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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable

Case No.: 2026-039971

In the matter between:

L[...] B[...] F[...]

Applicant

And

MUNICIPAL MANAGER: OUDTSHOORN MUNICIPALITY

First Respondent

THE SPEAKER OF THE OUDTSHOORN MUNICIPAL

COUNCIL

Second Respondent

MEC: LOCAL GOVERNMENT, ENVIRONMENTAL

Coram: Francis J

Heard: 17 March 2026

Delivered: 20 March 2026

ORDER

1. The applicant's non-compliance with the Uniform Rules of Court and the Practice Directives of this Division is condoned, and the matter is heard as one of urgency in terms of Rule 6(12)(a).
2. The decision taken by the First Respondent, the Municipal Manager: Oudtshoorn Municipality, dated 2 February 2026, terminating the employment of the applicant as Director: Corporate Services, is suspended pending the final determination of Part B of this application.
3. The decision taken in a special council meeting (Resolution no: 63/16/01/26) by the Second Respondent, the Oudtshoorn Municipal Council, dated 29 January 2026, resolving to terminate the employment of the applicant as Director: Corporate Services, is suspended pending the final determination of Part B of this application.
4. The suspensions referred to in paragraphs 2 and 3 above shall remain in effect pending the outcome of the review application in Part B.
5. The First and Second Respondents are ordered, jointly and severally, the one paying the other to be absolved, to pay the applicant's costs of this application on the attorney-client scale, including the costs occasioned by the postponement on 27 February 2026.

JUDGMENT

FRANCIS, J:

Introduction

[1] This is an urgent application for interim relief in terms of Part A of the notice of motion. The applicant seeks the suspension, pending the final determination of the review in Part B, of two decisions: first, the resolution of the Second Respondent (the Municipal Council) dated 29 January 2026 (Resolution 63/16/01/26), and second, the consequent decision of the First Respondent (the Municipal Manager) dated 2 February 2026, both of which terminated his employment as Director: Corporate Services.

Procedural history

[2] The matter was initially enrolled on the urgent roll for 27 February 2026. On that day, it came before Dolamo J. By agreement between the applicant and the first and second respondents, the matter was postponed to the semi-urgent roll. An order was granted by Dolamo J on 27 February 2026, directing the first and second respondents to file any

answering affidavits by 12h00 on Monday, 9 March 2026. The applicant was to reply by 12 March 2026, and costs were reserved.

[3] The first and second respondents have failed to comply with this court order. They filed no answering affidavits by the deadline, nor at any point thereafter. They also failed to appear at the hearing before me.

[4] The third respondent, the MEC, filed a notice on 26 February 2026, indicating that he would abide by this Court's decision in respect of Part A of the application. No relief is sought against the third respondent at this stage.

[5] In motion proceedings, where a respondent files a notice of intention to oppose but subsequently fails to deliver an answering affidavit despite a court-ordered deadline, the applicant's factual averments must be accepted as correct (cf. ***National Director of Public Prosecutions v Zuma*** 2009 (2) SA 277 (SCA) at para 26). A party that wishes to dispute the version in the founding affidavit must do so in an answering affidavit. The matter therefore proceeds on the uncontested facts set out in the applicant's founding affidavit.

Factual background

[6] The applicant, Mr. L[...] B[...] F[...], is an adult male who was offered the post of Director: Corporate Services at the Oudtshoorn Municipality on 16 December 2025. He accepted the offer and, on 5 January 2026, signed an indefinite employment contract with the Municipality. The contract was signed on behalf of the Municipality by the First Respondent, the Municipal Manager.

[7] At the time of his appointment, the applicant was residing in Pretoria. His three minor children, however, were living in Oudtshoorn with their mother and enrolled at Principia Primary School. The applicant had been estranged from his children and engaged in litigation over their care and maintenance. A significant arrear school fee account of R34,260.00 had accumulated at Principia Primary School, and the school had handed the matter over to its attorneys. The school principal had informed the applicant that the children would not be permitted to return to school in 2026 unless the arrears were settled.

[8] The applicant's offer of permanent employment with the Municipality was a turning point. Relying on the certainty of this permanent income, he was able to negotiate with the school and its attorneys. He paid R17,130.00 (half the arrears) on 13 January 2026 and entered into a further agreement to pay the remaining school fees. His children were re-admitted to Principia on the strength of his permanent employment contract. He further terminated his lease in Pretoria, placed his belongings in storage, and relocated to Oudtshoorn to take up the position.

[9] On 2 February 2026, the applicant received a letter from the First Respondent terminating his employment with immediate effect. The letter stated that the Municipal Council had, on 29 January 2026, resolved to accept the Third Respondent's 'non-concurrence and to act on his instruction to terminate the appointment. Attached to the termination letter was a letter from the Third Respondent, Mr. A Bredell (the MEC), dated 19 January 2026. In that letter, the MEC declared the applicant's appointment 'null and void' on the basis that his BCom (Accounting) degree was not a relevant qualification for the post of Director: Corporate Services as prescribed in the regulations. He directed the Municipality to confirm the termination within seven days.

[10] The council resolution of 29 January 2026 (attached to the papers) records that the council "*accepted the correspondence received from the MEC*" and resolved to terminate the applicant's employment "*with immediate effect.*"

[11] The applicant's attorneys addressed a letter to the First Respondent on 17 February 2026, setting out the legal principles against self-help and calling for the decision to be retracted. In a response dated 18 February 2026, the First Respondent (acting through an Acting Municipal Manager) refused to retract. The letter denied any unlawfulness and stated that any court application by the applicant "*will be opposed with a request for an appropriate penalising cost order.*"

[12] The applicant's attorneys also made representations to the MEC. On 18 February 2026, the Third Respondent, Mr. Bredell, responded. In this letter, the MEC made a significant procedural concession. He stated that, in his capacity as MEC, he has no statutory authority to instruct a Municipal Council to either appoint a specific incumbent or to lawfully terminate such an appointment. He clarified that any notion of his concurrence or non-concurrence would be an ultra vires act. The decision to terminate, he stated, vests solely with the Municipal Council. Crucially, however, the MEC did not resile from his substantive view. He maintained his position that the applicant's BCom (Accounting) qualification did not meet the prescribed requirements for the post, arguing it was not 'relevant' as required by the regulations.

[13] Despite the MEC's concession that he lacked authority to instruct the Council, and despite being granted an extension of time by court order to file answering papers, the first and second respondents have persisted in the termination and have placed no evidence before this Court to justify their actions.

The legal framework

[14] The applicant seeks an interim interdict. The well-known requirements are a prima facie right (even if open to some doubt), a well-grounded apprehension of irreparable harm, that the balance of convenience favours the grant of relief, and the absence of any other satisfactory remedy (*Setlogelo v Setlogelo* 1914 AD 221).

[15] These requirements must be assessed in the context of the principle of legality and the doctrine articulated in ***Oudekraal Estates (Pty) Ltd v City of Cape Town*** 2004 (6) SA 222 (SCA) and confirmed by the Constitutional Court in ***MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd*** 2014 (3) SA 481 (CC). An administrative act, even if alleged to be unlawful, exists in fact and produces legal consequences until a competent court sets it aside. Public officials, especially organs of state, may not resort to self-help by ignoring or acting upon such an act as if it were a nullity without first obtaining a court order.

Prima facie right

[16] The applicant relies on a validly signed contract of employment. On the uncontested papers, this contract has not been set aside by any court. The only justification advanced for its repudiation was the MEC's directive. The MEC has now conceded that he had no power to issue such a directive and that his purported 'non-concurrence' was an ultra vires act. The first and second respondents, despite having every opportunity to do so, have placed no evidence before the Court to justify their continued reliance on an instruction that its own author now admits was procedurally flawed. Their decision to terminate the contract without a court order, based on a procedurally invalid instruction, constitutes impermissible self-help.

[17] I am satisfied on the papers that the applicant has established a prima facie right to the performance of his contract of employment. The factual basis for the termination is

unsustainable on the current record. The applicant's right is not merely open to some doubt; it is strongly established.

Irreparable harm

[18] The applicant has demonstrated that the harm he will suffer if the interim relief is not granted extends far beyond financial inconvenience. He relocated his entire life to Oudtshoorn on the strength of this permanent employment. His children, from whom he was estranged, were only readmitted to their school because he could pay the substantial arrears and guarantee future payments based on his permanent salary.

[19] If the interim relief is not granted, the applicant faces the immediate and real prospect of being:

- rendered homeless, having terminated his lease in Pretoria;
- unable to meet his contractual obligations to the school, leading to his children's suspension or expulsion;
- unable to provide for his children's basic needs; and
- left without any income while his review application, which could take months or years, is finalised.

[20] This harm is ongoing and cannot be adequately remedied by a retrospective order for damages at some future date. The disruption to his family life and his children's education is a harm that money cannot undo. The apprehension of this harm is well-grounded.

Balance of convenience

[21] The balance of convenience overwhelmingly favours the applicant. Granting the interim relief will merely restore the status quo ante to the period prior to the respondents' unlawful conduct. It requires the respondents to do no more than comply with the rule of law by refraining from acting on an administrative act that a court has not set aside. It preserves the position until Part B of the application can determine the ultimate lawfulness of the decisions.

[22] Refusing the relief, on the other hand, would allow the first and second respondents to benefit from their own procedurally flawed conduct. It would permit them to continue their impermissible self-help and would cause the applicant and his minor children the severe and irreparable harm described above. The public interest in ensuring that organs of state act lawfully and do not take the law into their own hands strongly favours the grant of relief. Furthermore, preserving the employment relationship pending the review is also in the public purse's interest, as it may prevent a potentially larger claim for damages at a later stage.

No other satisfactory remedy

[23] The applicant has no other adequate remedy. A claim for damages in a contractual breach is not an adequate remedy for the imminent and irreparable harm he faces. An unfair dismissal claim to the bargaining council would not address the root cause of the termination—the unlawfulness of the underlying administrative decision—and would not provide the urgent, interim protection he requires. The only remedy that can prevent the immediate harm is an interim interdict from this Court suspending the operation of the unlawful decisions.

[24] Part B of the application will determine the ultimate validity of the decisions. Until then, interim relief is the only effective way to protect the applicant's rights and prevent the injustice that would otherwise occur.

Costs

[25] The applicant seeks costs on the attorney-client scale. Such an order is not made lightly and requires conduct that is unambiguously reckless, vexatious, or motivated by malice, or which constitutes an abuse of the process of the court.

[26] The conduct of the first and second respondents in this matter meets this high threshold. They acted on an instruction that its author has now admitted was procedurally ultra vires. When challenged, they did not engage with the substance of

the legal argument but instead threatened the applicant with a punitive costs order. They sought and were granted an indulgence by this Court to file answering papers, thereby obtaining a postponement, and then flagrantly disregarded the court order by failing to file anything. They then failed to appear at the hearing to explain their non-compliance. This sequence of events demonstrates a pattern of disregard for both the law and this Court's processes, which has forced the applicant to incur unnecessary legal costs to protect his and his children's most basic interests. A punitive costs order is warranted.

Order

[27] In the premises, the following order is made:

1. The applicant's non-compliance with the Uniform Rules of Court and the Practice Directives of this Division is condoned, and the matter is heard as one of urgency in terms of Rule 6(12)(a).
2. The decision taken by the First Respondent, the Municipal Manager: Oudtshoorn Municipality, dated 2 February 2026, terminating the employment of the applicant as Director: Corporate Services, is suspended pending the final determination of Part B of this application.
3. The decision taken in a special council meeting (Resolution no: 63/16/01/26) by the Second Respondent, the Oudtshoorn Municipal Council, dated 29 January 2026, resolving to terminate the employment of the applicant as Director: Corporate Services, is suspended pending the final determination of Part B of this application.

4. The suspensions referred to in paragraphs 2 and 3 above shall remain in effect pending the outcome of the review application in Part B.

5. The First and Second Respondents are ordered, jointly and severally, the one paying the other to be absolved, to pay the applicant's costs of this application on the attorney-client scale, including the costs occasioned by the postponement on 27 February 2026.

M FRANCIS

Judge of the High Court

Appearances:

For Applicant: Mr Y Mphahlwa

Instructed by: Mphahlwa and Co Inc.

For 1st and 2nd Respondent Adv De Beer

Instructed by Dixon Attorneys

For 3rd Respondent Ms L Raphasha

Instructed by State Attorney