section of the building to continue the meeting. They went there but were refused access by members of the South African Police. The meeting then proceeded without them being in attendance.

[8] It is contended that the meeting of 20 May 2025 was unlawful and should be set aside for the following reasons.

- (a) The majority of councilors, fifteen of them, were denied entry and were not present at the said meeting. There was accordingly not a coram as at best there could have been fourteen councilors and at worst twelve councilors if the expelled members of Team Sugar South Africa are not counted. Ndumiso Masondo had no status or authority to participate and vote at the meeting.
- (b) The meeting that had been held with all councillors was abandoned when Third to Sixteenth Respondents walked out of the meeting. In terms of the standing rules and orders of council when a meeting is adjourned a notice for continuation shall be served in terms of section 4 which requires forty-eight hours notice before a special meeting. Also locking out councillors from the meeting was a violation of the standing rules.
- (c) Section 31(1) of the Act requires a Municipal Council to conduct its business in an open manner and not closed sessions. The election of the Mayor and Deputy Mayor was of public interest. Various supporting affidavits by all Applicants were attached as well as one from Twenty-Fourth Respondent supporting the said application. Eighteenth Respondent representing Action SA also filed an affidavit supporting the application by Applicants.

[9] On behalf of First Respondent an opposing affidavit was filed by the Acting Municipal Manager. It is contended that the relief sought was not competent as a declaratory order cannot be granted on an interim basis. Secondly that the interdicts do not apply retrospectively and that the requirements for the interdict had not been met.

[10] The affidavit deals extensively with the requirements of an interim interdict but a reading of the papers will indicate that the order which was granted in the Rule *nisi* did not contain any interdict but was to set aside the meeting and appointment of Mayor and Deputy Mayor. It was contended that the thirteen Applicants do not

constitute a majority. It sets out at length how certain councilors were appointed, certain resigned and, how they were replaced. This in my view does not appear to be relevant to the issue which has to be decided in respect of the relief claimed. It is contended that Applicants do not constitute the majority of the District Council and therefore their representation for a meeting of no confidence was not considered. Certain microphones etc. were broken on 20 May 2025 and the speaker then informed councilors that the meeting would continue at another venue in the Municipality. It was merely a change of venue. The decision that was then taken was taken by the majority of the councilors.

[11] In applicants heads of argument it sets out that one of the issues is whether the persons who attended the meeting of 20 May 2025 were entitled to do so. Secondly that the coram was not fulfilled and it proceeded in another room but there was no notice of the location being changed and contravened Rule 4 of the standing Rules. Fourthly, the prevention of councilors from entering the said room which was near the office of the Municipal Manager. It further sets out previous events where the speaker was requested to convene a meeting and this was not done. At the meeting of 20 May 2025 Fifth Respondent Thembelihle Elvis Mthembu was elected as Mayor and the Seventh Respondent Isaac Shaka Sithole as Deputy Mayor. Due to the non-compliance as set out above this should be set aside.

[12] It further deals with the election of the Mayor and Deputy Mayor and in terms of the provisions of the standing Rules and also the Constitution and the Structures Act. It was contended that the speaker of the Municipality acted *ultra vires* and contrary to his powers in terms of section 29 (1) as he failed to call a special meeting as prescribed in section 29 (1) as was requested. Also that 48 hours notice was not given by the speaker of the said meeting and there was therefore non-compliance with the Rules. The speaker had to give notice of the change of venue of the meeting after the chaos that broke out at the meeting and it was then moved to another venue at the Municipality. It does not set out in the answering affidavit where exactly it went and who was informed and how they were informed. There is no explanation save to state that it was moved to another venue. It further contended that the South African

Police could not have councilors from entering and that the person Nondumiso Masondo, not being a duly elected member, could not vote at the said meeting and was also not entitled to be present. There was no coram for the meeting and the Mayor and Deputy Mayor could therefore not have been elected in terms of the Rules.

[13] First and Second Respondents in their heads of argument contend that a declaratory order was inappropriate and could not be sought against the Mayor and Deputy Mayor as they were not cited in those capacities but in their capacities as councilors. They should have been cited in their positions as Mayor and Deputy Mayor. It was further contended that interdicts cannot apply retrospectively and that there was no basis for such relief.

[14] On behalf of Applicants what was contained in the heads of argument set out above were confirmed and then submitted that in terms of section 29 of the Structures Act the majority petitioned the speaker to convene a special meeting on 13 May 2025 which the speaker refused to do. There was no notice of at least 48 hours for the meeting on 20 May 2025 as the 17 May 2025 was a Saturday. It needs to be working days. The meeting was therefore not properly convened and was invalid. Further there was a person not on the list of councilors who attended that meeting and this was also a breach of the Constitution. It was not explained where the meeting was to proceed and one Nondumiso was not entitled to be present at the meeting and could not be counted as a member to attain a coram.

[15] It was submitted that the position of Mayor was vacant and the councilor who was elected was cited as a Respondent and accordingly properly joined. As the meeting was not correctly constituted when the Mayor and Deputy Mayor were elected they could therefore not be cited in that capacity. Applicants had a right to participate in the council meeting and the Court must look at the unlawfulness that took place. Further that no interdict was sought. All that is sought is confirmation of the Rule *nisi*.

[16] It was not apparent who made the decision to oppose the said application as it was only First and Second Respondent who opposed the application and there was nothing to indicate that such opposition was authorised by council. It was therefore submitted that the Rule *nisi* had to be confirmed and that First and Second Respondent be ordered to pay the costs including the reserved costs and such costs to include the costs of two counsel.

[17] In addition to their heads of argument referred to above it was submitted on behalf of First and Second Respondent that the Court should not exercise its discretion in favour of Applicants. It was submitted that the Mayor and Deputy Mayor were not cited in their respective positions but were cited as Fifth and Seventh Respondent. That is not sufficient. I was referred *inter alia* to the decision of Machabeng Municipality v Eskom 2017 (ZACC 35) and Watson NOV Nongoma & another 2021 (5) SA 559 (SCA) as authority that court cannot deal with matters where a party was not joined in the suit. There should be a distinguishment between a party in their official capacity and their personal capacity. There was no citation in the papers of the specific Respondents as Mayor and Deputy Mayor. They were cited as councilors. There is a difference between these positions because the action was not against them in their capacity as councilors but as Mayor and Deputy Mayor.

[18] It must be considered if a proper case for a declaratory order has been made out. The citing of the parties is legal argument on a point of law. It was submitted that in the amended notice of motion, a review application, was sought. However the amended notice of motion was never made an order or dealt with in court and is not relevant as far as these proceedings are concerned as it only concerns whether the Rule *nisi* should be confirmed or discharged. The declaratory order sought in respect of the meeting of 20 May 2025 will not resolve the matter in its totality. There needs to be a declaration which sets out what should happen if it is declared invalid as there would then be no uncertainty. It would be of no benefit to Applicants if it is only declared unlawful. It should therefore be dismissed with costs. Such costs to be on scale C.

[19] It is not disputed that there was a request for a special general meeting made on 13 May 2025. It is common cause that a meeting was set down for 20 May 2025 and that such meeting indeed proceeded. It is also common cause that the meeting became chaotic and was stopped. The speaker then moved the meeting to another room at the Municipality. There the meeting proceeded and the Mayor and Deputy Mayor were elected.

[20] In the answering affidavit it merely mentions that the speaker moved the meeting after certain microphones were broken when chaos developed at the meeting. It is not set out how it was explained to councillors or how they were informed that the meeting was to proceed in another room nor when it was to proceed. In the answering affidavit it does not set out what the speaker did to ensure that all councillors were aware that the meeting was to be held in another room. Further the allegations in the founding affidavit that police members prevented councillors from entering the room, where the meeting proceeded, which they say was close to the office of the Municipal Manager, was merely denied together with many other averments and no explanation provided in that regard.

[21] This is a very serious allegation as it would indeed make the whole meeting totally unlawful and invalid if police members refused councillors, who were entitled to be at the meeting, entrance into the room. One would have expected that this issue would be dealt with in some detail by First and Second Respondents in their answering affidavit. Also an explanation as to why the police members were placed at the door to the room. It is further apparent that it is in issue what notice was given of the meeting of 20 May 2025. It is clear that 48 hours notice must be given of such a meeting and as it extended over a weekend and not working days that the said 48 hours notice was indeed not given. This however, although there may have been non-compliance therewith, does not appear to have affected the holding of the meeting because the members were all present. The other issue is that of the person who attended who was not a councillor. It is not apparent from the papers as to whether a coram was indeed present when the Mayor and Deputy Mayor were elected.

[23] The position of Mayor was vacant. When the Mayor and the Deputy Mayor were elected it was done at the said meeting where it is not clear whether there was a quorum or not and from which other councilors were prevented to enter. The question arises whether the Mayor and the Deputy Mayor who were elected were not cited as Mayor and Deputy Mayor but were cited as normal councilors namely Fifth and Seventh Respondents in the case amounts to non joinder. The cases I was referred to above on which Respondents rely are in my view distinguishable. They deal with the issue where a person is not a party to the proceedings. In this case they are parties and joined as Respondents. As already set out there was no interdictory relief sought. The amended notice of motion need not be dealt with as that was never dealt with in the matter and not made an order of court. The order of court is the Rule *nisi* which was granted.

[24] The only issue which has to be decided now is whether the Rule *nisi* should be confirmed or discharged. The Rule *nisi* sets out that both the meeting and the elections of the Mayor and Deputy Mayor should be declared invalid and set aside. If that is done it would result in the status quo which was in existence prior to the meeting of 20 May 2025 being reinstated. That would cause the person elected as Mayor to return to the position of Deputy Mayor and the position of Mayor would then still be vacant.

[25] It is so that in this matter there are interested parties upon which the declaratory order would be binding. They would not only be Applicants but also Respondents. Applicants have an existing and contingent right. The fact that they were excluded from the meeting is indeed a factor to be considered as that excluded their right to be present at such meeting.

[26] The persons elected as Mayor and Deputy Mayor are indeed parties to the proceedings as Respondents and were well aware of the allegations which were made against them. The only difference is that they were not cited twice. They were indeed Respondents and it was also set out in the founding papers exactly how they are

parties in the proceedings and how they were elected to the positions of Mayor and Deputy Mayor which is contended to have been an invalid meeting.

[27] Indeed Applicants have shown that they were excluded from the said meeting. There is nothing to show how they were informed where the meeting was to continue and also that they were prevented from going into the said room when they established where the meeting was continuing. The issue of whether there was a quorum is also in dispute. However, in my view, the fact that even if there may have been a quorum it is not sufficient because Applicants were entitled to be at the meeting, they had not been expelled from the meeting and therefore indeed by not allowing them to be at the meeting the meeting was irregular and should not have been proceeded with.

[28] In the event of the Rule *nisi* being confirmed the effect would be that the status quo prior to the granting of the Rule *nisi* would prevail. That would thus mean that the position of Mayor would become vacant again and the Deputy Mayor would return to that position from the position of Mayor which he was now elect to. The correct procedure should then be followed for the election.

[29] Having considered all the issues, the argument by the respective parties representatives, their heads of argument and the cases I am satisfied that Applicants have made out a case for the Rule *nisi* to be confirmed.

Accordingly the following order is made:

1. The Rule *Nisi* granted on 23 May 2025 is confirmed.
2. The First and Second Respondents are to pay the costs of the application including the reserved costs of 23 May 2025 and such costs to included the costs of two counsel where applicable.


P C BEZUIDENHOUT J.

JUDGMENT RESERVED:

31 OCTOBER 2025

JUDGMENT HANDED DOWN:

29 JANUARY 2026

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