IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Not reportable

CASE NO:2026-030139

In the matter between:

HANS KEKANA	Applicant
and	
MEC FOR COMMUNITY SAFETY AND TRANSPORT MANAGEMENT: NORTH WEST PROVINCE	First respondent
PREMIER OF THE NORTH WEST PROVINCE	Second respondent

Coram: Wessels AJ

Date of hearing **:20 February 2026**

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 16h00 on 27 February 2026.

Summary: Public service — Head of Department — Precautionary suspension — Authority to suspend — Sections 12 and 16A of Public Service Act 103 of 1994 — Whether Member of Executive Council (MEC) as 'executive authority' possesses original statutory power to suspend Head of Department (HOD) notwithstanding Premier being appointing authority — Specific provisions of s 16A qualifying general powers of s 12 — MEC as statutory repository of disciplinary power — Chapter 8 of Senior Management Service Handbook.

Practice — Applications and motions — Urgency — Uniform Rule 6(12) — Precautionary suspension on full pay in terms of paragraph 18.3 of Chapter 8 of the SMS Handbook — Legality challenge not *per se* establishing urgency where no irreparable harm or lack of substantial redress shown — Court nonetheless exercising discretion to determine unmeritorious application in the interest of judicial certainty.

Jurisdiction — High Court — Concurrent jurisdiction with Labour Court — Challenge to executive action framed as breach of principle of legality — Jurisdiction of High Court not ousted by employment context.

JUDGMENT

WESSELS AJ

Introduction

[1] The applicant, Dr Hans Kekana, who serves as the Head of Department ('HOD') for Community Safety and Transport Management: North West Provincial Government, has approached this court on an urgent basis. He seeks a declaratory order to the effect that his precautionary suspension, initiated by the first respondent on 11 February 2026, is unlawful and ultra vires. The applicant's primary contention is that, as an appointee of the Premier in terms of s 12 of the Public Service Act[1] ('PSA'), only the Premier holds the legal authority to suspend him.

Urgency

[2] Before the merits can be ventilated, I must address the requirement of urgency. Uniform Rule 6(12) confers a discretion to dispense with the ordinary forms and service. As articulated in *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo and others*[2], this discretion is exercised by evaluating whether the applicant has explicitly set out the circumstances rendering the matter urgent and whether substantial redress can be afforded at a hearing in due course.

[3] The criteria for deviating from the general provisions of Rule 6 were clarified in *Eniram (Pty) Ltd v New Woodholme Hotel (Pty) Ltd*[3], where the court emphasised that an applicant must explicitly specify the circumstances justifying

---

[1] Public Service Act 103 of 1994.

[2] *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo and others* [2014] 4 All SA 67 (GP) para 64.

[3] *Eniram (Pty) Ltd v New Woodholme Hotel (Pty) Ltd* 1967 (2) SA 491 (E) 493F-G.

urgency. In the present matter, the applicant relies on the principle of legality to support the claimed urgency. However, the principle of legality should not be viewed in a vacuum. While the lawfulness of executive conduct is a matter of significant constitutional importance, a challenge based on legality does not, per se, establish urgency if the eventual redress will not be rendered nugatory by the passage of time.

[4] I am mindful that in cases like *Mogalakwena*[4], courts have sometimes held that a serious breach of the principle of legality warrants an urgent hearing. However, that matter is clearly distinguishable from the present instance. In *Mogalakwena*[5] the alleged illegality led to a total collapse of local governance and a conflict between competing legitimate authorities, resulting in administrative paralysis. No such crisis exists here. It is common cause that an Acting HOD has been appointed under the clear regulatory framework set out in the SMS Handbook, ensuring the continued administrative functioning of the Department. In a suspension matter where an Acting HOD replaces an HOD, the 'harm' is localised to the individual and does not threaten the stability of the Department. Consequently, the legality of the first respondent's action can be addressed in due course without causing a vacuum in departmental leadership. As stated in *IL & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd and Others; Aroma Inn (Pty) Ltd v Hypermarkets (Pty) Ltd and Others*[6], potential financial prejudice or professional inconvenience alone does not qualify as good cause for an expedited hearing. The prejudice suffered by the applicant, who remains on full pay, thus falls back into the territory of mere professional inconvenience, which does not constitute a ground for this court to bypass the ordinary roll.

---

[4] *Op cit* fn2.
[5] *Op cit* fn2.
[6] *IL & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd and Others; Aroma Inn (Pty) Ltd v Hypermarkets (Pty) Ltd and Others* 1981 (4) SA 108 (C) 113H-114A.

[5] The suspension of the applicant falls within the purview of paragraphs 18.2 (1) and (2) of Chapter 8 of the Senior Management Service ('SMS') Handbook. Paragraph 18.3 (of Chapter 8) governs the consequences of a suspension of an HOD. It explicitly mandates the following:

'18.3 A suspension of this kind is a precautionary measure that does not constitute a judgement [sic] and must therefore be on full pay.'

[6] Nothing in the application leads me to conclude that the applicant is not receiving his full remuneration. In light of this, I find that the applicant has not demonstrated that he will be denied substantial redress in the ordinary course. As stated in *Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk*[7] the court's power to condone non-compliance is reserved for deserving cases of necessity. A precautionary suspension with full remuneration does not meet this threshold.

[7] Although the application fails to meet the requirements for urgency, I nonetheless deem it appropriate to deal with the merits. Where an application lacks merit, and the papers are complete, it is in the interest of judicial certainty to finalise the dispute rather than simply striking it from the roll.

Jurisdiction

[8] A significant issue concerns this Court's jurisdiction. The respondents, relying on *Chirwa v Transnet Limited and Others*[8], argue that this matter is essentially a labour dispute and should fall within the exclusive jurisdiction of the

---

[7] *Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk* 1972 (1) SA 773 (A) 782A-C.

[8] *Chirwa v Transnet Limited and Others* (CCT 78/06) [2007] ZACC 23; 2008 (4) SA 367 (CC); 2008 (3) BCLR 251 (CC) ; [2008] 2 BLLR 97 (CC) ; (2008) 29 ILJ 73 (CC) (28 November 2007).

Labour Court. In this judgment, the Constitutional Court emphasised[9] that the Labour Relations Act[10] ('LRA') was intended to be a comprehensive '*one-stop court'* for all labour-related grievances. The Constitutional Court held[11] that the existence of a dual system of law, where public sector employees could choose between the High Court and Labour Court by framing labour disputes as administrative action, was to be avoided.

[9] However, the jurisdictional landscape has been further clarified in *Baloyi v Public Protector and Others*[12]. This judgment confirmed that the High Court's jurisdiction is not ousted in employment-related disputes if the cause of action is framed outside the LRA. As was stated in *Gcaba v Minister for Safety and Security*[13], when a court's jurisdiction is challenged, the applicant's pleadings determine the matter. They set out the legal basis of the claim under which the applicant seeks to invoke a court's competence. The papers, including the notice of motion and supporting affidavits, must be interpreted to establish the claim's legal foundation. If, properly interpreted, the pleadings must show the applicant's claim falls under the LRA and is exclusively within the Labour Court's jurisdiction and only then would the High Court lack jurisdiction.

[10] It follows that where a claim is based on the principle of legality or a review of administrative action in the labour law context, the High Court and the Labour Court have concurrent jurisdiction.

---

[9] *Op cit* fn 8 paras 54 and 149.

[10] Labour Relations Act 66 of 1995.

[11] *Op cit* fn 8 para 65.

[12] *Baloyi v Public Protector and Others* (CCT03/20) [2020] ZACC 27; 2021 (2) BCLR 101 (CC); [2021] 4 BLLR 325 (CC); (2021) 42 ILJ 961 (CC); 2022 (3) SA 321 (CC) (4 December 2020) para 26

[13] *Gcaba v Minister for Safety and Security and Others* (CCT64/08) [2009] ZACC 26; 2010 (1) SA 238 (CC); 2010 (1) BCLR 35 (CC) ; (2010) 31 ILJ 296 (CC) ; [2009] 12 BLLR 1145 (CC) (7 October 2009) para 75.

[11] Unlike the applicant in *Chirwa*[14], who sought to review a dismissal under the Promotion of Administrative Justice Act[15] after failing in the CCMA, the applicant in this matter has specifically and primarily challenged the first respondent's statutory power under the PSA. This is a direct challenge to the principle of legality and the ultra vires exercise of public power, which falls within the concurrent jurisdiction of this Court.

[12] The High Court retains concurrent jurisdiction where a claim is framed as a breach of the principle of legality. On this point, I conclude that in the present matter, the applicant challenges the first respondent's statutory power under the PSA, thereby engaging this Court's jurisdiction.

Merits

[13] The factual dispute arises from a breakdown in the parties' professional relationship following an investigation into allegations of misconduct. These allegations centre on procedural failures in the *'Airport Tender'* procurement process and purported deviations from the Supply Chain Management Framework. Further, the first respondent cites concerns regarding the alleged unlawful transfer of funds and potential contraventions of the Public Finance Management Act[16]. The first respondent contends that the applicant's continued presence at the workplace poses a risk of interference with evidence and with the influence of witnesses, thereby jeopardising the integrity of the pending investigation.

---

[14] *Op cit* fn 6.
[15] Promotion of Administrative Justice Act 3 of 2000.
[16] Public Finance Management Act 1 of 1999.

[14] On 3 February 2026, the second respondent informed the first respondent that he lacked the authority to suspend the applicant. Despite this, the first respondent proceeded with the applicant's suspension on 11 February 2026, relying on his status as the executive authority.

Power to suspend

[15] The resolution of this matter requires an analysis of the interplay between ss 12 and 16A of the PSA. Section 12(1) identifies the Premier as the authority responsible for the appointment of an HOD. It reads:

'Notwithstanding anything to the contrary contained in this Act, but subject to this section and sections 2 (2B) and 32 (2) (b) (i), the appointment and other career incidents of the heads of department and government component shall be dealt with, in the case of-

(a) …

(b) a head of the Office of a Premier, provincial department or provincial government component, by the relevant Premier.'

[16] However, s 16A(1) of the PSA provides the following specific, mandatory instruction:

'An **executive authority** shall-

(a) **immediately take appropriate disciplinary steps against a head of department who does not comply with a provision of this Act or a regulation, determination or directive made thereunder**;' (own emphasis)

[17] Section 1 of the PSA defines *'executive authority'* in relation to a provincial department as the Member of the Executive Council ('MEC') responsible for such portfolio.

[18] The applicant argues that the power to suspend is an incident of the power to appoint, with reference to *Masetlha v President of the Republic of South Africa and Another*[17]. It should be borne in mind that at the time *Masetlha* was handed down on 3 October 2007, the Public Service Amendment Act[18] ('2007 Amendment Act'), which had not yet commenced, introduced the most recent revisions to the PSA. The 2007 Amendment Act, which largely came into effect on 1 April 2008, introduced ss 16A and 16B into the PSA, provisions that did not exist when the Constitutional Court considered the facts in *Masetlha*.

[19] While the common law principle identified in *Masetlha*[19] holds that the power to dismiss or suspend is implied by the power to appoint, the legislature has, through the 2007 Amendment Act, provided an express and mandatory statutory framework that specifically assigns the initiation of disciplinary steps to the *'executive authority'*. By defining the *'executive authority'* in s 1 as the MEC for provincial departments, the PSA creates an original statutory power that exists independently of the Premier's power to appoint.

[20] For the sake of completeness, the insertion of ss 16A and 16B introduced the initiation of disciplinary steps (Section 16A) and the disciplinary steps themselves (Section 16B), which are central to contemporary disputes over

---

[17] *Masetlha v President of the Republic of South Africa and Another* (CCT 01/07) [2007] ZACC 20; 2008 (1) SA 566 (CC); 2008 (1) BCLR 1 (3 October 2007).
[18] Public Service Amendment Act 30 of 2007.
[19] *Ibid.*

whether the MEC or the Premier has the authority to suspend, were inserted into the PSA by the 2007 Amendment Act.

[21] While the power to suspend is an incident of the power to appoint, it is a general principle that must yield to the specific statutory scheme established by the legislature. Section 16A(1) of the PSA grants the MEC, as the executive authority, an original statutory power to ensure departmental accountability. If the legislature intended for the Premier to be the sole actor in disciplining an HOD, it would not have specifically designated the executive authority in s 16A, which is a term defined in s 1 as the MEC.

[22] The fact that the political head of a department must possess the statutory tools to manage senior officials to ensure service delivery has been reinforced in *Shabane v Minister of Public Service and Administration*[20]. The court in *Shabane*[21] furthermore stated that, while s 42A of the PSA allows for the delegation of powers, s 16A confers an original power upon the MEC to initiate disciplinary steps. The decision in *Shabane* is a well-reasoned judgment and constitutes a well-founded precedent.

[23] The MEC, therefore, does not act as a mere delegate of the Premier when initiating disciplinary steps, but as a statutory repository of power.

[24] The communication from the second respondent to the first respondent cannot supersede a power directly conferred upon the first respondent by the PSA. Executive instructions do not have the legal effect of amending or vacating

[20] *Shabane v Minister Nkwinti and Another* (J1947/2017) [2018] ZALCJHB 102 (13 March 2018).
[21] *Ibid.*

statutory jurisdiction. In conclusion, therefore, as the first respondent acted within the scope of Section 16A and the SMS Handbook, the suspension is lawful.

Costs

[25] On the issue of costs, the general rule is that costs follow the result. This matter involved complex questions of administrative and constitutional law, specifically concerning the hierarchical distribution of executive power and the interpretation of amended provincial legislation. The dispute required an in-depth analysis of the interplay between the PSA, the SMS Handbook, and established case law. Given the high stakes involved in the administrative leadership of a provincial department and the intricate legal nature of the arguments presented, the respondents' employment of senior counsel was a reasonable precaution.

[26] However, while the complexity and the importance of the legal principles at stake warrant the costs of senior counsel, I am not convinced that the matter necessitated the employment of two counsel. The legal points, while complex, were focused on a narrow statutory interpretation. The volume of the record and the nature of the hearing do not justify the additional expense of a second advocate. Therefore, while I acknowledge the necessity of senior counsel, the costs of two counsel cannot be allowed.

Order

[27] Resultantly, the following order is made:

1. The application is dismissed.

2. The applicant is ordered to pay the costs of the application on scale C, which include the costs of senior counsel.

[redacted]

M WESSELS
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Appearances

Counsel for applicant	:Adv M Makoti
	:Adv J Mabuza
Instructed by	:Moshidi Inc
	:Mahikeng
Counsel for the first respondent	:Adv JA Motepe SC
	:Adv Z Ngwenya
Instructed by	:Mthombeni & Ramoboea Inc
	:Pretoria
	:c/o Molefakgotla Attorneys
	:Mahikeng