



- (1) Reportable Yes/No
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case no: 2026-040712

In the matter between:

NHLANHLA MDAKANE

First Applicant

PAMELA MNTAKA

Second Applicant

THEMBELA NXUMALO

Third Applicant

and

KWADUKUZA MUNICIPALITY

First Respondent

COUNCIL OF KWADUKUZA MUNICIPALITY

Second Respondent

MAYOR OF KWADUKUZA MUNICIPALITY

Third Respondent

SPEAKER OF KWADUKUZA MUNICIPALITY

Fourth Respondent

Heard: 27 February 2026

Reasons delivered: 2 March 2026

REASONS FOR ORDER

PHEHANE, J

Introduction

- [1] The applicants launched an urgent application seeking various orders, essentially, declaratory orders that the second respondent acted contrary to the provisions of Regulation 6 of the Local Government: Disciplinary Regulations for Senior Managers, 2010¹ in placing them on precautionary suspension on 17 February 2026. In addition, the applicants sought declaratory orders regarding the failure by the second and fourth respondents to comply with the provisions of section 30 of the Local Government Municipal Structures Act² read with section 160 of the Constitution of the Republic of South Africa, 1996, (the Constitution) in relation to their precautionary suspensions. Further, the applicants sought orders uplifting their suspensions, as well as interdictory relief interdicting and restraining the respondents from preventing them from accessing the workplace and rendering their services. The applicants sought a *rule nisi* calling upon the respondents to show cause on the return date, why the aforesaid orders should not be made final.
- [2] The application was opposed by the respondents, who at the outset raised preliminary issues.
- [3] Pursuant to this Court hearing the submissions by both parties on the preliminary issues the following order was made on 27 February 2026:

'Order:

1. The application is struck off the roll.
 2. There is no order as to the payment of costs.'
- [4] The following constitute the reasons for such order.

¹ Published under section 120 of the Local Government: Municipal Systems Act 32 of 2000.

² Act 117 of 1998.

Preliminary issues

First preliminary issue

[5] The first is that the applicants' founding affidavit deposed to by the first applicant, Mr Nhlanhla Mdakane (Mr Mdakane) in support of the notice of motion is invalid for non-compliance with the provisions of Regulation 4 of the Regulations Governing the Administration of an Oath or Affirmation,³ (the Regulations), in that the Commissioner of Oaths who commissioned the founding affidavit deposed to by Mr Mdakane, did not sign the affidavit, but only affixed his stamp.

[6] Regulation 4 reads thus:

- '(1) Below the deponent's signature or mark the commissioner of oaths shall certify that the deponent has acknowledged that he [or she] knows and understands the contents of the declaration and he [or she] shall state the manner, place and the date of taking the declaration.
- (2) The commissioner of oaths shall-
 - (a) sign the declaration and print his [or her] full name and business address below his [or her] signature; and
 - (b) state his [or her] designation and the area for which he [or she] holds his [or her] appointment of the office held by him [or her] if he [or she] holds his [or her] appointment *ex officio*'.

[7] In addition, the respondents contend that the initials of both Mr Mdakane and the Commissioner of Oaths on the impugned founding affidavit do not accord with their names.

Second preliminary issue

[8] The second preliminary issue is that the manner in which the prayers in the notice of motion are drafted are such that the applicants seek interim relief that

³ Published under GN R1258 in GG 3619 of 21 July 1972, in terms of section 10 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963.

the respondents be ordered to pay the costs of the application.⁴ The respondents accordingly contend that an order for the payment of costs, improperly sought before substantive relief, is devoid of urgency. They submit that should the applicants attempt to amend their notice of motion, such amendment would be opposed on the basis that the case made out on the applicants' papers as they stand, seek interim relief, whereas the prayers 3.1 to 3.6 properly construed, seek final relief.

Applicants' reply

- [9] In reply, the applicants filed as an annexure to their replying affidavit, an explanatory affidavit deposed to by the Commissioner of Oaths who commissioned the founding affidavit deposed to by Mr Mdakane, namely, Mr Senzesihle Mthembu (Mr Mthembu). Mr Mthembu explains that he is a practicing attorney. He stated that he commissioned the founding affidavit on 23 February 2026 and made an error by not signing the affidavit and only affixing his stamp on that date. He further explains that he called Mr Mdakane to his offices on 26 February 2026 and signed the founding affidavit before Mr Mdakane on that date, which affidavit had only been stamped by him previously. Mr Mthembu stated that the presumably corrected affidavit is attached as "SM1". "SM1" however, is not annexed as an annexure to Mr Mthembu's explanatory affidavit.
- [10] The respondents inform this Court that annexure "SM1" was not attached to Mr Mthembu's affidavit when the replying affidavit was served on them. "SM1" was filed on caselines on 27 February 2026, some 30 minutes after the replying affidavit was filed. Neither Mr Mthembu nor Mr Mdakane explain the discrepancy between their initials on the founding affidavit and their names as contained in their respective affidavits.
- [11] In reply to the challenge regarding the prayer sought on an interim basis for the payment of costs only, the applicants saw it fit, on the day of the hearing of this

⁴ Prayers 3.1 to 3.6 of the notice of motion are drafted in a manner that the applicants seek interim declaratory orders. Prayer 3.7 seeks an order that the respondents pay the costs of the application in the event of opposition. Prayer 4 of the notice of motion seeks an order that prayer 3.7 operates as interim relief pending the return date.

urgent application, to file an application to amend the notice of motion, in which application, they sought to amend prayer 4 by deleting “3.7” and replacing it with “3.6”.

Evaluation

- [12] Although annexure “SM1” was not served on the respondents, the respondents maintain that the failure to comply with Regulation 4 of the Regulations is not cured by the explanatory affidavit of Mr Mthembu, as it is impermissible to simply sign the founding affidavit on a *later* date without reflecting that the correction was made on that later date, as this creates the impression that the founding affidavit was properly commissioned on 23 February 2026, whereas this was not the case. I agree.⁵
- [13] The replying affidavit was deposed to by Mr Mdakane and was commissioned on 27 February 2026 by Sergeant NP Mkhungo.⁶ The replying affidavit mentions 12 annexures. “SM1” which is said to be attached to annexure “RA12”, being the explanatory affidavit of Mr Mthembu, is not initialled by the Commissioner of Oaths. Therefore, it is unlikely that “SM1” was annexed as an annexure to Mr Mthembu’s affidavit.
- [14] Annexure “RA12” was commissioned on 27 February 2026 before a different SAPS Commissioner of Oaths.⁷ This Commissioner’s initials do not appear on “SM1”. This demonstrates that “SM1” was not annexed to Mr Mthembu’s explanatory affidavit and did not form part of the replying affidavit.
- [15] In my view, the way the applicants attempted to correct the defect in the founding affidavit compounded the applicants’ problems, as annexure “SM1” itself is not annexed to Mr Mthembu’s explanatory affidavit marked “RA12” to the replying affidavit. As an officer of the Court, Mr. Mthembu ought to have seen to it that annexure “SM1”, being an annexure he mentions in his affidavit, was attached and properly commissioned. Further, the Regulations provide that

⁵ See p 006-108. Mr Mthembu did not sign the founding affidavit on 23 February 2026. To simply append his signature on a later date, 26 February 2026, is improper and does not accord with the import of Regulation 4(1). It must be noted that this annexure, “SM1” was not served on the respondents as it was not attached to the replying affidavit.

⁶ See p 006-19.

⁷ See p 006-78.

the deponent must sign the declaration in the presence of the Commissioner of Oaths,⁸ not the other way around, as Mr Mthembu tells this Court that he called Mr Mdakane to his office for Mr Mdakane to witness a Commissioner of Oaths signing the affidavit before the deponent.⁹

[16] Therefore, as things stood, there was no valid founding affidavit before this Court when this application was heard.

[17] Rules 35 and 38 of the Rules Regulating the Conduct of the Proceedings of the Labour Court¹⁰ make provision the way applications generally, and urgent applications specifically, must be brought in this Court.¹¹ The said rules provide that an application, or urgent application must be brought on notice supported by an affidavit.

[18] For an affidavit to be valid, it must comply with the provisions of the Regulations. The founding affidavit is invalid for want of compliance with the Regulations. In the premises, there is no valid affidavit that supports the applicants' notice of motion. Therefore, the application is fatally defective.

[19] The application to amend the notice of motion is an interlocutory application. In view of the afore-going it is not necessary to decide the application to amend the notice of motion and the opposition thereto.

Costs

[20] Applications that are genuinely urgent are often prepared in constrained timeframes. However, legal practitioners are to ensure that the correct and applicable Rules are adhered to in approaching the Court and are to avoid short cuts. They are to ensure that their conduct is not a hindrance to their clients' right of access to Court as enshrined in section 34 of the Constitution.

[21] This is an instance where the requirements of the law and fairness indicate that no order as to the payment of costs should be made.

⁸ Regulation 3(1).

⁹ See: annexure "RA12" at para 7 on p 006-77.

¹⁰ Published under GN 4775a in GG 50608 of 3 May 2024.

¹¹ The applicants' notice of motion incorrectly refers to Rule 8 in prayer 2. Rule 8 was repealed on 17 July 2024.

[22] It is for these reasons that the order above was made.

M T M Phehane

Judge of the Labour Court of South Africa

LABOUR COURT