



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION - MAHIKENG**

CASE NO: 5064/2025

In the matter between:

**MEMBER OF EXECUTIVE COUNCIL:
ECONOMIC DEVELOPMENT, ENVIROMENT,
CONSERVATION AND TOURISM**

APPLICANT

and

**NORTH WEST DEVELOPMENT
CORPORATION (SOC) LTD
(Registration No. 1999/002625/30)**

1ST RESPONDENT

MOJALEFA NALE N.O

2nd RESPONDENT

**PREMIER NORTH WEST PROVINCIAL
GOVERNMENT**

3rd RESPONDENT

**MEMBER OF THE EXECUTIVE COUNCIL:
PROVINCIAL TREASURY**

4th RESPONDENT

Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail. The date that the judgment is deemed to be handed down is 20 FEBRUARY 2026 at 12h30.

ORDER

- (i) The *rule nisi* issued by this Court on 23 September 2025 and extended on 4 December 2025 is discharged.
- (ii) A *rule nisi* be and is hereby issued calling upon the applicant to show cause, if any, on 13 March 2026 at 10H00 why the applicant should not be held personally liable *de bonis propriis* on an the attorney and client scale for the costs of the application under case number 5064/2025.
- (iii) The affidavit of the applicant dealing with the order in (ii) above must be filed and served no later than 6 March 2026.

JUDGMENT

MASIKE AJ

INTRODUCTION

[1] This matter served as an urgent *ex parte* application before this Court on 23 September 2025. The applicant sought relief against the first, second, third and fourth respondent in the following terms:

- “1. Condoning the Applicant’s non – compliance with the time frames and manners of service prescribed by the Uniform Rules of Court, and dispensing of this application on an urgent basis in terms of Rule 6(12);
2. That a Rule Nisi is hereby issued, calling upon the Respondents to show cause on 4th day of December 2025 at 10H00, or so soon thereafter as Counsel may be heard, why the following orders should not be made final:

2.1 Declaring that:

2.1.1 the Applicant’s appointment of the interim Board of Directors of the North West Development Corporation (SOC) Ltd was valid and lawful;

2.1.2 the members of the Interim Board of Directors of the North West Development Corporation were properly appointed as such on 17 July 2025;

2.1.3 The Interim Board of Directors of the North West Development Corporation (SOC) Ltd became the Accounting authority with effect from 07 July 2025;

2.1.4 the Chief Executive Officer together with all the executive directors, or all senior executive management and their subordinates are to report directly to the Interim Board in terms of subparagraph 2.1.3 of this order.

3. Costs of this application be reserved for determination on the return day.”

- [2] When the application was moved on 23 September 2025, this Court indicated to Advocate Montsho – Moloisane SC for the applicant, that it had concerns with the application that served before it, primarily the Court was not satisfied that the applicant, on the papers before it, made out a proper case to bring the application on a *ex parte* basis.
- [3] Advocate Montsho – Moloisane SC submitted to this Court that some members of the Interim Board of Directors of the North West Development Corporation (SOC) Ltd (“the Interim Board”) were resigning because of the legal uncertainty of the Interim Board. This Court was referred to the resignation of the chairperson of the Interim Board who resigned citing the legal uncertainty of the Interim Board as the reason for the resignation.
- [4] It was submitted by Advocate Montsho – Moloisane SC that the matter was so urgent that any delay in hearing the matter would defeat the purpose for

which the application was brought before the urgent court. The submission was further that there was a fear on the part of the applicant that should the matter not be heard on 23 September 2025 and the order granted, more members of the Interim Board would resign and by the time that the matter is heard, the Interim Board would not have sufficient members to form a quorum.

[5] On the draft order that was handed to this Court, this Court indicated to Advocate Montsho – Moloisane SC that it would in addition order “*The Respondents may anticipate the return date of this order on 48 hours notice to the attorneys of the Applicant.*” This was inserted in the draft order and numbered 4.

[6] As a result, the order that this Court granted on 23 September 2025, read as follows:

- “1. Condonation is hereby granted for the Applicant’s non – compliance with the time frames and manners of service prescribed by the Uniform Rules of Court, and dispensing of this application on an urgent basis in terms of Rule 6(12);
2. A Rule *Nisi* is hereby issued, calling upon the Respondents to show cause on 4th day of December 2025 at 10H00, or so soon thereafter as Counsel may be heard, why the following orders should not be made final:

2.1 It is declared that:

- 2.1.1 the Applicant's appointment of the interim Board of Directors of the North West Development Corporation (SOC) Ltd was valid and lawful;
 - 2.1.2 the members of the Interim Board of Directors of the North West Development Corporation were properly appointed as such on 07 July 2025;
 - 2.1.3 The Interim Board of Directors of the North West Development Corporation (SOC) Ltd became the Accounting authority with effect from 07th July 2025;
 - 2.1.4 the Chief Executive Officer together with all the executive directors, or all senior executive management and their subordinates are to report directly to the Interim Board in terms of subparagraph 2.1.3 of this order.
- 3. Costs of this application be reserved for determination on the return day.
 - 4. The Respondents may anticipate the return date of this order on 48 hours notice to the attorneys of the Applicant"

[7] On 4 December 2025, this Court was informed that the third and fourth respondent had filed a notice to oppose and that the parties had agreed that the matter may be postponed for argument. This Court was requested for a preferential date for argument. The proposed date was 16 January 2026. The matter was postponed to 16 January 2026 for argument with the rule *nisi* extended accordingly.

THE ANSWERING AFFIDAVIT OF THE THIRD AND FOURTH RESPONDENT

- [8] The third and the fourth respondent filed their answering affidavits to the founding affidavit of the applicant. The answering affidavit of the third respondent was deposed to by Mr Mosweu Paul Mogotlhe (“Mogotlhe”), a major male person in the employ of the North West Provincial Government, as the head of the administration of the North West Province. The fourth respondent elected to file a confirmatory affidavit deposed to by Mr Ndlela Kunene (“Kunene”), a major male person in the employ of the Provincial Treasury of the North West Provincial Treasury of the North West Provincial Government, as the Head of Department (“HOD”) and the accounting officer as defined in s 1 read together with s 36 of the Public Finance Management Act 1 of 1999 (“the PFMA”).
- [9] The basis of the opposition of the third and fourth respondent were similar and the affidavit deposed to by Mogotlhe covered the opposition of the fourth respondent.
- [10] The applicant in reply raised a point *in limine* that Mogotlhe lacked *locus standi in judicio* to act on behalf of the third respondent. It is submitted on behalf of the applicant that the answering affidavit deposed to by Mogotlhe amounts to a nullity and falls to be struck off.

- [11] The applicant further went to raise a further point *in limine* that the confirmatory affidavit of Kunene does not state that he is authorised to depose to the confirmatory affidavit on behalf of the fourth respondent. It was submitted on behalf of the applicant that the confirmatory affidavit of the fourth respondent is a nullity and should be struck off by this Court.
- [12] I am of the view that the applicant has conflated (a) the legal standing of a party to oppose a matter; (b) the basis for deposing to an affidavit; and (c) the authority to represent a party.
- [13] A party will have legal standing (*locus standi*) to oppose a matter if he or she has a direct and substantial interest in the subject matter of the judgment sought. In the matter before this Court, the third and the fourth respondents were cited as parties with direct and substantial interests in the subject matter of the application. The applicant states this in paragraph 2.7 of her founding affidavit. The applicant goes on to state that no relief is sought against the third and fourth respondents. In my view, what is key is that the applicant appreciated that the third and fourth respondents have a “direct and substantial interest in the subject matter of the application”.
- [14] Annexed to the answering affidavit of the third respondent and referred to by the applicant in her replying affidavit is a letter dated 14 November 2025, in which written instructions were given to the Office of the State Attorney to oppose the application on behalf of the third and fourth respondent by the Acting Director General, Mr B Setswambung.

- [15] The Office of the State Attorney could not oppose the application as it was representing the applicant and the Office of the State Attorney was therefore conflicted. Mokhetle Attorneys Incorporated (“Mokhetle Attorneys”) were subsequently appointed as attorneys of record for the third and fourth respondents and a notice to oppose was filed on behalf of the third and fourth respondents.
- [16] From what I have stated in paragraph 14 and 15 above, it is clear that it is not Mogotlhe who opposed the application, but the third and fourth respondents who have opposed the application. The third and fourth respondent have the necessary standing as they are cited in the application as parties who have a direct and substantial interest in the subject matter of the application.
- [17] In the answering affidavit on behalf of the third and fourth respondents, Mogotlhe states that the contents of the answering affidavit fall within his personal knowledge and he goes on to state that he is duly authorised to oppose the application on behalf of the third and fourth respondents. I will return to the issue of Mogotlhe being authorised to oppose the application on behalf of the third and fourth respondent later in this judgment.
- [18] The applicant when dealing with the confirmatory affidavit of Kunene states that Kunene does not state that he is authorised to depose to the confirmatory affidavit. In *Ganes and Another v Telkom Namibia (Ganes)*¹ it was said as follows:

¹ 2004 (3) SA 615 (SCA) ([2004] 2 All SA 609; (2004) 25 ILJ 995) para 19.

"It is irrelevant whether Hanke had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised. In the present case the proceedings were instituted and prosecuted by a firm of attorneys purporting to act on behalf of the respondent. In an affidavit filed together with the notice of motion a Mr Kurz stated that he was a director in the firm of attorneys acting on behalf of the respondent and that such firm of attorneys was duly appointed to represent the respondent. That statement has not been challenged by the appellants. It must, therefore, be accepted that the institution of the proceedings was duly authorised. In any event, Rule 7 provides a procedure to be followed by a respondent who wishes to challenge the authority of an attorney who instituted motion proceedings on behalf of an applicant. The appellants did not avail themselves of the procedure so provided. (See *Eskom v Soweto City Council* 1992 (2) SA 703 (W) at 705C – J.)"

- [19] Kunene stated in his confirmatory affidavit that the reason for deposing to the confirmatory affidavit is because he has been duly authorized to depose to the affidavit on behalf of the fourth respondent and the facts contained therein falls within his own personal knowledge. The applicant has not challenged the statement that Kunene has been duly authorized to depose to the confirmatory affidavit on behalf of the fourth respondent or that the facts contained in the confirmatory affidavit falls within his personal knowledge.
- [20] The proper procedure to have been followed by the applicant was to have filed a notice in terms of Rule 7 of the Uniform Rules of Court, if the applicant was of the view that it was Mogotlhe who was opposing the application. I have stated herein above, the application was opposed by the

third and fourth respondents. In my view it appears the third and fourth respondent instructed Mokhetle Attorneys to oppose the application.

- [21] Mogotlhe and Kunene deposed to the answering affidavit and confirmatory affidavit respectively on behalf of the third and fourth respondent as any witness who testifies orally, on oath or affirmation regarding events within his or her knowledge. When Mogotlhe and Kunene deposed to the answering and confirmatory affidavits respectively, they did not need authorisation from the third and fourth respondent². The point in limine of lack of *locus standi* of Mogotlhe and Kunene must accordingly fail.
- [22] The applicant raised another point *in limine* in her replying affidavit that the matter has become moot, because term of office of the Interim Board came to an end on 7 January 2026.
- [23] In *Bojosinyane v Maroga and Others (Bojosinyane)*³ Laubscher AJ writing for the court said the following:

“While mootness generally precludes the need for judicial intervention, South African courts have consistently recognised that the doctrine is not rigid and must be applied flexibly. In particular, the courts have a discretion to hear moot cases where the interests of justice warrant it. This flexibility is especially important in matters that involve

² *PM v MM and Another* 2022 (3) SA 403 (SCA) Para [11].

³ (UM197/2022) [2024] ZANWHC 221; [2024] 4 All SA 378 (NWM) (23 August 2024).

constitutional questions, issues of public importance, or rights that may affect others beyond the immediate parties to the dispute.”⁴

[24] When this matter was argued before this Court on 16 January 2026, it was submitted by Advocate Montsho – Moloisane SC for the applicant and Advocate Mphaga SC for the third and fourth respondent that although the matter is moot on the issue of facts, there was a live dispute between the parties on costs. The applicant was of the view that she had brought the application before this Court on valid grounds, as the applicant had the authority to appoint the Interim Board and for that reason, the applicant should not be ordered to pay the costs of the application. The third and fourth respondent were of the view that the applicant should not have brought the application before this Court as the applicant did not have the authority to appoint the Interim Board and the applicant should be ordered to pay the costs of the application.

[25] This Court directed the parties to address it on the merits of the application to determine the question of costs. In the answering affidavit of the third and fourth respondent, it was alleged that on 16 July 2025, the Chief State Law Advisor, Advocate Olebile Benjamin Ratshikana (“Advocate Ratshikana”) provided an opinion to the third respondent regarding the decision of the applicant to appoint the Interim Board. It was further alleged that the opinion of Advocate Ratshikana was extended to the applicant for her consideration on 17 July 2025. The applicant, despite

⁴ *Bojosinyane* Para [34]; *AAA Investments (Pty) Ltd v Micro Finance Regulatory Council* (1) SA 343 (CC) para [27], *President of the Republic of South Africa v Democratic Alliance* 2020 (1) SA 428 (CC) para [17]; *South African Reserve Bank v Shuttleworth* 2015 (5) SA 146 (CC) para [27].

having had sight of the opinion, proceeded with her stance that she was correct in law.

- [26] It is alleged further that the applicant formally responded to Advocate Ratshikana in a letter dated 15 July 2025 wherein she referred to oral advice received from him, which oral advice was later confirmed by Advocate Ratshikana in the writing on 17 July 2025.
- [27] It is alleged that during July 2025, after the opinion by Advocate Ratshikana had been provided to the applicant, the applicant and the third respondent met formally to discuss the opinion and agreed that the Interim Board should be dissolved. Despite such agreement, the applicant proceeded to approach this Court for the relief set out in the notice of motion.
- [28] On 16 January 2026, when the application was argued before this Court, this Court enquired from Advocate Montsho – Moloisane SC if it is true that when the applicant deposed to her affidavit in support of the urgent *ex parte* application which was heard by this Court on 23 September 2025, the applicant was aware of the opinion of Advocate Ratshikana. That question was asked on more than one occasion and Advocate Montsho – Moloisane SC did not answer the question.
- [29] The applicant in her replying affidavit has not denied that the opinion of Advocate Ratshikana dated 17 July 2025 was known to her or that she met formally with the third respondent during July 2025 to discuss the opinion.

The applicant denies that there was an agreement with the third respondent that the Interim Board should be dissolved. Whether there was an agreement or not that the Interim Board is to be dissolved is not an issue that should detain this Court.

[30] Good faith is a *sine qua non* in *ex parte* applications⁵. It extends also to legal representatives.⁶ If any material facts are not disclosed, whether they be wilfully suppressed or negligently omitted, the court may on that ground alone dismiss an *ex parte* application.⁷ The Court will also not hold itself bound by any order obtained under the consequent misapprehension of the true position⁸.

[31] Among the factors which the court will take into account in the exercise of its true discretion to grant or deny relief to a litigant who has been remiss in his duty to disclose, are: the extent to which the rule has been breached; the reasons for the non-disclosure; the extent to which the first court might have been influenced by proper disclosure; the consequences, from the point of doing justice between the parties, of denying relief to the applicant on the *ex parte* order; and the interest of innocent third parties such as

⁵ *Estate Logie v Priest* 1926 AD 312 at 323; *Schlesinger v Schlesinger (Schlesinger)* 1979 (4) SA 342 (W) at 348D–350B; *National Director of Public Prosecutions v Basson* 2002 (1) SA 419 (SCA) at 428H–I; *Thint (Pty) Ltd v National Director of Public Prosecutions*; *Zuma v National Director of Public Prosecutions* 2009 (1) SA 1 (CC) at 115A–E; *Recycling and Economic Development Initiative of South Africa NPC v Minister of Environmental Affairs* 2019 (3) SA 251 (SCA) at 267C–H;

⁶ *Recycling and Economic Development Initiative of South Africa NPC v Minister of Environmental Affairs* 2019 (3) SA 251 (SCA) at 268A.

⁷ *Schlesinger supra* at 348E – 350B; *Phillips v National Director of Public Prosecutions* 2003 (6) SA 447 (SCA) at 455A–B; *Thint (Pty) Ltd v National Director of Public Prosecutions*; *Zuma v National Director of Public Prosecutions* 2009 (1) SA 1 (CC) at 115D; *Recycling and Economic Development Initiative of South Africa NPC v Minister of Environmental Affairs* 2019 (3) SA 251 (SCA) at 267C–268G.

⁸ *In re The Leydsdorp & Pietersburg (Transvaal) Estates Ltd* 1903 TS 254; *African Realty Trust v Sherman* 1907 TH 34; *Barclays Bank v Giles* 1931 TPD 9.

minor children, for whom protection was sought in the *ex parte* application. The test is objective.⁹

[32] On the papers that served before this Court when the application was heard on 23 September 2025, the applicant did not disclose that there was an opinion from Advocate Ratshikana and that the applicant had met formally with the third respondent during July 2025 to discuss the opinion. This information was material and should have been brought to the attention of the Court before the Court could make an order which it deemed appropriate.

[33] The applicant in her replying affidavit has not taken the Court into her confidence and disclosed the reason for the non-disclosure. When the application was argued before this Court on 16 January 2026, this Court was further informed that the applicant had not served a copy of the application and the interim order issued by this Court on 23 September 2025 on the third and fourth respondents despite the order directing that the respondents may anticipate the return date on 48 hours notice to the attorneys of the applicant. Mogotlhe states in the answering affidavit deposed to by him on behalf of the third and fourth respondents that he became aware of the order that this Court made on 23 September 2025 in social media on 14 November 2025.

[34] When this Court asked Advocate Montsho – Moloisane SC where were the returns of service of the application and the court order dated 23 September

⁹ *Recycling and Economic Development Initiative of South Africa NPC v Minister of Environmental Affairs* 2019 (3) SA 251 (SCA) at 267F–H.

2025, the Court was informed that the Office of the State Attorney was to have served the application and the court order, but as they withdrew as attorneys of record for the applicant it is unclear if the application and the court order were served on the third and fourth respondent.

- [35] In my view this explanation is deplorable. From the reading of the email from the Office of the State Attorney dated 14 November 2025, the Office of the State Attorney withdrew as attorneys of the applicant on that day. When one considers that the order dated 23 September 2025 gave the respondents the right to anticipate the return date of the court order on 48 hours' notice to the attorney of the applicant, there can be no argument that on 14 November 2025, the third and fourth respondent had not been served with a copy of the application and the court order, thus denying the third and fourth respondent their right to anticipate the return date of the application. No explanation was tendered to this Court why by 14 November 2025, the third and fourth respondents have not been served with a copy of the application and the court order dated 23 September 2025.
- [36] In my view, the applicant when signing and swearing positively to the facts contained in the founding affidavit in support of the application on 18 September 2025, failed to disclose all material facts which were within her personal knowledge, these material facts are the events of July 2025. Had this Court been made aware of the opinion of Advocate Ratshikana and that the applicant and the third respondent had formally met in July 2025 to discuss the contents of the opinion, this Court would not have granted the order dated 23 September 2025. This Court would have insisted that the matter could not be heard on an *ex parte* basis, the third and fourth

respondent should be served with the application before the application could be heard.

- [37] In *Schlesinger* an order obtained *ex parte* was set aside with costs on the scale as between attorney and client against the original applicant for displaying a reckless disregard of a litigant's duty to a court in making a full and frank disclosure of all known facts that might influence the court in reaching a just conclusion.
- [38] As indicated herein above, this Court is approached to make a just order as it relates to the costs of the application. In my view the applicant wilfully did not disclose the contents of the opinion of Advocate Ratshikana and that there was a formal meeting with the third respondent in July 2025 to discuss the opinion. The applicant ought to have disclosed this information and raised argument on why she was of the view that the opinion is incorrect in respect of its interpretation of the law. In these circumstances the conduct of the applicant warrants a punitive cost order.
- [39] A number of court judgments have been setting a long overdue norm of holding State officials personally liable for costs of suit in certain matters in which they have acted wilfully or negligently in a gross manner and with disregard to constitutional norms and standards. In matters where State officials have been involved in litigation and have lost such cases and subsequently costs have been awarded against them, it has been the taxpayer who has had to bear the burden of those costs. In *GGB & Another*

*v MEC for Economic Development (GGB Judgment)*¹⁰ Navsa JA writing for the court said the following:

“In the present case the best that can be said for the MEC and her department is that their conduct, although veering toward thwarting the relief sought by the Board, cannot conclusively be said to constitute contempt of court. However, that does not excuse their behaviour. The MEC, in her responses to the opposition by the Board, appeared indignant and played the victim. She adopted this attitude whilst acting in flagrant disregard of constitutional norms. She attempted to turn turpitude into rectitude. The special costs order, namely, on the attorney and client scale, sought by the Board and Mafojane is justified. However, it is the taxpayer who ultimately will meet those costs. It is time for courts to seriously consider holding officials who behave in the high-handed manner described above, personally liable for costs incurred. This might have a sobering effect on truant public office bearers. Regrettably, in the present case, it was not prayed for and thus not addressed.”¹¹ (Own emphasis)

[40] In the application before this Court, the third and the fourth respondents sought costs *de bonis propriis* against the applicant. The applicant, in the interests of justice and fairness must be afforded an opportunity to advance reasons why this Court should not award such a costs order.

[41] Resultantly, the following order is made:

¹⁰ [2013] ZASCA 67

¹¹ *GGB Judgment* para [54]

ORDER

- (i) The *rule nisi* issued by this Court on 23 September 2025 and extended on 4 December 2025 is discharged.
- (ii) A *rule nisi* be and is hereby issued calling upon the applicant to show cause, if any, on 13 March 2026 at 10H00 why the applicant should not be held personally liable *de bonis propriis* on the attorney and client scale for the costs of the application under case number 5064/2025.
- (iii) The affidavit of the applicant dealing with the order in (ii) above must be filed and served by no later than 6 March 2026.




T MASIKE

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

APPEARANCES

For the Applicant:

Advocate LM Montsho – Moloisane SC with
her Advocate Mothusi

Instructed by:

Sefanyetso Attorneys
C/o MPM Molefe & Associates
REF: MPM MOLEFE

For the Defendant:

Advocate M Mphaga SC

Instructed by:

Mokhetle Attorneys Inc.
Mahikeng
REF: MR MOKHETLE P00038/CIV

Date Heard :

23 September 2025, 4 December 2025, 16
January 2026

Date Handed Down:

20 February 2026