

Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates:	NO



IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION MAHIKENG

CASE NO: 2026-051559

In the matter between:

**DIWEDITSWE MASHI
APPLICANT**

FIRST

**ITUMELENG GODFREY MEKOA
APPLICANT**

SECOND

**MONAMODI ABRAM SENWEDI
APPLICANT**

THIRD

**ADV KABO PULENYANE
APPLICANT**

FOURTH

And

**NGAKA MODIRI MOLEMA
DISTRICT MUNICIPALITY**

FIRST RESPONDENT

**DR AUCHALI MOTHUPI
(ACTING MUNICIPAL MANAGER)
RESPONDENT**

SECOND

**MEC: NORTH WEST DEPARTMENT OF
COOPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS
RESPONDENT**

THIRD

Coram:

Makolomakwe AJ

Date of hearing: 6 March 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down is deemed to be 16h00 on 30 March 2026.

ORDER

The following order is made:

1.1 The application is urgent, and the rules relating to forms, service and time periods, as prescribed by the Uniform Rules of Court, are dispensed with.

1.2 The applicants' suspensions issued by the second respondent on 27 February 2026 are declared invalid, unlawful, and *null* void, and are accordingly set aside.

1.3 The first and second respondents are ordered to allow the applicants to resume their duties with immediate effect.

1.4 The first and second respondents are ordered to pay the costs of the application, jointly and severally, the one paying the other to be absolved, on a party and party basis on scale B.

JUDGMENT

MAKOLOMAKWE AJ

Introduction

[1] The applicants are seeking an order declaring unlawful and setting aside the precautionary suspensions from the Municipality” and directing that they be permitted to resume their duties pending completion of an investigation. The respondents oppose the application.

Background

[2] The applicants are employed by the first respondent in the following capacities: first applicant, as its manager: Security Services; the second applicant, as its manager: Labour Relations; the third applicant, as its manager: Water Services Provision; The fourth applicant, as its Acting Senior Manager: Corporate Support Services.

[3] The first respondent is a district municipality (Municipality), and legal entity with full legal capacity, with reference to what is stated in section 2 of the Systems Act, read with Chapter 7 of the *Constitution of the Republic of South Africa* 108 of 1996 (Constitution). The second respondent is the member of the Executive Council of the North West Provincial, Acting Municipal Manager of the Municipality. The third respondent is the MEC (MEC), appointed in terms of Section 132(2) of the Constitution.

[4] On 24 February 2026, the Municipality issued notices of intention to place the applicants on suspension. The Notices called upon the applicants to make written representations as to why they should not be subjected to a suspension ‘within 48 hours’.

[5] On 26 February 2026 the respondents submitted written representations. On the same day, the second respondent acknowledged receipt of their representations. On Friday 27 February 2026, the applicants were served with

notices issued by the second respondent, which confirmed their suspensions with immediate effect.

Points in limine

[6] The respondents raised the following points *in limine* in the answering affidavit: urgency and jurisdiction.

[7] During the hearing of the application, having familiarized myself with the papers and having heard both counsels on the points raised by the respondents, I found that the application was urgent, and that the rules relating to forms, service and time periods, as prescribed by the Uniform Rules of Court, be dispensed with.

Pertaining urgency

[8] Rule 6 (12)¹ enables the court to dispense with the normal rules relating to forms and service as provided for in the rules and dispose of the matter at such time and place and in such manner and in accordance with procedure (which shall as far as practicable be in terms of the rules) as it deems fit. It is trite law that each urgent application must be determined on its own facts and merits. An applicant seeking to be heard on an urgent basis must set forth explicitly the circumstances which he avers renders the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.

[9] In *Mogothle v Premier of the North West Province*² it was stated that a suspension is equivalent to an ‘arrest’ and that when it is applied without proper

¹ Rule 6 (12) of the Uniform Rules of Court.

² (2009) 30 ILJ 605(LC).

justification or in a punitive manner (before hearing), the court will urgently intervene.

[10] In *Mbude v Premier of the North West Province*,³ the High Court heard an urgent application to declare a suspension unconstitutional and invalid, acknowledged that public officials' misuse of power to suspend warrants immediate review.

[11] It was argued on behalf of the respondents that the applicants have failed to demonstrate the urgency required to justify immediate judicial intervention and that the application be dismissed. It was contended on behalf of the applicants that their suspensions were imposed without proper consideration of their representations. Further, that the suspensions caused them sufficient prejudice to justify urgent judicial intervention.

[12] According to the founding affidavit, the second respondent failed to comply with the provisions of clause 16 of the Collective Agreements, which regulates precautionary suspension pending a disciplinary hearing. It was contended on behalf of the applicants that their notices of intention to suspend did not comply with clause 16.1 of the *Disciplinary Procedure Collective Agreement* (Collective Agreements). Further, that the failure to provide them with a required notice of intention to suspend them violated their contractual rights as it infringed on their right to make representations. Further, that their suspension is null and void as it infringed their employment of contract and/or collective agreements.

[13] It is clear from the above authorities that this Court is entitled to urgently intervene where the validity of the suspension is being challenged. In the

³ (218/2022) [2022] ZAECHC 3.

present matter the applicants are challenging the validity of their suspensions and the application was issued within a reasonable time after been served with suspension notices. I found that the matter was urgent.

Jurisdiction

[14] It was argued on behalf of the respondent that this Court does not have jurisdiction. It was contended on behalf of the applicants that this Court has dual jurisdiction with the Labour Court.

[15] In *Baloyi v Public Protector and Others*,⁴ the Constitutional Court stated instances under which both the High Court and the Labour Court enjoy concurrent jurisdiction and stated the following in paragraph [27] and [28]:

‘[27]. . . both the LRA and the Employment Act expressly recognizes that there are certain matters in respect of which the Labour Court and the High Court enjoy concurrent jurisdiction. Further that section 157(2) of the LRA provides, in relevant parts:

“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) . . .
- (c) . . .”

[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. That disputes arising from contracts of employment do not, without more, fall within the exclusive jurisdiction of the Labour Court is further made clear by section 77(4) of the Employment Act, which emphasises that the exclusive jurisdiction of the Labour Court referred to in section 77(1) “does not prevent any person relying upon a

⁴ [2022 (3) SA 321 (CC) (4 December 2020).

provision of [the Employment Act] to establish that a basic condition of employment constitutes a term of a contract of employment in any proceedings in a civil court or an arbitration held in terms of an agreement.”

[16] Having regard to the averments of the breach of the applicant’s contractual rights in the founding affidavit and the reliance on the ground of breach of contract, as well as paragraphs [27] and [28] of the *Baloyi* judgment, in which it was stated that both the LRA and the Employment Act expressly recognizes that there are certain matters in respect of which the Labour Court and the High Court enjoy concurrent jurisdiction, I find that this Court has jurisdiction to hear the matter.

Analysis

[17] The following averments in the founding affidavit remain unchallenged:

17.1 First applicant’s contract of employment, issued by the then Acting Municipal Manager, Mr Mokhele Mojaki, dated 1 August 2011,

17.2 Second Applicant’s contract of employment, issued by the then Acting Municipal Manager, Ms Lesupi, dated 17 April 2017.

17.3 Third Applicant’s contract of employment, issued by the then Acting Municipal Manager, Mr Mokhele Mojaki, dated 1 July 2014.

17.4 Fourth Applicant’s contract of employment, is employed by the Municipality as its Manager: Legal Services, and at the time of his suspension, Acting Senior Manager: Corporate Support Services, appointed as such in terms of Section 56(1)(a)(ii) of the Systems Act.

17.5 First Applicant’s contract of employment with the ‘Municipality’ is regulated by the employment conditions, policies and regulations applicable to local government sector.

17.6 Second to Fourth applicants' employment with the 'Municipality' is subjected to the applicable Collective Agreement concluded under the SALGBC, but in particular the Disciplinary Procedure Collective Agreement.

17.7 The notices of intention to suspend the applicants.

17.8 The precautionary suspension notices attached to the application were served on the applicants.

[18] It was contended on behalf of the applicants that their Notices of intention to suspend do not state that the proposed suspensions will be '*pending an investigation*'. Further, that the Municipality 'has reasonable cause to believe' that their continued presence at the workplace may give rise to one of the scenarios listed in Clause 16.1.1 to 16.1.3 of the Collective Agreement.

[19] It was argued on behalf of the respondents that the notices in the present matter adequately identified the concerns giving rise to the contemplated suspension and afforded the applicants an opportunity to answer those concerns. Clause 16 was therefore complied with. In the alternative, that there is substantial compliance.

Applicable Law

[20] Clause 16.1 and 16.2 of the Disciplinary Procedure Collective Agreements read as follows.

'16. Pre-cautionary suspension pending a disciplinary hearing

16.1 An Employer may suspend the Employee or utilise him temporarily in another capacity pending an investigation into alleged Misconduct if the Municipal Manager or his authorised representative has reasonable cause to believe that the Employee at the workplace may-

16.1.1 jeopardise any investigation into the alleged misconduct;

16.1.2 interfere with potential witnesses; or

16.1.3 commit further acts of misconduct

16.2 if the Municipal Manager, or his authorised representative, intends to suspend an Employee, he shall give written notice of such intention and afford the Employee 48 hours to make representations as to why he should not be suspended. The Municipal Manager or his authorised representative shall make a determination, within five (5) days as to whether the Employee concerned shall be suspended or not, after having considered the representations.'

[21] In *National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI) v Block N.O.*⁵ it was stated that it is sufficient if there is substantial compliance with Clause 16.

Issues in dispute

[22] The dispute between the parties is whether or not the Municipality complied with Clause 16 of the 'Collective Agreement', in the notices of intention to suspend the applicants.

Issues for Determination

[23] The issues for determination is whether the notices of intention to suspend the applicants complied with the provisions of Clause 16 of the Collective Agreements.

Analysis

[24] I will proceed to scrutinize the notices of intention to suspend. According to paragraph 8 of the notice of intention to suspend first applicant. The Municipality received several complaints and those incidents indicated that on a *prima facie* basis, the first applicant may have acted in a manner unbecoming of an employee of his position and therefore has committed acts of misconduct. The first applicant neglected his duties and acted in a manner in which the credibility, integrity and proper administration of the municipality were

⁵ [D236/2020) [2023] ZALCD.

compromised and/or brought into disrepute. His conduct was confirmed by the preliminary investigation report dated 12 February 2026 of Modiboa Attorneys Inc.

[25] As stated above, Clause 16.1 empowers the Municipality to suspend an employee pending an investigation into alleged misconduct, if the Municipal Manager or his authorised representative 'has reasonable cause to believe' that the presence of the employee at the work place may jeopardise any investigation into the alleged misconduct; interfere with potential witnesses; or commit further acts of misconduct.

[26] According to paragraph 8, several complainants received by the Municipality indicated, on the prima facie basis, that the first applicant may have acted in a manner unbecoming of an employee of his position and that he has committed acts of misconduct. Further, that he neglected his duties and acted in a manner that compromised the credibility, integrity and proper administration of the Municipality and/or brought it into disrepute. It is further stated that his conduct was confirmed by the preliminary investigation report dated 12 February 2026 of Modiboa Attorneys Inc.

[27] There is mention of the preliminary investigation confirming the complaints that were received by the Municipality. However, no mention is made that the second respondent or his authorised representative 'has reasonable cause to believe' that the first applicant's presence at the work place may jeopardise any investigation into his alleged misconduct; interfere with potential witnesses; or commit further acts of misconduct. I find that there is no substantial compliance with Clause 16.3.

[28] It is alleged that the second applicant failed to implement the recommendations of the auditor-general which identified certain material irregularities and brought it to the attention of the Municipal Manager. The above failures indicate on the *prima facie* basis he may have acted in a manner unbecoming of an employee of his position and therefore has committed acts of misconduct. He has neglected his duties and acted in a manner in which the credibility, integrity and proper administration of the Municipality were compromised and/or brought into disrepute. His conduct was confirmed by the preliminary investigation report dated 12 February 2026 of Modiboa Attorneys Inc.

[29] No mention is made that the second respondent has reasonable cause to believe that the presence of the second respondent at the work place may jeopardise any investigation into the alleged misconduct; interfere with potential witnesses; or commit further acts of misconduct. There no compliance with the requirements of Clause 16.1.

[30] The Municipality received several complaints which indicate on the *prima facie* basis that the third applicant may have acted in a manner unbecoming of an employee of his position and therefore has committed acts of misconduct. Further, that he has neglected his duties and acted in a manner that compromised the credibility, integrity and proper administration of the municipality and/or brought into disrepute.

[31] It is stated that given the position occupied by the third applicant, it is the view of the Municipality that his continued presence at the work place might hamper the investigation. In my view, there is compliance with Clause 16.1 as mention is made that the presence of the third applicant may hamper which is not a perfect drafting as the clause states 'jeopardise'.

[32] I find that there is no substantial compliance as the municipality had a view instead of a 'reasonable believe' required in Clause 16.1 and no mention is made that in addition to hampering the investigations to be carried out, the third applicant will either interfere with potential witnesses or commit further acts of misconduct.

[33] There is reference to Clause 16.3 of the Collective Agreement. It is stated that the fourth applicant failed to implement the recommendations of the auditor-general who identified certain material irregularities which were brought to the attention of the Municipal Manager. Further that those incidents indicate that on the *prima facie* basis that he may have acted in a manner unbecoming of an employee of his position and therefore has committed acts of misconduct. He has neglected his duties and acted in a manner that the credibility, integrity and proper administration of the Municipality were compromised and/or brought into disrepute. This conduct was confirmed by the preliminary investigation report dated 12 February 2026 of Modiboa Attorneys Inc.

[34] No mention is made that the Municipality has reasonable believe that the fourth respondent's presence at the work place may jeopardise any investigation into the alleged misconduct; interfere with potential witnesses or commit further acts of misconduct. I find that there is no substantial compliance.

[35] In *DEMAWUSA and Others v City of Johannesburg*.⁶ it was stated that the employer must strictly adhere to the conditions laid down out in Clause 16.

⁶(J1849/2019) [2019] ZALCJHB 368.

Further, that failure to do so renders the suspension unlawful and constitutes a breach of the collective agreement.

[36] *SAMWU obo Members v Ditsobotla Local Municipality & Others*,⁷ is a case which centered on allegations that the Municipality failed to comply with Clause 16.1 of the Disciplinary Procedure Collective Agreement (concluded under the auspices of the bargaining council) regarding the suspension of employees. That court recognized that failing to follow the agreed-upon procedures for disciplinary action constitutes a breach of the contract of employment, which can be challenged on the basis of legality.

[37] I agree with the submissions on behalf of the applicants that there is no substantial compliance with Clause 16. In *Lottering and Others v Stellenbosch Municipality*,⁸ the court established that a failure to adhere to contractual notice periods or procedures is a breach of contract, allowing the innocent party to sue for specific performance or damages.

[38] I find that the failure by the Municipality to comply with Clause 16 constitute breach of contract.

[39] It was argued on behalf of the applicants that they are prejudiced by their suspensions as they were robbed of their opportunity to present a case as to why their continued presence at the workplace would give rise to a scenario(s) contemplated by Clause 16.1 of the Collective Agreement. The prejudice of the applicants cannot be disputed. I found that the applicant had the right to approach this Court for urgent intervention.

⁷ [2019] ZALCJHB/368.

⁸ [2010] ZALCCT 67.

[40] It was submitted on behalf of the respondent that if the court finds that the notices of intention to suspend do not comply with the Collective Agreements, the respondents be afforded the opportunity to remedy the shortcomings and the suspensions be extended. The municipality was afforded the opportunity to remedy the shortcomings in the representations that were made by the then legal representative of the Third Applicant.

Conclusion

[41] Having regard to the aforementioned as well as the written submissions of both legal representatives, I find the notices of intention to suspend of the applicants to be unlawful, null and void and that they infringe the employment contracts and/or collective agreements. Further, that the applicants will suffer irreparable harm if the court does not intervene as stated in *Mogothle v Premier of the North West Province, supra*. Having regard to the fact that in the representations of the third applicant, the non-compliance was brought to the attention of the respondents as well as what was stated in *Mogothle v Premier of the North West Province, supra*, that the court must intervene. This Court will not grant the extension but will intervene by granting the application.

Costs

[42] The general rule is that the successful party is entitled to costs. The applicants are successful and are entitled to costs. The submissions on behalf of the applicants are that the respondents be ordered to pay punitive costs, as they were warned of the shortcomings in the notices of intention to suspend and the representations that were made on behalf of the third applicant. I find that there is no justification to grant a punitive cost order as the respondents were of the view that the notices of intention to suspend substantially complied with the

provisions of Clause 16. I find the appropriate cost order to be costs on party and party scale B.

Order

[43] Consequently I made the following order,

1.1 The application is urgent, and the rules relating to forms, service and time periods, as prescribed by the Uniform Rules of Court, are dispensed with.

1.2 The applicants' suspensions issued by the second respondent on 27 February 2026 are declared invalid, unlawful, and *null* void, and are accordingly set aside.

1.3 The first and second respondents are ordered to allow the applicants to resume their duties with immediate effect.

1.4 The first and second respondents are ordered to pay the costs of the application, jointly and severally, the one paying the other to be absolved, on a party and party basis on scale B.



L MAKOLOMAKWE
ACTING JUDGE

NORTH WEST DIVISION, MAHIKENG

APPEARENCES

Date of Hearing	18 March 2026
Judgment Handed down	30 March 2026
For the Applicant	Mr Scholtz
For the Respondent	Adv Dewrance SC