



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA (MAIN SEAT)**

CASE NO: 3430/2022

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
	04/02/2026
SIGNATURE	DATE

In the matter between:

**MEMBER OF THE EXECUTIVE COUNCIL: COOPERATIVE
GOVERNANCE AND TRADITIONAL AFFAIRS,
MPUMALANGA**

FIRST APPLICANT

**ANALYTICAL FORENSIC INVESTIGATION SERVICES
(PTY) LTD**

SECOND APPLICANT

**MINISTER OF COOPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS**

THIRD APPLICANT

MINISTER OF FINANCE

FOURTH APPLICANT

EMALAHLENI LOCAL MUNICIPALITY

FIFTH APPLICANT

and

HUMPHREY SIZWE MAYISELA

FIRST RESPONDENT

PRECIOUS JABULILE HLATSHWAYO

SECOND RESPONDENT

THAPELA MICHAEL LELAKA

THIRD RESPONDENT

COLIN BRENTJIES

FOURTH RESPONDENT

EDWIN SEDUPANE

FIFTH RESPONDENT

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 04 February 2026 at 10h00.

JUDGMENT

Mashile J

[1] This is a leave to appeal application following this Court reviewing and setting aside three decisions by the First Applicant ("the MEC"), which were as follows:

- 1.1 Designating the Second Applicant ("AFIS") to investigate allegations of maladministration, fraud, corruption or any other serious malpractice within

the Fifth Applicant ("the Municipality") in terms of Section 106(1)(b) of the Local Government Municipal Systems Act¹ ("the MSA");

1.2 The AFIS Report titled: Investigation in terms of Section 106(1)(b) of the MSA; - Emalahleni Local Municipality;

1.3 The adoption and tabling of the Report in the Provincial Executive Council.

[2] This Court also awarded costs jointly and severally against the MEC and AFIS ("the Applicants"). Dissatisfied with the interim order as described above, the Applicants launched this application for leave to appeal. At the heart of this matter is that this Court failed to discharge its duties contemplated in Section 34 of the Constitution of the Republic of South Africa ("the Constitution").² In support of the criticism, the MEC and AFIS have raised several grounds of appeal. Some of these grounds, they argue, were identified by this Court early in the judgment, but failed to canvass them when analysing the matter. I now proceed to briefly discuss those main grounds on which the MEC and AFIS rely.

[3] The MEC raised the following two grounds: Firstly, the Respondents lacked *locus standi*. Secondly, the review prematurely came before this Court. These are two distinct grounds, but they are consequential because the former precedes the latter unless *locus standi* is conceded. In justification of the grounds, the MEC contends that the decisions of the MEC and the subsequent report were not final administrative decisions as intended in Section 1 of the Promotion of Administrative Justice Act ("PAJA").³ That must be the position, argues the MEC, because AFIS's report has neither been tabled before the Municipality nor has there been any disciplinary action against the Respondents stemming from the report.

[4] Insofar as AFIS is concerned, this Court misconstrued the relief sought by the Respondents. It is the MEC's decision to designate AFIS, so continues the argument, that the Respondents impugned and not the MEC's decision to invoke the power to investigate

¹ Local Government: Municipal Systems Act, No 32 of 2000 ("the MSA").

² Constitution of the Republic of South Africa, Act No 108 of 1996 ("the Constitution").

³ Promotion of Administrative Justice Act, No 3 of 2001 ("PAJA").

bestowed upon her by Section 106(1)(b) of the MSA. To the extent that this Court interpreted the notice of motion as comprising the latter, it has erred. For that reason, concludes AFIS, another Court would reach a different conclusion.

[5] Section 17(1)(a) of the Superior Courts Act, 10 of 2013 provides that:

“(c1) Leave to appeal *may only be given* where the judge or judges concerned are of the opinion that –

- (a) (i) the appeal *would* have a reasonable prospect of success; or
- (ii) there is *some other compelling reason* why the appeal should be heard, including conflicting judgments on the matter under consideration.”

[6] In *Ramakatsa and Others v African National Congress and Another*⁴, the Supreme Court of Appeal (“SCA”) set out the test when seeking leave to appeal under Section 17(1)(a)(i), as follows:

“... I am mindful of the decisions at the High Court level debating whether the use of the word ‘would’ as opposed to ‘could’ possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. *The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court.* In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.”

[7] The applicable threshold when applying Section 17(1)(a)(i) of the Superior Courts Act remains the same as under the old Supreme Court Act, 59 of 1959. The interpretation

⁴ *Ramakatsa and Others v African National Congress and Another* [2021] JOL 49993 (SCA) para 10.

of this Section, as articulated by the SCA in the *Ramakatsa* matter *supra*, does *not* result in any raised threshold, requiring some degree of certainty that the Appeal Court *will* differ from the Court *a quo*. The Supreme Court Act standard that 'a Court of Appeal could reasonably arrive at a conclusion different to that of the trial Court' is still extant. If the Court is unpersuaded by the prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. In *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*⁵, the Court defined a compelling reason as one including an important question of law or a discrete issue of public importance that will have an effect on future disputes.

[8] Any discussion of *locus standi* and prematurity in these circumstances must begin with Section 3 of PAJA, headed: "Procedurally fair administrative action affecting any person." Subsection 1 states that: "administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair." The AFIS report made unequivocal conclusions of alleged misconduct against the Respondents and accused them of wrongdoing. These included, among others, corruption, mismanagement, incompetence, and recommended criminal liability and investigations. These findings, together with the recommendations, are devastating and adverse to the Respondents, making them, for the purposes of this Application, the people envisaged in Section 3(1) of PAJA.

[9] The MEC's assertion that the decisions were directed at the Municipality and not the Respondents, thereby implying that any adverse consequence befalling the Respondents must be treated as a mere coincidence, must be rejected. The Respondents have already felt the impact of the findings in the AFIS report, as it has been published, and their image in the public eye is no longer the same. Once this has happened, I find it difficult to understand why they would lack *locus standi* when PAJA specifically prescribes that 'administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.'

⁵ *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA) para 2.

[10] Turning to the ground that the application for the review of the MEC's decisions was premature. The import of this Court's finding that the impugned decisions were administrative actions is that another's rights have been adversely affected. These are the Respondents. The issue of prematurity cannot arise because implied in the MEC's argument is a subtle admission that the Respondents were adversely affected, even though they were not the target. By inference, therefore, they have locus standi but must live with the adverse consequences until the AFIS report has been tabled before the Municipality. That is not acceptable, and PAJA was enacted to address such situations.

[11] In any event, Section 106(6) of the MSA states that a Municipality must take disciplinary measures if it appears necessary from the Report. I agree with Counsel for the Respondents that, given the damaging findings of the AFIS report on the Respondents, the Municipality does not have any discretion but to implement the disciplinary processes contemplated in Section 106(6) of the MSA. The question is, why should the Respondents wait for an event that they know is certain to come? I do not see another Court reaching a different conclusion on both *locus standi* and prematurity. Accordingly, it will serve no purpose to grant leave on those grounds. Insofar as the other grounds raised by the MEC, I have carefully considered them and chosen to defer to the judgment.

[12] The main ground for AFIS is that the notice of motion is couched in a manner that suggests that the attack is aimed at the designation of AFIS as an investigator and not the power of the MEC to invoke Section 106(1)(b) of the MSA. I reiterate that a proper reading of the notice of motion and the founding and replying affidavits shows that the MEC's authority is also impugned. Accordingly, I do not expect another Court to reach a different conclusion on that matter, and there is no compelling reason why I should grant leave to appeal. In the circumstances, it is appropriate to refuse leave to appeal. Like in the case of the MEC, I have given adequate thought to the other grounds of appeal raised by AFIS. In my opinion, my judgment covers them, making it unnecessary to reconsider them.

[13] I have also considered if there exists a compelling reason, including an important question of law or a discrete issue of public importance, that will have an effect on future disputes. The outcome of my assessment is that both do not exist, making it unnecessary to entertain this matter.

[14] Against the background above, I am constrained to make the following order:

- (a) Leave to appeal is dismissed.
- (b) Both the MEC and AFIS are liable for the costs of the Respondents as at the scale between party and party Scale 'B'.


B A MASHILE
 JUDGE OF THE HIGH COURT
 MPUMALANGA DIVISION, MBOMBELA

Appearances

Counsel for the Applicant:	Adv ZZ Matebese SC Adv L Zwane
Instructed by:	Matsane Attorneys
Counsel for the Respondent:	Adv M Peacok
Instructed by:	Morgan Law Incorporated
C/O	Christo Smith Attorneys Incorporated
Counsel for the 2 nd Respondent:	Adv L Laughland
Instructed by:	Adams Attorneys
C/O	Du Toit – Smuts & Partners
Date of Judgment:	04 February 2026