



- (1) Reportable: NO
(2) Of interest to other Judges: No

Signature

24 February 2026
Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: 2026-025004

In the matter between:

ISAAC SONNYBOY MOKGATHE

Applicant

and

CLLR ME MOKATSANE

First Respondent

MOQHAKA LOCAL MUNICIPALITY

Second Respondent

Heard: 12 February 2026

Delivered: 24 February 2026

Summary: An urgent application seeking an order that the suspension of the applicant is unlawful for non-compliance with Regulations 5 and 6 of the Disciplinary Regulations, and to interdict a disciplinary hearing until there is compliance with the applicable Regulations.

JUDGMENT

GANDIDZE, J

Introduction

- [1] This is an urgent application by the applicant, Mr Mokgathe, seeking orders declaring his suspension on 23 January 2026 by his employer, Moqhaka

Municipality (the Municipality), (i) to be unlawful, null and void; (ii) to be set aside; (iii) directing the Municipality to allow him to return to work with immediate effect; and (iv) interdicting the respondents from instituting, commencing, and/or continuing disciplinary proceedings against him until there is compliance with the Local Government: Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings¹ (the 2014 Regulations).

- [2] The second respondent, Cllr ME Mokotsane (the Mayor), is cited in both his official and personal capacities. Both he and the Municipality opposed the application.

The facts

- [3] The applicant commenced employment with the Municipality on 1 July 2021, but signed a five-year fixed-term employment contract on 23 July 2021, effective from 1 June 2021 and set to expire in May 2026. He was appointed to the position of Director: Infrastructure Management, also known as Director: Technical Services. He also signed a performance agreement entitling him to receive a performance bonus for satisfactory work. The latest performance agreement covers the period from July 2025 to June 2026. He is accountable to the Municipal Manager.
- [4] Around 2024, the President of the Republic of South Africa signed Proclamation 163 of 2024, authorising the Special Investigation Unit (SIU) to investigate allegations of serious maladministration in the Municipality's affairs and to recover any financial losses suffered by the Municipality and the State. The SIU report dated October 2025 was submitted to the Mayor, together with a Disciplinary Referral Letter by the Head of SIU dated 14 October 2025.
- [5] On 15 January 2026, the applicant received a letter from the Mayor,² stating that a report from the SIU dated 14 October 2025, REF: MQM163DC0010,

¹ GN 587, GG 37699, 30 May 2014. These Regulations were issued in terms of section 157 of the Municipal Finance Management Act, 56 of 2003 (MFMA).

² The letter erroneously referred to the applicant as the Municipal Manager, which did not go unnoticed.

(the SIU report), contains allegations of serious financial misconduct against him. Also provided to the applicant on that occasion were the affidavit of Nomgqibelo Nthoba (the Nthoba affidavit), dated 10 October 2025, and the Disciplinary Referral letter. The SIU report was not provided. The applicant was invited to make representations as to why he should not be suspended.

- [6] On 22 January 2026, the applicant sent a letter to the Mayor requesting documents and information to enable him to make representations. He sought clarification on whether the letter of 15 January 2026 was a notice of suspension or a notice of intention to suspend, all documentation relating to the alleged Special Council meeting held on 15 January 2026, and stated that, in the absence of information on the purpose of the suspension, he was unable to make the necessary representations. He did not receive a response.
- [7] On 25 January 2026, the applicant was served with a notice of precautionary suspension, dated 24 January 2026. This letter followed a special Council meeting held on 23 January 2026, which resolved (i) that there was reasonable cause to believe that an act of misconduct may have been committed, (ii) that a precautionary suspension was deemed necessary based on the grounds set out in Regulation 6(1) of the Local Government: Disciplinary Regulations for Senior Managers 2010³ (the Disciplinary Regulations), issued under the Local Government: Municipal Systems Act⁴ (Systems Act), and (iii) the Council believed that his continued presence at the workplace might jeopardise or interfere with the integrity of the pending investigation and/or be detrimental to the stability and administration of the Municipality.
- [8] On 26 January 2026, the applicant lodged a review application in the Free State High Court seeking to set aside the SIU report, the Nthoba affidavit, and the SIU Disciplinary Referral letter. He states that he hoped the SIU report would be discovered under Rule 53 of the Uniform Rules of Court. The grounds for review include, among other reasons, that he was not

³ GN344 in GG 34213 of 21 April 2011.

⁴ Act 32 of 2000.

investigated by the SIU and therefore was not given an opportunity to respond to the allegations.

- [9] The applicant states that he later learned that one of the allegations against him is that the extension of the 3-year fixed-term contract for Isidingo Security Services (Isidingo) breached procurement laws, when all he did was extend the contract until a new service provider could be appointed, and that such renewal did not require compliance with procurement procedures.
- [10] On 2 February 2026, the applicant's attorneys sent a letter to the Mayor asserting that the suspension was unlawful and urging the Council to urgently reconsider and revoke the resolution suspending him.
- [11] In a response dated 3 February 2026, the respondents maintained that the precautionary suspension was imposed in accordance with Regulation 6.
- [12] The urgent application was launched on 5 February 2025 and was set down for hearing on 12 February 2026.
- [13] The initial matter to decide, even before urgency, is whether this Court possesses the necessary jurisdiction to consider the application, which I now address.

Jurisdiction

- [14] The applicant pleaded that this Court has jurisdiction over the legality or lawfulness of his suspension, as provided for in section 169(1) of the Constitution of the Republic of South Africa, and section 157(2) of the Labour Relations Act⁵ (LRA). The foundation for arguing that the suspension is unlawful is that it breaches clauses 2.1 and 20 of the employment contract.
- [15] Clause 2.1 states that, in accordance with section 57(1)(a) of the Systems Act, managers accountable to the Municipal Manager must be appointed in terms of an employment contract that complies with the provisions of the Systems Act. Clause 20 lists the documents that are incorporated into and

⁵ Act 66 of 1995.

form part of the employment contract. These include the Municipality's conditions of service, human resources management policy, the Code of Conduct, any applicable collective agreement, and the Municipality's delegated powers.

- [16] The Municipality is also governed by the Local Government: Municipal Finance Management Act⁶ (MFMA). As the applicant is a Senior Manager, it is common cause that the Disciplinary Regulations form part of his terms and conditions of employment. Disciplinary Regulations 5 and 6 specify how precautionary suspensions should be implemented.
- [17] It is therefore the applicant's submission that the Court has jurisdiction over the lawfulness of the suspension in terms of section 158 of the Labour Relations Act⁷ (LRA), as well as in terms of section 77(3) of the Basic Conditions of Employment Act⁸ (BCEA).
- [18] As I understood the respondent's contentions, they are as follows. This Court lacks jurisdiction to hear a matter involving an alleged breach of an LRA obligation, given that the applicant has relied on the BCEA. The main cause of action, the legality challenge, does not fall within the exclusive jurisdiction of the LRA. The applicant is complaining about 'conduct' and 'decisions', and that this Court has no jurisdiction to hear applications challenging such matters. Additionally, it was submitted that the relief sought was not competent, as the court cannot grant a declaratory order and an interdict simultaneously. Lastly, there was a contention that the applicant was seeking a final order without a return date.
- [19] Whether this Court has jurisdiction to decide the matter is assessed based on the pleaded case, and it is not for the Court to suggest that a litigant should have chosen a different cause of action.
- [20] Returning then to that pleaded case, the applicant relied on section 169(1)(a) of the Constitution, sections 157(1) and (2) and 158 of the LRA.

⁶ Act 56 of 2003.

⁷ Act 66 of 1995.

⁸ Act 75 of 1997.

[21] Section 169(1)(a) of the Constitution states as follows:

‘High Court of South Africa

169. (1) The High Court of South Africa may decide—

- (a) any constitutional matter except a matter that—
 - (i) the Constitutional Court has agreed to hear directly in terms of section 167(6)(a); or
 - (ii) is assigned by an Act of Parliament to another court of a status similar to the High Court of South Africa;’

[22] In my view, this provision does not confer jurisdiction on this Court to hear the current matter, given that in subsection (1)(a)(ii), it is specifically stated that the High Court may not decide a matter assigned by an Act of Parliament to another court of a similar status. Therefore, section 169 concerns the jurisdiction of the High Court, not that of this Court, which has a similar status to that of the High Court.

[23] The jurisdiction of this Court is outlined in sections 157 and 158 of the LRA. Sections 157(1) and (2) state as follows:

‘157 Jurisdiction of Labour Court

- (1) Subject to the Constitution and section 173, and except where *this Act* provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of *this Act* or in terms of any other law are to be determined by the Labour Court.

- (2) The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from-

- (a) employment and from labour relations;
- (b) any *dispute* over the constitutionality of any executive or administrative act or conduct, or any threatened executive or

administrative act or conduct, by the State in its capacity as an employer; and

- (c) the application of any law for the administration of which the *Minister* is responsible.’

[24] From the applicant’s pleadings, it is not immediately clear why section 157(2) is being relied upon. That provision concerns the violation of Chapter 2 Constitutional rights, and I did not understand the applicant’s case to be that he is relying on the violation of these rights, although I note that in addressing the irreparable harm (see below), he has referenced the right to human dignity and the right to practise his profession.

[25] Section 157(1) of the LRA confers jurisdiction on this Court to hear the application. The applicant is challenging the lawfulness of his suspension on the grounds that both the Disciplinary Regulations and the 2014 Regulations, which form part of his employment contract, were breached. The respondents did not dispute that the Disciplinary Regulations and the 2014 Regulations are part of the terms and conditions of the applicant’s employment.

[26] This Court has jurisdiction to determine contractual claims. In *Baloyi v Public Protector & others*⁹, the Constitutional Court stated the following:

‘[26] By virtue of s 157(1), the Labour Court will enjoy exclusive jurisdiction over any matter ‘in terms of’ the Employment Act. Matters governed by, or concerning the enforcement of a provision of, the Employment Act accordingly fall within the ambit of the Labour Court’s exclusive jurisdiction...’

[27] The Court went further and stated this:

‘[28] Section 77(3) of the Employment Act provides, similarly, that the Labour Court “has concurrent jurisdiction with the civil courts to hear and determine any matter concerning *a contract of employment*, irrespective of whether any basic condition of employment constitutes a term of that contract’ (emphasis added)

⁹ (2021) 42 ILJ 961 (LC); [2020] ZACC 27.

...

[47] Matters “concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract”, are expressly noted in s 77(3) of the Employment Act as falling within the *concurrent* jurisdiction of the High Court and the Labour Court.’

[28] Therefore, this Court and the High Court have concurrent jurisdiction where a breach of an employment contract is alleged, with the result that the employee chooses the court in which to bring their contractual claim.

[29] More specifically, where an employer suspends an employee in breach of an employee’s contract of employment, then this Court has jurisdiction to determine whether the suspension was unlawful in that it constitutes a breach of contract.

[30] In my respectful opinion, *Steenkamp and Others v Edcon Ltd*¹⁰ (*Steenkamp*), which the respondents relied upon, is not authority for the proposition that this Court never makes an order of unlawfulness. It depends on the pleaded case. In that case, the employees argued that their dismissals were effected contrary to the time periods set out in section 189A of the LRA, rendering the dismissals invalid and unlawful. The Court found that the employees could not rely on the LRA to claim a remedy it did not provide, namely that the dismissals were invalid and unlawful.

[31] I believe that it was in this context that in *Cibane & another v Premier, Province of KwaZulu-Natal & another*¹¹ (*Cibane*), the court stated this:

[23] ...‘The majority of the Constitutional Court rejected their claim on the basis that the Labour Court has no jurisdiction to determine the lawfulness of a dismissal...

[24] It is clear from this passage that outside of the scope of any statutory provision that specifically confers jurisdiction on the court, the Labour Court has no jurisdiction, in any general sense, to make any determination of the unlawfulness of employer conduct.’

¹⁰ 2016 (3) SA 251 (CC); [2016] ZACC 1.

¹¹ (2025) 46 ILJ 2587 (LAC) at para 23.

[32] That the court did not mean that this Court can never assess the lawfulness of an employer's conduct is clear from its remark that counsel for the applicants argued the cause of action was contractual. The court dismissed that argument because "*the pleadings disclosed no claim that is founded on any term of a contract of employment, nor do the appellants seek to enforce any contractual rights*". Therefore, if the pleadings had referred to a contractual term and the appellant's intention to enforce that right, the Court would have considered their case, and if it was found that there was a breach of contract, an order that the employer's conduct was unlawful would have been competent.

[33] We also know from *Passenger Rail Agency of SA and Others v Ngoye and Others*¹² (*Ngoye*), handed down after the decision in *Steenkamp*, as well as *Baloyi v Public Protector and Others*¹³ (*Baloyi*), that the Labour Appeal Court considered and upheld a contractual claim that a dismissal was unlawful (as opposed to being unfair).¹⁴ The Court stated this:

'[23] ... It is only where a litigant chose to pursue an unfair dismissal claim that the dispute-resolution procedures in the LRA would apply. The same could not be said where the litigant chose to pursue the dispute as a contractual claim, as contractual rights existed independently of LRA rights, as confirmed in *Makhanya*.'

[34] *Cibane* did not address the approach in *Ngoye*, which followed the Constitutional Court decision in (*Baloyi*), and I see no conflict between the two decisions.

[35] The applicant was entitled to choose whether to pursue a claim under the LRA or the BCEA. He chose to pursue a claim under the BCEA, which section 157(1) of the LRA permits. In *Makhanya v University of Zululand*¹⁵, the Court stated this:

¹² 2025 (2) SA 556 (LAC); [2024] ZALAC 18.

¹³ (2021) 42 ILJ 961 (LC); [2020] ZACC 27.

¹⁴ See also *SA Football Association v Mangope* (2013) 34 ILJ 311 (LAC); [2012] ZALAC 27.

¹⁵ [2009] ZASCA 69; 2010 (1) SA 62 (SCA).

[11] The LRA creates certain rights for employees that include “the right not to be unfairly dismissed and [not to be] subjected to unfair labour practices... Yet employees also have other rights, in common with other people generally, arising from the general law. One is the right that everyone has (a right emanating from the common law) to insist upon performance of a contract...’

- [36] If the court finds that there has been a breach of contract, then an order declaring that the Municipality’s conduct was unlawful on that ground falls within this Court’s jurisdiction.
- [37] It follows from the above discussion that the Court has jurisdiction to hear the matter, contrary to the respondent’s contentions, most of which, respectfully, I found to be based on misunderstandings and misreadings of case authorities.
- [38] The respondent’s further contention is that the employment contract contains an arbitration clause and that this Court lacks jurisdiction to determine the matter for that reason. Clause 22.6 of the employment contract provides that, notwithstanding the provision dealing with arbitration, either party may apply for an interdict from any competent court having jurisdiction. This resolves the submission.

Urgency

- [39] The applicant submitted that he acted promptly after receiving a suspension notice on 25 January 2026. The following day, on 26 January 2026, he requested to consult with his lawyers, who indicated that the earliest available date was 30 January 2026. On 2 February 2026, his lawyers sent a letter to the Municipality, which replied on 3 February 2026 that Regulation 6 had been complied with. The current application was submitted on 5 February 2026.
- [40] It was further submitted by the applicant that, since the matter involved alleged non-compliance with the Disciplinary Regulations and the 2014 Regulations, the interests of justice require that it be considered urgently to uphold the rule of law. It was also argued that the Mayor’s abuse of power affects the rule of law and impacts the public purse, hence the need for urgent consideration.

- [41] The respondent disputed that the matter was urgent, that the reasons for urgency and the necessity of urgent relief were not explained, that the respondent was prejudiced by the limited time frames for filing an answer, and that the urgency was self-created because the applicant wasted time in writing the letter to the Municipality to keep the urgency alive.
- [42] In exercising the Court's discretion, I am satisfied that the applicant has established a case for urgency. I am also convinced that the applicant cannot obtain substantial redress in due course if this matter is not treated as urgent, given that his contract of employment is expiring in May 2026 and that his potential to earn a performance bonus is affected by his suspension.

Merits of the application

- [43] The next question is whether the applicant has made out a case for the relief sought. The applicant seeks final relief regarding the suspension implemented and must therefore demonstrate a clear right, irreparable harm committed or reasonably apprehended, and the absence of a satisfactory remedy.¹⁶
- [44] The applicant also seeks interim relief in the form of an interdict against a disciplinary hearing until the Municipality complies with the 2014 Regulations. Therefore, regarding this relief, in addition to the requirements for final relief outlined above, he must also demonstrate that the balance of convenience favours granting the interim relief.

(a) Clear right

- [45] The applicant's main argument is that the suspension is unlawful because it was implemented in breach of Regulations 5 and 6 of the Disciplinary Regulations, which are as follows:

'5 Disciplinary procedures

- (1) Any allegation of misconduct against a senior manager must be brought to the attention of the municipal council.

¹⁶ *Setlogelo v Setlogelo* 1914 AD 221 at 227.

- (2) An allegation referred to in sub-regulation (1) must be tabled by the mayor or the municipal manager, as the case may be, before the municipal council not later than seven [7] days after receipt thereof, failing which the mayor may request the Speaker to convene a special council meeting within seven [7] days to consider the said report.
- (3) If the municipal council is satisfied that -
 - (a) there is a reasonable cause to believe that an act of misconduct has been committed by the senior manager, the municipal council must within seven [7] days appoint an independent investigator to investigate the allegation[s] of misconduct; and
 - (b) there is no evidence to support the allegation[s] of misconduct against the senior manager, the municipal council must within seven [7] days dismiss the allegation[s] of misconduct.
- (4) The investigator appointed in terms of sub-regulation (3)(a) must, within a period of thirty [30] days of his or her appointment, submit a report with recommendations to the mayor or municipal manager, as the case may be.
- (5) The report contemplated in sub-regulation (4) must be tabled before the municipal council in the manner and within the timeframe as set out in sub-regulation (2).
- (6) After having considered the report referred to in subregulation (4), the municipal council must by way of a resolution institute disciplinary proceedings against the senior manager.
- (7) The resolution in sub-regulation (6) must-
 - (a) include a determination as to whether the alleged misconduct is of a serious or a less serious nature;
 - (b) authorise the mayor, in the case of municipal manager, or municipal manager, in the case of the manager, directly accountable to the municipal manager to -

- (i) appoint -
 - (aa) an independent and external presiding officer; and
 - (bb) an officer to lead evidence; and
- (ii) sign the letters of appointment.

5. Precautionary suspension

6(1) The municipal council may suspend a senior manager on full pay if it is alleged that the senior manager has committed an act of misconduct, where the municipal council has reason to believe that-

- (a) the presence of the senior manager at the workplace may -
 - (i) jeopardise any investigation into the alleged misconduct;
 - (ii) endanger the well-being or safety of any person or municipal property; or
 - (iii) be detrimental to stability in the municipality; or
- (b) the senior manager may-
 - (i) interfere with potential witnesses; or
 - (ii) commit further acts of misconduct.

(2) Before a senior manager may be suspended, he or she must be given an opportunity to make a written representation to the municipal council why he or she should not be suspended, within seven [7] days of being notified of the council's decision to suspend him or her.

(3) The municipal council must consider any representation submitted to it by the senior manager within seven [7] days.

(4) After having considered the matters set out in subregulation (1), as well as the senior manager's representations contemplated in sub-

regulation (2), the municipal council may suspend the senior manager concerned.

(5) The municipal council must inform -

- (a) the senior manager in writing of the reasons for his or her suspension on or before the date on which the senior manager is suspended; and
- (b) the Minister and the MEC responsible for local government in the province where such suspension has taken place, must be notified in writing of such suspension and the reasons for such within a period of seven [7] days after such suspension.

(6)(a) If a senior manager is suspended, a disciplinary hearing must commence within three months after the date of suspension, failing which the suspension will automatically lapse.

- (b) The period of three months referred to in paragraph (a) may not be extended by council.'

[46] The applicant raises several issues that he claims violate the above-mentioned disciplinary regulations. I will first address the alleged non-compliance with Regulation 6 concerning the implementation of precautionary suspensions.

[47] Firstly, he argues that the notice of intention to suspend was issued prematurely and unfairly because he was not provided with certain documents. He references the SIU report and documents related to the special council meeting, such as the notice of the meeting, the agenda, the signed attendance register, the transcript, and the minutes of the council meeting allegedly held on 15 January 2026, in accordance with Standing Rule 46(2) of the Municipality's Rules and Orders By-Law. This matter need not delay the Court. Regulation 6 does not provide for supplying an employee with documents when a precautionary suspension is contemplated. Thus, the failure to provide the required documentation does not constitute a breach of the Regulation.

- [48] The applicant also argues that the Mayor was aware of the alleged financial misconduct but, in breach of Regulation 3, failed to report and present the matter to the Council so that an investigation could be initiated under Regulations 5 and 6 and a report prepared as required by Regulation 14.
- [49] Regulation 3(4) states that, in exceptional circumstances, disciplinary action can be taken against a senior manager without an investigation. The Regulation does not mention reporting or presenting an investigation report to the Council.
- [50] However, if the applicant intended to rely on Regulation 5(2), that provision requires the report containing allegations of serious misconduct against a senior manager to be presented to the Council within 7 days of receiving the allegations. Since the SIU report was received in October 2025, the Mayor was obliged to present it to the Council within 7 days of receipt. It appears that the report was not tabled within that timeframe. So, what happens then? Regulation 5(2) states that in such cases, the Mayor may ask the Speaker to call a special council meeting within seven days to review the report. The applicant did not plead sufficient facts on this issue, but as I understood the respondents' pleaded case, the special Council meeting was called by the Speaker. I see no evidence of a breach of the regulation.
- [51] The applicant also contends that the letter of 15 January 2026 did not inform him of the purpose of the intended suspension, and/or that the purpose of the suspension was not described clearly enough to allow him to make representations. He states that this prevented him from doing so. The letter reads as follows:

- '2. This consideration¹⁷ follows the referral of a report from the Special Investigating Unit (SIU) (REF: MQM163DC0010, dated 14 October 2025) concerning the investigation into the procurement of the physical and armed security tender, as authorised by Proclamation R163 of 2024 (see attached annexure). The Council resolution

¹⁷ To suspend.

indicates that the allegations contained therein constitute *prima facie* evidence of serious misconduct and financial misconduct.’

- [52] In the following paragraph, the applicant was invited to make representations as to why he should not be suspended under Regulation 6(2).
- [53] In my reading of Regulation 6(1), the provision lists the reasons the Council may consider sufficient to justify suspending an employee, such as when presence at work might jeopardise an investigation into alleged misconduct, or endanger the well-being or safety of any person or municipal property, or be detrimental to the stability of the municipality, or where the employee could interfere with potential witnesses or may commit further acts of misconduct. Consequently, all that is required of the Council is to consider these factors. Nothing in the Regulation requires the notice of intention to suspend to specify the purpose of the suspension, although this might be preferable so that an employee understands why they are suspended. On the facts, there is no indication that the Council did not consider these factors, nor has it been suggested that it did not. I fail to see the alleged breach of the Regulations.
- [54] In saying this, I am mindful that there are decisions of this Court that have held that the notice of intention to suspend must specify the purpose of the suspension,¹⁸ so that an employee can make representations that address the specific purpose of the suspension. In *Retlaobaka v Lekwa Local Municipality & Another*¹⁹, the court referred to two of the decisions and then stated this:

[8] I accept that it may be so that this interpretation was not argued in any of the reported cases cited above, but in my view it would be an unduly narrow reading of the provisions on precautionary suspension if they were read to imply that it was not necessary for the council to convey why it believed the suspension was necessary. As the applicant points out responding to the charges does not in and of itself address the reasons for the suspension on which the employer might

¹⁸ *Biyase v Sisonke District Municipality & others* (2012) 33 ILJ 598 (LC); [2011] ZALCD 9, *Lebu v Maquassi Hills Local Municipality & others* (2) (2012) 33 ILJ 653 (LC); [2011] ZALCJHB 248 and *Retlaobaka v Lekwa Local Municipality & another* (2013) 34 ILJ 2320 (LC); [2013] ZALCJHB 179.

¹⁹ (2013) 34 ILJ 2320 (LC); [2013] ZALCJHB 179.

rely under reg 6(1)(a) or (b). The whole object of inviting representations from the employee on whether he or she should be suspended would be rendered nugatory if the employee is in the dark as to why the employer believes he or she should not be at the workplace until the disciplinary proceedings are concluded. Without knowing the employer's reasons, the employee could only guess what they might be and his or her response would be mostly superfluous and speculative answers to unknown propositions. I accept that before taking the decision to suspend the employee the council only needs to have reason to believe it would be desirable for one or more of the reasons mentioned based on the information it has before it, but that information also includes the employer's representations on the purpose of the proposed suspension, which clearly must be made known to the employee for those representations to be meaningful. (Own emphasis)

[55] Therefore, the Court interpreted the Regulation in a specific way, and I have interpreted the same provision differently. As the meaning of the Regulation is a matter of interpretation, I believe that a breach of the Regulation has not been established.

[56] Some support for the interpretation that I have adopted can be found in *Tsietsi v City of Matlosana Local Municipality & another*²⁰, where the following was stated:

'[12] In my judgment the above authorities on which applicant relies, should *not* be understood to amount to the following two propositions:

12.1 that the particularity of the allegations of misconduct must be of such detail as to allow for the setting out of a defence in response thereto in the applicable representations in terms of regulation 6. Or as applicant averred to: "show that the allegations have no prospects". This is because the suspension in terms of the regulation is precautionary, and resorted to in order for an investigation to take place as to whether charges should follow, and not a disciplinary sanction in its own terms;

²⁰ (2015) 36 ILJ 2158 (LC); [2015] ZALCJHB 92.

12.2 that a municipality must set forth *evidence* to show that the person involved may interfere in the conduct of the investigation against him- or herself. Reference to the position of the senior official and the attendant powers and responsibilities that he or she has, read with the allegations of misconduct as set out in the pre-suspension letter, should suffice.

[13] In dealing with regulation 6(1) it is important not to lose sight of the principle that the suspension is precautionary and not punitive, and it contains a safeguard that the suspension may not be extended indefinitely...'

[57] Therefore, the necessity to suspend a senior manager may be apparent from the position and the responsibilities attached to the position.

[58] I also align myself with what the Court stated in *Mothogoane & another v Lepelle-Nkumpi Local Municipality & another*²¹, where the notice of intention to suspend listed the reasons for suspension as set out in Regulation 6(1) without specificity, and the Court did not find that there had been a breach, reasoning as follows:

'[28] I find the applicant's precautionary suspension to have been motivated by objectively justifiable considerations as envisaged by regulation 6(1). In fact, given the seriousness of the alleged misconduct the applicants are charged with, their removal as a precautionary measure is compelling.'

[59] Consequently, the necessity to suspend may also be apparent from the seriousness of the charges against an employee.

[60] In any event, although the notice of intention to suspend did not specify any of the reasons for suspension listed in regulation 6(1), the notice of suspension does list them. Therefore, when the application was launched, the applicant was aware of the purpose of the suspension. That the purposes of the suspension were not expanded on does not amount to a breach of the Regulation.

²¹ (2019) 40 ILJ 1072 (LC); [2018] ZALCJHB 411.

- [61] The applicant also argues that the Council's beliefs regarding the reasons for suspension must be based on facts and evidence, not speculation, and that the notice of intention to suspend does not establish a factual foundation for the speculative beliefs outlined in it. In my view, the contents of the SIU report constituted *prima facie* evidence of serious and financial misconduct against the applicant. The Council's consideration of a suspension was therefore not speculative. The alleged breach is not apparent.
- [62] The applicant also argues that the report to the Council dated 21 January 2026 specifically noted that his representations had not yet been submitted, that the Council meeting of 23 January 2026 took place before he could present them, and that he was not invited to that meeting to do so. He further contends that his request for information and documents, which was ignored, was not discussed at the Council meeting, thereby demonstrating a lack of integrity on the part of the Mayor, who failed to bring the request to the Council's attention. Additionally, he asserts that the resolution to suspend him was therefore based on a misrepresentation.
- [63] On 15 January 2026, the applicant was given seven days to submit representations, meaning that submissions were due by 22 January 2026. When the report to the Council was prepared on 21 January 2026, it noted that the applicant had not yet submitted his representations and that the deadline had not yet passed. The report also recorded that if the applicant's representations were received on 22 or 23 January 2026, they would be tabled before the Council. That account is not disputed.
- [64] When the Council meeting was held on 23 January 2026, the deadline for submitting representations had passed, and the applicant had not submitted them. He adopted this approach because he required information and documents as outlined in his letter of 22 January 2026. I have already found that the Regulations do not require an employee to be provided with documents or information for the purpose of making representations. Therefore, the complaint that he was not afforded an opportunity to make representations rings hollow.

- [65] His letter of 22 January 2026 did not request an opportunity to present representations at the Council meeting. He cannot now argue that the conclusion was preordained when he failed to submit the representations he was invited to provide.
- [66] The applicant also argued that, because the letter dated 15 January 2026 referenced the SIU report, it implied the investigation had concluded and that he was suspended despite the absence of an ongoing investigation. The suspension notice states that an independent investigator will be appointed in accordance with Regulation 5 and that the disciplinary hearing must commence within 3 months of the suspension date. Consequently, despite the SIU report, the Council decided to carry out an independent investigation. There is nothing in Regulations 5 and 6 that prevents a second investigation after an SIU report has been produced. The applicant claims that the SIU did not interview him, and the Council-mandated investigation may address this issue. The specific breach is difficult to identify.
- [67] The applicant also claims that he is unaware of the substance of the allegations of serious and financial misconduct against him. That version is improbable. The notice of intention to suspend clearly stated that the SIU report examined the procurement process for the physical and armed security tender. The applicant refers to allegations concerning the extension of the Isidingo Security Services contract, which he claims are false. He states that the service agreement with Isidingo was only extended pending the outcome of an ongoing tender process, and that no new service agreement was signed, which would have required a new tender process. Therefore, the applicant understands that the allegations pertain to the physical and armed security tender, as specified in the notice of intention to suspend. When he provides information about Isidingo, he does not claim that this is separate from the physical and armed security tender referred to in the notice of intention to suspend.
- [68] What is even more perplexing, in my view, is that when the applicant was served with the notice of intention to suspend, he was also given the Nthoba Affidavit and the SIU Disciplinary Referral letter. For reasons that have not

been explained, these documents were not annexed to the applicant's pleadings. The Court does not know what is contained in these two documents. If not, why were the documents furnished to him together with the notice of intention to suspend? The Court draws an adverse inference against the applicant for failing to attach these documents to his application, and his claim that he is completely in the dark about the allegations against him cannot be taken seriously.

- [69] The applicant further submitted that under Regulation 6, the Municipal Council lacked the authority to suspend him without specifying the act of misconduct committed by the applicant. He also argued that the claim that the allegations in the SIU report are of a serious nature, constituting *prima facie* evidence of serious and financial misconduct, is vague and does not meet the requirements of the Regulation. Additionally, he pointed out that the SIU report was not provided to him despite his request.
- [70] Despite the respondent's assertion to the contrary, it is more probable that the SIU report was not given to the applicant. However, the Nthoba Affidavit and the SIU Disciplinary Referral letter were provided, and the Court remains unaware of their contents. Therefore, the Court cannot determine whether the applicant's misconduct was not detailed in these documents. It was the applicant's responsibility to submit these documents to the Court.
- [71] Furthermore, the notice of intention to suspend states that, concerning the physical and armed security tender, the Council had resolved that the allegations in the SIU Report presented *prima facie* evidence of serious and financial misconduct by the applicant, and that it was considering suspending him for that reason. Therefore, the alleged serious financial misconduct related to the applicant's involvement in the physical and armed security tender, if any. Either he was involved in this tender, in which case he would have clarified the extent of his involvement and that there was no wrongdoing, or he could have denied involvement. He did neither.
- [72] The applicant also submitted that, in terms of Regulation 6(5)(a), the Municipality did not inform him in writing of the reasons for the suspension on

or before the date he was suspended. The notice of suspension reads as follows:

‘This letter serves to formally notify you of the Council decision taken on 23 January 2026 during the Special Council meeting, in terms of Regulation 6 of the Local Government: Disciplinary Regulations for Senior Managers made under the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), to place you on precautionary suspension with full pay and benefits.

This action follows the special council meeting of the 23 January 2026 wherein the Council, having considered a report on allegations of misconduct against you resolved that.

- (a) There is reasonable cause to believe that an act of misconduct may have been committed: and
- (b) a precautionary suspension is warranted as per the grounds set out in Regulation 6(1).

The Council has reason to believe that your continued presence at the workplace may:

- Jeopardise or interfere with the integrity of a pending investigation into the allegations; and/or
- Be detrimental to the stability and administration of the Municipality.’

[73] The question is whether the above constitute reasons for the suspension. In my view, they do, although the Mayor’s letter to the applicant’s attorneys on 3 February 2026 stated that the ‘Employer is not obliged to provide any reasons for suspension other than those set out in Clause 6(1) of the Regulations’. The reasons for suspension given were those recorded above, as per Regulation 6(1).

[74] Taking all of the above into account, I am unable to find that Regulation 6 was breached, as alleged or at all.

- [75] In reaching the above conclusions, I considered the unreported decision of this Court in *Matlala v Greater Tzaneen Local Municipality*²² (*Matlala*), and an earlier reported decision of this Court in *Mere v Tswaing Local Municipality & another*²³ (*Mere*), which the applicant relied upon.
- [76] I am unable to see how the *Mere* decision assists the applicant's case, as the Court found substantial compliance with Regulation 6 and dismissed the employee's application to declare the suspension unlawful.
- [77] *Matlala* is clearly distinguishable for several reasons. Most notably, the Municipal Manager was suspended in relation to two tenders awarded before his appointment, as well as the progress of the associated projects, solely because he was the accounting officer. In setting aside the suspension, the Court lamented that the notice of intention to suspend did not specify the misconduct alleged against the applicant, especially since it was the applicant's efforts that had led to the discovery of the irregularities in the tenders. The court in *Matlala* also lamented that the reasons given for the suspension, that there were 'a lot of challenges' in the Municipal Manager's report to the Council, and that there were 'problems' with the projects, were vague. Based on the facts of that case, I would have reached the same conclusion. Additionally, there was a pending application in the High Court to set aside the award of the two tenders, a process initiated by the Municipal Manager. This situation is markedly different from those in the present case.
- [78] I also observed that in *Matlala*, unlike in the present case, the Council informed the applicant that the purpose of the investigation was simply to investigate, without any specific reference to the reasons for suspension outlined in Regulation 6. In this case, the notice of suspension explicitly states the reasons from Regulation 6 as the grounds for the suspension.
- [79] Even if I am mistaken in my conclusions that there was no breach of Regulation 6, I align myself with Lagrange J's views in *Lebu v Maquassi Hills Local Municipality & others (3)*²⁴ (*Lebu 3*), that not every breach of contract is

²² (J2289/19) [2020] ZALCJHB 2 (3 January 2020).

²³ (2015) 36 ILJ 3094 (LC); [2015] ZALCJHB 193.

²⁴ (2012) 33 ILJ 2623 (LC); [2011] ZALCJHB 248.

material, warranting an order for specific performance, which is discretionary.²⁵ If there was a breach of Regulations 6 (which I have found not to be the case), it was immaterial. I am also of the view that specific performance, in the form of an order lifting the suspension, would be inappropriate given that the allegations against the applicant emanate from an SIU report and have been described as serious and financial misconduct. The applicant can clear his name at a disciplinary hearing, if it comes to that.

[80] Therefore, in the absence of breach of Regulation 6, the applicant is not entitled to the relief he seeks. He has failed to demonstrate a clear right to the relief sought, and that finding is dispositive of the setting aside of the suspension relief sought, even though the rest of the requirements for interim relief will still be determined.

[81] For completeness, I address the respondent's submission that, in *Long v South African Breweries (Pty) Ltd*,²⁶ the Constitutional Court stated that when a suspension is precautionary rather than punitive, there is no requirement to give the employee an opportunity to make representations. The key point to note is that the Disciplinary Regulations form part of the terms and conditions of employment and must be complied with, failing which, it may be found that there was a breach of contract. On the facts of this matter, I have found that there was no breach of contract.

(b) *Irreparable harm*

[82] The applicant submitted that his exclusion from the workplace risks him losing the performance bonus, which is based on an assessment of standards and work output. Since the loss cannot be quantified, it is irreparable. He also argued that the suspension violates his right to engage in productive work, damages his reputation, and infringes on his right to dignity and self-esteem.

[83] If the Court had found that the suspension was carried out in breach of Regulation 6, it would have accepted that, unless the relief sought is granted,

²⁵ *Passenger Rail Agency of SA and Others v Ngoye and Others* 2025 (2) SA 556 (LAC); [2024] ZALAC 18 at para 46.

²⁶ 2019 JDR 0218 (CC); [2019] ZACC 7.

the applicant would suffer irreparable harm. The Court has determined that no breach occurred. The suspension is on full pay and with benefits. It will last for three months. It is quite plausible that the independent investigation will find that the applicant did not engage in misconduct, in which case his suspension will be lifted. Alternatively, if the investigation concludes that the applicant has a case to answer and the Council decides to proceed with disciplinary action, he can defend himself at such a hearing. He will either be exonerated or found guilty. If exonerated, he can return to work immediately. If found guilty and dismissed, he can challenge his dismissal in the appropriate forum, depending on his cause of action. Based on these facts, any harm the applicant will face if the suspension is not lifted is the same harm that any suspended employee suffers. A damages claim in due course should address any harm the applicant might suffer as a consequence of the suspension.

(c) *No suitable alternative remedy*

[84] I have already established that, regarding his alleged breach of contract claim, the applicant can pursue it only in this Court or the High Court. That was the only course of action available for an alleged breach of contract. Unfortunately, the Court has determined that no breach of contract has taken place, and that has to be the end of the discussion on the lawfulness of the suspension. The Court will now turn to the relief sought, namely, an interdict against the disciplinary hearing.

Interdicting the disciplinary hearing

[85] The applicant submitted that all allegations of financial misconduct must be referred to the disciplinary board for verification before disciplinary proceedings can begin. Therefore, the submission was that the suspension is premature because (i) no disciplinary board has been established to consider the financial misconduct allegations, (ii) there are no terms of reference for the disciplinary board, (iii) the disciplinary board has not yet sat, and (iv) there is no report from the disciplinary board. The submission was also that the Mayor's report on financial misconduct was not referred to a disciplinary board for a preliminary investigation, and that no report was submitted to the Council

regarding whether there were sufficient grounds for a full investigation into the allegations. The conclusion was that there was a breach of Regulations 4 and 5 of the 2014 Regulations.

- [86] The relevant portions of the 2014 Regulations dealing with the disciplinary board being relied upon were not cited in the applicant's papers, and it is not for the Court to look outside the Court papers to find the Regulations relied upon, especially where parties are legally represented and in urgent applications.
- [87] Be that as it may, if one considers Regulations 5 and 6 of the Disciplinary Regulations, it appears that the relief is being sought prematurely. The suspension notice recorded that the next step was to appoint an independent investigator, that the applicant would be given a full opportunity to respond to the allegations, and that the applicant was reminded that a disciplinary hearing must commence within three (3) months from the date of suspension. Therefore, whether disciplinary proceedings will be instituted against the applicant depends on the outcome of the investigation yet to be conducted and on the Council's decision after reviewing that report. To interdict the institution of a disciplinary hearing against the applicant would amount to pre-empting the outcome of the independent investigation yet to be conducted and would usurp the Council's authority to decide on the next steps. For that reason, the applicant does not have a clear right to the relief sought. He has not and cannot demonstrate irreparable harm or that the balance of convenience favours granting the interim relief sought, especially in respect of unknown future events. The issue of an alternative remedy regarding unknown future events also does not even arise.

Exceptional circumstances

- [88] In the absence of a breach of the Disciplinary Regulations, it cannot be said that there are exceptional circumstances warranting the Court's interference in the applicant's suspension.²⁷

²⁷ *Booyesen v Minister of Safety & Security & others* (2011) 32 ILJ 112 (LAC); [2010] ZALAC 21.

Relief

- [89] The applicant has not demonstrated a breach of Regulations 5 and 6 of the Disciplinary Regulations. If there was any breach (I have found there was no breach), it was not material. The Council does not need to restart the suspension process, and the applicant is not entitled to the relief he seeks.

Costs

- [90] The applicant sought costs on an attorney-and-own-client scale, jointly and severally against both respondents, because he was compelled to institute the current proceedings and incurred legal costs. He also sought costs against both respondents due to their blatant disregard of all applicable prescripts in adopting the resolution to suspend him. Costs are sought against the Mayor, in his personal capacity, ostensibly because of the material misrepresentations he made to Council, and for the unlawful, unreasonable, egregious illegalities and failure to act within the scope of his authority.
- [91] The respondents questioned why a costs order should be made against them and did not request one against the applicant.
- [92] The application has failed, and, in accordance with the requirements of law and fairness, and in line with section 62 of the LRA, a costs order is for each party to pay its own costs.

- [93] In the result, the following order is made:

Order

1. The matter is heard as one of urgency.
 2. The application is dismissed.
 3. There is no order as to costs.
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T Gandidze

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Advocate MD Maluleke

Instructed by: MM Baloyi Attorneys

For the Respondent: Advocate S Ngombane

Instructed by: Seobe Attorneys