Reportable:	YES / **NO**
Circulate to Judges:	YES / **NO**
Circulate to Magistrates:	YES / **NO**
Circulate to Regional Magistrates:	YES / **NO**

IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST HIGH COURT MAHIKENG

CASE NO: 5437/2025

In the matter between:

NOTABOGI VINCENT MASILO	**FIRST APPLICANT**
AOBAKWE DIRE	**SECOND APPLICANT**
YVONNE MORUTI	**THIRD APPLICANT**
MOSA SEHLOHLO	**FOURTH APPLICANT**

And

MAMUSA LOCAL MUNICIPALITY	**FIRST RESPONDENT**
MUNICIPAL MANAGER OF MAMUSA LOCAL MUNICIPALITY	**SECOND RESPONDENT**

Date considered : 13 February 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down of the judgment is deemed to be 20h00 on 20 February 2026.

JUDGEMENT

TSAUTSE AJ

INTRODUCTION

[1] This is an application for leave to appeal the judgment delivered on 24 October 2025, in which this Court granted an interim interdict suspending disciplinary proceedings against the applicants pending the final determination of a review application.

[2] The applicants (respondents in the main proceedings) contend that the Court misdirected itself in three principal respects:

1. In its findings regarding the authority of the Municipal Manager and the doctrine of legality;
2. In its application of the requisite elements for an interim interdict; and
3. In the exercise of its judicial discretion concerning the award of costs.

[3] The respondents oppose the application, submitting that there are no reasonable prospects of success on appeal and that the interim order is, in any event, not appealable.

[4] The inquiry before this Court is narrow: whether the applicants have met the statutory threshold established by section 17(1)(a) of the Superior Courts Act 10 of 2013.

The Statutory Threshold

[5] Section 17(1)(a)(i) of the Superior Courts Act 10 of 2013 stipulates that leave to appeal may only be granted where the judge concerned is of the opinion that the appeal "would have a reasonable prospect of success".

[6] The jurisprudence has made plain that the use of the word "would" in the Act, as opposed to the "might" found in previous legislation, represents a heightened and more stringent threshold as set out in *The Mont Chevaux Trust v Tina Goosen & 18 Others* [2014] ZALCC 20 at para 6. The inquiry is no longer whether another court *might* reach a different conclusion, but whether there is a realistic and substantial prospect that it *would* do so.

[7] The Supreme Court of Appeal held that a "sound, rational basis" is required for leave to appeal, not merely a possibility of success or an arguable case.

This requires a dispassionate decision that an appellate court could reasonably reach a different conclusion. With this framework, the analysis turns to the grounds advanced by the applicants.

A. Urgency and Appealability

[8] The first ground assails this Court's determination to enrol and hear the matter as urgent in terms of Uniform Rule 6(12).

[9] It is trite that the adjudication of urgency constitutes a procedural and quintessentially discretionary interlocutory ruling. Such a determination governs merely the manner and timing of the dispute's hearing, without impinging upon substantive rights. As held in *S v Western Areas Ltd* and Others [2005] ZASCA 31 (para 24), a court's inherent power to regulate its own process is ordinarily not appealable absent finality or dispositive effect.

[10] This principle was reaffirmed by the Supreme Court of Appeal in *Cornerstone Logistics (Pty) Ltd v Zacpak Cape Town Depot (Pty) Ltd* [2022] ZASCA 12 (para 15), highlighting that procedural orders lacking finality, such as urgency rulings, which are inherently temporary, do not ordinarily attract appellate scrutiny. Indeed, as observed in *Commissioner, South African Revenue Service v Hawker Air Services (Pty) Ltd* [2006]

ZASCA 51 (para 9), a dismissal for want of urgency permits re-enrolment in the ordinary roll, confirming the non-final nature of such decisions.

[11] The Constitutional Court in *United Democratic Movement v Lebashe Investment Group (Pty) Ltd* [2022] (ZACC) 34 (para 25) reiterated that appealability hinges on the "interests of justice," which typically demands that an order be final in effect and dispositive of rights before warranting intervention.

[12] The impugned urgency order satisfies none of these criteria, for it:

- is not final in effect;
- does not define or determine the substantive rights of the parties; and
- does not dispose of any portion of the relief sought in the main review application.

[13] Even *arguendo* that the discretion was exercised imperfectly, which this Court does not accept, such a ruling falls beyond the ambit of appellate jurisdiction. To permit otherwise would engender the "piecemeal adjudication" of disputes deprecated by the Constitutional Court in *Machele v Mailula* [2010] (ZACC) 7 (para 37).

[14] There exists no reasonable prospect that another court would overturn the urgency determination or deem it appealable in terms of section 17(1)(a) of the Superior Courts Act 10 of 2013.

B. Appealability of the Interim Interdict

[15] The core relief granted comprised an interim interdict suspending the disciplinary proceedings *pendente lite*, pending finalisation of the review application.

[16] The appealability of interim interdicts is governed by settled jurisprudence. In *Economic Freedom Fighters v Gordhan and Others* [2020] ZACC 10 (paras 49–50), the Constitutional Court confirmed that such orders are ordinarily not appealable, being temporary measures that preserve the *status quo ante* without determining the parties' ultimate rights or disposing of substantial relief.

[17] This rule is buttressed by compelling policy considerations, including the prevention of piecemeal appeals and the prudent conservation of judicial resources. The principle was reiterated in *United Democratic Movement v Lebashe Investment Group (Pty) Ltd* [2022] (ZACC) 34 (para 25), which affirmed the "interests of justice" as the paramount test—rarely satisfied by non-final interim orders.

[18] The instant order was granted expressly *pendente lite* and lacks finality. It neither disposes of any portion of the main relief nor determines:

- the legality of the Municipal Manager's appointment;
- the substantive merits of the disciplinary charges; or
- the ultimate justification for dismissal.

[19] These issues are reserved exclusively for the review court. The order thus fails the traditional hallmarks of appealability articulated in *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) at 533E–F—namely, finality, definitive effect on rights, or disposition of substantial relief—subject now to the overriding "interests of justice" inquiry.

[20] The applicants have adduced no exceptional circumstances, irreparable harm, or other compelling factors warranting departure from the general rule. Their averment of prejudice from delayed proceedings is unavailing; as held in *National Treasury v Opposition to Urban Tolling Alliance and Others* [2012] ZACC 18 (para 21), mere inconvenience or delay does not elevate an interim order to appealable status.

[21] Should the review fail, the proceedings may resume untrammelled; should it succeed, the interdict will have averted potentially unlawful action. In

either event, the order preserves the integrity of the review process without finally adjudicating rights.

[22] Therefore, no reasonable prospect exists that another court would deem the order appealable or find the interests of justice demand interference with this Court's discretion in terms of section 17(1)(a) of the Superior Courts Act 10 of 2013.

C. Prima Facie Right and the Doctrine of Legality

[23] The applicants contend that this Court erred in finding that the respondents established a *prima facie* right. However, the right asserted to was not a claim to immunity from accountability, but rather the right to be subjected to disciplinary action only where it is instituted by a lawfully authorised official.

[24] The Constitutional Court in *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd* [2014] ZACC 6; 2014 (3) SA 481 (CC) established that administrative decisions, even those that may be invalid, exist in fact and carry legal consequences until a court of law formally sets them aside. This principle prohibits public authorities from engaging in "self-help" by unilaterally disregarding acts they deem invalid.

[25] Further, the Supreme Court of Appeal has consistently affirmed in matters such as *Merafong City Local Municipality v Anglogold Ashanti Ltd* [2016] ZACC 35 that organs of state must proactively approach the courts to set aside decisions they consider unlawful, rather than simply ignoring them.

[26] If the Municipal Manager's purported dismissal was a nullity due to a lack of authority, then in law, he remained in office. The principle that an invalid dismissal is void and without legal effect is a cornerstone of our labour and administrative jurisprudence.

[27] At this interim stage, the respondents were not required to prove their case on a balance of probabilities. As held in *Webster v Mitchell* 1948 (1) SA 1186 (W), the requirement is merely the establishment of a prima facie right, even if open to some doubt.

[28] The respondents demonstrated a *bona fide* dispute concerning the underlying authority of the disciplinary process, thereby satisfying this threshold. It cannot be said that another court, applying the dispassionate standard required by section 17(1)(a), would necessarily reach a different conclusion on this point.

D. Balance of Convenience

[29] The applicants argue that the balance of convenience favours the immediate resumption of disciplinary proceedings to uphold the principles of accountability and the rule of law.

[30] This submission conflates administrative expediency with the substantive requirements of the doctrine of legality. As the Constitutional Court held in *Chief Lesapo v North West Agricultural Bank* 2000 (1) SA 409 (CC), the rule of law does not permit "self-help" or shortcuts at the expense of lawful process. Accountability pursued under potentially defective authority does not vindicate the rule of law; rather, it fundamentally undermines it.

[31] In weighing the competing interests, the Court must consider the nature of the prejudice involved. The applicants cite the prejudice of delay. However, as established in *National Treasury and Others v Opposition to Urban Tolling Alliance and Others (CCT 38/12) [2012] ZACC 18*, when a court considers the balance of convenience, it must be satisfied that the harm to the party seeking the interdict is irreparable.

[32] In this instance, the risk to the respondents, potential dismissal following proceedings that may ultimately be declared a nullity, is immediate and carries significant, often irreversible, professional and personal

consequences. In contrast, the prejudice to the applicants is temporary and can be cured by resuming the proceedings should the review application fail.

[33] The balance of convenience therefore justified the preservation of the *status quo* pending judicial clarification of the underlying authority. This is consistent with the principle in *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D), which permits the court to grant an interdict where the prejudice to the applicant outweighs the inconvenience to the respondent.

[34] No material misdirection in this assessment has been demonstrated, and there is no reasonable prospect that an appellate court would find that the balance was struck incorrectly.

E. Costs

[35] It is a fundamental principle of our law that the award of costs lies within the narrow and unfettered discretion of the court of first instance. As the Supreme Court of Appeal held in *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another* [2015] ZACC 22, an appellate court will not interfere with this discretion merely because it might have reached a different conclusion. Interference is warranted only where it is shown that the discretion was not

exercised judicially, or was based on a misdirection of fact or a wrong principle of law.

[36] In this matter, the award of costs followed the general rule that the successful party is entitled to their costs. Furthermore, the litigation concerned the exercise of public power and the protection of constitutional legality.

[37] Following the principles established in *Biowatch Trust v Office of the Registrar, Genetic Resources* [2009] ZACC 14, in constitutional litigation against the State, even an unsuccessful private litigant is generally shielded from an adverse costs order.

[38] Conversely, where the private party is successful in vindicating constitutional rights against an organ of state, the awarding of costs is entirely appropriate.

[39] The applicants bear the onus to establish that this Honourable Court misdirected itself in the exercise of its discretion by acting capriciously, perversely, or without due regard to the material considerations pertinent to the matter. No such demonstration has been forthcoming.

[40] In this regard, the challenge mounted against the costs order amounts to no more than an expression of dissatisfaction with the outcome ultimately reached. It is trite law that mere displeasure with a judicial determination does not furnish the "sound, rational basis" requisite for a successful appeal. This principle finds authoritative expression in *Smith v S* [2011] ZASCA 15 (para 7), wherein the Supreme Court of Appeal emphatically held that an appellate court will not lightly interfere with a discretion properly exercised at first instance unless vitiated by material misdirection or unreasonableness.

[41] The applicants have not presented any convincing reasons for this Court to reconsider the order in question. As a result, their challenge to the costs order does not meet the statutory requirements set out in section 17(1)(a) of the Act.

Conclusion

[42] The order granted by this Court on 24 October 2025 was quintessentially procedural and discretionary, particularly in its determination of urgency. It was interim and non-final in effect, designed solely to preserve the *status quo ante*. The judicial exercise of discretion therein rested upon a balanced assessment of the competing harms at stake. Critically, it did not purport

to finally determine the substantive rights of the parties, which fall to be adjudicated by the review court in due course.

[43] As authoritatively held by the Constitutional Court in *United Democratic Movement v Lebashe Investment Group (Pty) Ltd* [2022] (ZACC) 34 (para 25), it is generally not in the interests of justice to permit appeals against purely interlocutory relief of this nature. To hold otherwise would frustrate the very purpose of such relief and occasion the undesirable piecemeal adjudication of the underlying dispute.

[44] The applicants have failed to demonstrate that another court would reasonably arrive at a different conclusion on any ground advanced. In particular, they have not discharged the onus of establishing that this Court exercised its discretion, whether in relation to urgency or the costs order, capriciously, perversely, or without regard to the relevant considerations.

[45] Their challenge to the costs order bespeaks mere dissatisfaction with the outcome, which does not constitute the "sound, rational basis" requisite for leave to appeal, as mandated by *Smith v S* [2011] ZASCA 15 (para 7).

[46] The high threshold prescribed by section 17(1)(a) of the Superior Courts Act 10 of 2013 accordingly remains unmet.

Order

1. The application for leave to appeal is dismissed.
2. The applicants are ordered to pay the costs of this application on the ordinary scale.

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TSAUTSE AJ

Acting Judge of the High Court

Appearances :

Counsel for 1st to 4th Applicants: **Adv S Shamase**

Shamase Ramotswedi Attorneys

Counsel for 1st and 2nd Respondents: **Adv O I Monnahela**

Mahikeng Chambers

M Mere & Associates Inc