



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable

Case no: 2264/2024

In the matter between:

AFRIFORUM NPC

Applicant

and

NGWATHE LOCAL MUNICIPALITY

First Respondent

**MUNICIPAL MANAGER:
NGWATHE LOCAL MUNICIPALITY**

Second Respondent

**MUNICIPAL COUNCIL:
NGWATHE LOCAL MUNICIPALITY**

Third Respondent

PREMIER, FREE STATE PROVINCE

Fourth Respondent

EXECUTIVE COUNCIL, FREE STATE PROVINCE

Fifth Respondent

**MEC FOR COOPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS, FREE STATE PROVINCE**

Sixth Respondent

Neutral citation: *Afriforum NPC v Ngwathe Local Municipality and Others*
(2264/2024) [2026] ZAFSHC 67 (20 February 2026)

Coram: OPPERMAN J

Heard: 12 February 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 16h00 on 20 February 2026.

Summary: Local government - Superior Courts Act 10 of 2013 – ss 18(1) and 18(3) – execution of order pending appeal – exceptional circumstances – irreparable harm – service delivery.

ORDER

1 The order of Daffue J dated 20 June 2025 is hereby put into operation with immediate effect, pending the first to third respondents' application for leave to appeal to the Constitutional Court, and subject to the provisions of s 18(4) of the Superior Courts Act 10 of 2013.

2 Should the first to third respondents fail to prosecute an appeal against this order in terms of s 18(4)(a)(ii) of the Superior Courts Act 10 of 2013 within twenty one (21) days of the granting of this order, such appeal shall lapse, and the suspension contemplated in s 18(4)(a)(iv) of Act 10 of 2013 shall cease to operate.

3 The first to third respondents, jointly and severally, the one paying the others to be absolved, are ordered to pay the costs of this application, including the costs of senior counsel on scale C and junior counsel on scale B.

JUDGMENT

Opperman J

Introduction

[1] Systemic failures which have resulted in the supply of contaminated water, recurring sewage spillages, financial insolvency and manifestly deficient governance demand urgent and decisive remediation. A failure to intervene in the face of such circumstances is inconsistent with the obligations imposed by the Constitution and cannot be countenanced in a constitutional democracy.

[2] The municipal council of the Ngwathe Local Municipality (Municipality) has been in office since 2021. It has accordingly had ample opportunity to ensure that

been in office since 2021. It has accordingly had ample opportunity to ensure that the Municipality complies with its constitutional obligations. In the circumstances, it cannot reasonably be contended that insufficient time has been afforded to the council to discharge its duties. That position is, in my view, beyond dispute.¹

[3] This is an application in terms of s 18(1) read with s 18(3) of the Superior Courts Act 10 of 2013 (the Act), in which the applicant seeks an order that the judgment and order granted by Daffue J on 20 June 2025,² placing the first respondent under mandatory provincial administration, be implemented immediately, notwithstanding the pending application for leave to appeal to the Constitutional Court.

[4] The relief is sought consequent upon the dismissal of an application for leave to appeal by this Court and the subsequent dismissal of the first to third respondents' petition to the Supreme Court of Appeal (SCA). I will depict the chronology of events later in more detail.

[5] The application is opposed only by the first to third respondents (the municipal respondents). The fourth to sixth respondents (the provincial respondents) have filed notices to abide by the decision of this Court.

[6] The applicant filed supplementary founding affidavits limited to placing before this Court facts which arose after the launch of the application. No prejudice arises from their admission, and they are admitted in the exercise of this Court's discretion under rule 6(5)(e) in the interests of justice.

¹ *Afriforum NPC v Ngwathe Local Municipality and 14 Others* (2264/2024) [2025] ZAFSHC 184; 2025 (6) SA 566 (FB) (20 June 2025) para 18 read with paras 1-4.

² *Ibid.*

Procedural history

[7] The main application culminated in an order by Daffue J, finding that the jurisdictional facts for mandatory provincial intervention in terms of s 139(4) and (5) of the Constitution had been established and ordering, *inter alia*, the dissolution of the municipal council. As mentioned, an application for leave to appeal was dismissed on 19 August 2025, with costs. A petition to the SCA was likewise dismissed on 22 October 2025.

[8] The present s 18-application was initially enrolled on an urgent basis but was removed from the urgent roll on 22 October 2025. The merits were not adjudicated, and the matter is accordingly not *res iudicata*. It was thereafter re-enrolled on the ordinary opposed motion roll. Any procedural complaints raised by the second respondent in a Rule 30-notice were rendered moot by the applicant's re-service of the papers and the additional time afforded to supplement affidavits.

[9] The following is a chronological account of the events culminating in the present matter. The municipal council of the Ngwathe Local Municipality was elected on 1 November 2021. The main application, which ultimately gave rise to the present proceedings, was served on 16 May 2024 and argued on 5 December 2024. On 20 June 2025, Daffue J granted an order placing the Municipality under administration. On 24 June 2025, the first and third respondents filed an application for leave to appeal to the High Court while the municipal manager followed with a separate application for leave to appeal on 10 July 2025. On 19 August 2025, Daffue J dismissed the applications for leave to appeal and immediately thereafter a petition was lodged with the SCA. That petition was dismissed on 22 October 2025.

[10] In the interim, a media statement was issued by the mayor on 29 August 2025. The present application in terms of s 18 was served on 10 September 2025. On 30 September 2025, the fourth to sixth respondents filed notices to abide, while the first

to third respondents delivered their answering affidavits on 1 October 2025. The applicant filed a replying affidavit on 8 October 2025.

[11] The s 18-application was initially enrolled on an urgent basis but was struck from the roll for lack of urgency by Chesiwe J on 22 October 2025, on the same day that the petition to the SCA was dismissed. The merits of the application were not determined, and the matter was thereafter set down for hearing on 4 December 2025.

[12] On 31 October 2025, the applicant filed its first supplementary affidavit while the respondents lodged an application for leave to appeal to the Constitutional Court of South Africa on 7 November 2025. This application is still pending. Meanwhile, the s 18-application was re-served on 24 November 2025, with further time afforded to the respondents to regularise the process.

[13] The foregoing narrative reflects a continuous sequence of appellate steps pursued after the order of 20 June 2025, the cumulative effect of which delayed the implementation of the administration order for a considerable period.

The legal framework

[14] Section 18 of the Act provides that the operation and execution of a decision is suspended pending an appeal unless the court orders otherwise under exceptional circumstances, upon proof that: the applicant will suffer irreparable harm if the order is not implemented; and the respondent will not suffer irreparable harm if it is. The SCA has confirmed that these requirements are not to be approached mechanistically. The overarching enquiry remains whether exceptional circumstances exist, having regard to all relevant facts.

[17] Counsel fared no better in defence of the contention that s 18(3) leaves no room for a “weighing-up” by the court. . . . In other words, unless there was no (as in “zero”, in the words of counsel) irreparable harm to a respondent the s 18 application had to fail.

[18] Counsel did not shrink from the logical consequence of the contention, namely that such a mechanistic approach, which rested on the supposition that the *second* and *third* had to be approached as isolated enquiries, may well strip a court of any discretion that it may possess or that it could give rise to a manifestly inequitable conclusion, which could serve to undermine the rule of law. This approach, if it is to be favoured, would disregard entirely the rationality, reasonableness and proportionality yardsticks that have become important touchstones in our jurisprudence . . .³

Exceptional circumstances

[15] The order sought to be implemented is not an ordinary civil judgment. It concerns the governance of a local authority, the provision of basic services, and the vindication of constitutional rights of thousands of residents.

[16] Ngwathe Local Municipality was financially dysfunctional, with liabilities exceeding assets by billions of rands. Notwithstanding previous legal battles concerning its dysfunction, the situation has worsened. The Municipality persistently fails to meet its obligations to Eskom and the Department of Water and Sanitation; it incurred extensive irregular, fruitless and wasteful expenditure; it fails to provide basic services, particularly potable water, sanitation and electricity; and it is unable to fulfil its constitutional obligations.

[17] The aforesaid factual realities have not been credibly or meaningfully challenged in any of the applications for leave to appeal, nor are they gainsaid by the evidence placed before this Court by the respondents. They are not salvaged by reliance on the so-called Plascon-Evans dictum. The respondents' attack is directed almost exclusively at the legal conclusions drawn by the court, rather than at the underlying factual findings, which remain substantially uncontroverted.

³ *Tyte Security Services CC v Western Cape Provincial Government* (479/2024) [2024] ZASCA 88; 2024 (6) SA 175 (SCA) (Tyte).

[18] The ongoing collapse of governance and service delivery, coupled with the repeated use of appellate processes to delay implementation of the order, constitutes circumstances that are markedly unusual, serious and compelling. I am satisfied that exceptional circumstances within the meaning of s 18 are present.

Irreparable harm

[19] The harm suffered by the applicant's members and the residents of the Municipality is ongoing and, by its very nature, irreparable. The interruption of potable water supply, the contamination of areas by sewage spillages and persistent electrical instability constitute more than mere administrative shortcomings; they pose immediate and tangible risks to public health, human dignity, and the environment. Access to clean water is indispensable to life itself and the sustained deprivation thereof, coupled with exposure to raw sewage, creates conditions inimical to human survival and wellbeing, and may, if unabated, result in severe illness or death.

[20] The harms complained of are of such a nature that they cannot be undone by the mere success of an appeal at some indeterminate point in the future. Once suffered, they will have taken effect in a manner that is neither reversible nor capable of meaningful restoration. They are also not susceptible to being cured by way of a monetary award. The enquiry into the nature of the harm is, therefore, in legal terms, straightforward: if the prejudice apprehended cannot adequately be remedied by damages, it is, by definition, irreparable.

[21] It has been said, albeit in a somewhat different context, that irreparable harm is more than a convenient rationale; it is a critical factor. The concept itself defies precise definition. As R J Sharpe observes:

‘The rationale for requiring the plaintiff to show irreparable harm is readily understood. If damages provide adequate compensation, and the defendant is in a position to pay them, then ordinarily

there will be no justification in running the risk of an injunction pending the trial. While it is easy to see why this requirement should be imposed, it is difficult to define exactly what is meant by irreparable harm.’⁴

[22] The essence of the requirement lies not in semantic precision but in practical justice. Where the harm apprehended cannot be adequately redressed by a subsequent award of damage, and where its consequences would endure beyond the reach of corrective relief, a court is entitled, indeed obliged, to recognise its irreparable character.⁵ Conversely, the municipal respondents have failed to demonstrate any concrete or substantiated irreparable harm they would suffer should the order be implemented.⁶ Assertions relating to councilors’ tenure or loss of remuneration are legally insufficient and constitutionally misplaced.

[23] The delay in instituting the present application has been satisfactorily and convincingly explained. The applicant adopted a measured and reasonable approach in awaiting the outcome of the applications for leave to appeal before this Court. It could not be assumed, as a matter of course, that the respondents would proceed further by way of petition. That eventuality materialised only on 26 August 2025.

[24] That development constituted the operative trigger for the present proceedings. It is common cause that the determination of the petition will inevitably delay the implementation of the order for several months. In those circumstances, the lapse of time between 26 August 2025 and 10 September 2025, when this application was issued, can hardly be characterised as inordinate. During that period, the applicant was required not only to prepare its response to the petition but also to obtain updated information concerning the prevailing conditions within the

⁴ Ibid para 19. See also paras 20–21.

⁵ See *Setlogelo vs Setlogelo* 1914 AD 221 at 227.

⁶ The next local government elections are scheduled to take place between 2 November 2026, being the earliest possible date, and 31 January 2027, being the latest permissible date.

Municipality.

[25] Viewed objectively, the explanation tendered is rational, consonant with the established chronology of events, and devoid of any suggestion of dilatoriness that might justify an adverse inference. It reflects neither neglect nor indifference, but a measured response to unfolding circumstances. Counsel correctly submitted during argument that applications in terms of s 18 are, by their very nature, urgent. In the context of the present matter, that urgency is accentuated by the particular facts and the substantive consequences at stake.

[26] The Constitutional Court has repeatedly held that the primary prejudice lies with communities deprived of basic services, not with office-bearers who may lose positions through constitutionally sanctioned processes. The Constitutional Court made it clear that ‘[i]t is evident that appropriate steps require a “balancing of the constitutional imperative to respect the integrity of local government as far as possible against the constitutional requirement of effective government”’⁷ and the people must come first:

‘The People of Tshwane must come first. We are dealing with a very difficult situation and are tasked with finding a remedy that will result in the strengthening of the Municipal Council to manage its own affairs and functions. Importantly, it must be a remedy that will stabilise the Municipal Council and enable it to continue to fulfil its executive obligations.’⁸

Prospects of success

[27] Although not decisive, the prospects of success on appeal are a relevant consideration.⁹ The dismissal of the SCA petition, the absence of any appeal by the

⁷ *Premier, Gauteng and Others v Democratic Alliance and Others; All Tshwane Councillors who are Members of the Economic Freedom Fighters and Another v Democratic Alliance and Others; African National Congress v Democratic Alliance and Others* [2021] ZACC 34; 2022 (1) SA 16 (CC) para 81.

⁸ *Ibid* para 129.

⁹ *University of the Free State v Afriforum and Another* (929/2016) [2016] ZASCA 165; [2017] 1 All SA 79 (SCA); 2018 (3) SA 428 (SCA) (17 November 2016):

provincial respondents, and the fact that the Constitutional Court application is materially indistinguishable from the petition previously dismissed, all weigh heavily against the respondents. I am not persuaded that the pending Constitutional Court application enjoys reasonable prospects of success.

Section 18(4) as remedy for the respondents

[28] Section 18(4)(a)(iv) of the Act regulates the immediate enforceability of a court's decision granting execution pending appeal. It provides that, where a court orders that its decision shall operate notwithstanding the noting of an appeal, such order is automatically suspended upon the lodging of an appeal against that execution order. The effect is that the successful applicant under s 18(3) does not obtain an unqualified right to immediate enforcement; rather, the statute creates an internal safeguard by preserving the appellant's right to challenge the execution order itself. Thus, once an appeal in terms of s 18(4) is duly instituted, the operation and execution of the order granted under section 18(3) are suspended pending the outcome of that appeal, unless and until the appeal court determines otherwise.

Costs

[29] The applicant litigates in the public interest to vindicate constitutional rights against organs of state. The *Biowatch*-principle applies.

[30] The municipal respondents, however, persisted in opposition notwithstanding overwhelming evidence and failed to advance any substantive basis for resisting the

‘[14] A question that arises in the context of an application under s 18, is whether the prospects of success in the pending appeal should play a role in this analysis. In *Incubeta Holdings* Sutherland J was of the view that the prospects of success in the appeal played no role at all. In *Liviero Wilge Joint Venture* Satchwell J, Moshidi J concurring, was of the same view. However, in *Justice Alliance Binns-Ward J* (Fortuin and Boqwana JJ concurring), was of a different view, namely that the prospects of success in the appeal remain a relevant factor and therefore “... the less sanguine a court seized of an application in terms of s 18(3) is about the prospects of the judgment at first instance being upheld on appeal, the less inclined it will be to grant the exceptional remedy of execution of that judgment pending the appeal. The same quite obviously applies in respect of a court dealing with an appeal against an order granted in terms of s 18(3)”.’

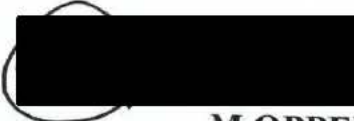
relief.

[31] **Order**

1 The order of Daffue J dated 20 June 2025 is hereby put into operation with immediate effect, pending the first to third respondents' application for leave to appeal to the Constitutional Court, and subject to the provisions of s 18(4) of the Superior Courts Act 10 of 2013.

2 Should the first to third respondents fail to prosecute an appeal against this order in terms of s 18(4)(a)(ii) of the Superior Courts Act 10 of 2013 within twenty one (21) days of the granting of this order, such appeal shall lapse, and the suspension contemplated in s 18(4)(a)(iv) of Act 10 of 2013 shall cease to operate.

3 The first to third respondents, jointly and severally, the one paying the others to be absolved, are ordered to pay the costs of this application, including the costs of senior counsel on scale C and junior counsel on scale B.


M OPPERMAN
JUDGE OF THE HIGH COURT

Appearances

For the applicant:	FJ Erasmus SC & P Eilers
Instructed by:	Hurter Spies Incorporated c/o Hendre Conradie Incorporated
For the first and third respondent:	WR Mokhare SC
Instructed by:	Rampai Attorneys
For the second respondent:	MC Louw
Instructed by:	Peyper Attorneys