



**THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

CASE NO: 2026-056849

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

13 April 2026

DATE

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SIGNATURE

In the matter between:

PETER NYONI

APPLICANT

And

**THE DIRECTOR GENERAL, MPUMALANGA
PROVINCIAL GOVERNMENT**

FIRST RESPONDENT

**THE PREMIER, MPUMALANGA
PROVINCIAL GOVERNMENT**

SECOND RESPONDENT

JUDGMENT

RATSHIBVUMO DJP:

Delivered: This matter was heard on 07 April 2026, and judgment was reserved. This judgment was delivered by uploading to CaseLines on 13 April 2026.

[1] Introduction.

This is a two-part application, with part A launched on an urgent basis. In part A, the Applicant seeks an order,

1.1 Condoning the Applicants' non-compliance with the rules relating to time periods, service and forms and that this application be disposed of as an urgent application in terms of Rule 6(12) of the Uniform Rules of Court.

1.2 Pending the final determination of Part B, it is ordered that

1.2.1 The First Respondent's decision dated 04 March 2026, terminating the Applicant's employment contract concluded on 14 November 2023, is suspended

1.2.2 The Second Respondent is directed to comply with the Applicant's employment contract concluded on 14 November 2023

1.3 Costs in the event of opposition.

1.4 Further and/or alternative relief.

[2] Part B of the application is not before this Court. For the sake of completeness and proper determination of urgency, which has been raised as a point *in limine* by the Respondents, it is necessary to look into the relief sought in part B, which is an order:-

2.1 Declaring that the decision of the First Respondent dated 04 March 2026 terminating the employment contract of the Applicant, Concluded on 14 November 2026, is reviewed and set aside.

2.2 It is declared that the employment contract of the Applicant concluded on 14 November 2026 (sic) is valid and binding.

2.3 Costs in the event of opposition.

2.4 Further and/or alternative relief.

[3] Practice Directives on Urgent Applications.

Paragraph 10 of the Practice Directives of this Division provides that urgent applications shall be enrolled on Tuesdays. Paragraph 10.2 of the Practice Directives provides that “[T]he court roll for the matters enrolled to be heard on Tuesday at 10:00 shall close at noon on the Thursday of the preceding week. Should a Thursday fall on a public holiday, the roll shall close on the court day preceding the Thursday of the close of the roll.” Paragraph 10.3 further provides that only in exceptional circumstances shall an urgent application be enrolled to be heard on a day and time other than 10:00 on a Tuesday. It goes without saying that the close of the roll referred to in paragraph 10.2 of the Practice Directives refers to normal urgent applications. There is no limitation on the close of the roll or the day of the week for exceptionally urgent matters that are enrolled, provided exceptional circumstances are apparent in the application.

[4] This application was served on the Respondents on 11 March 2026, and it was scheduled for hearing on 07 April 2026, a clear indication that it was meant to be heard as a normal urgent application. The close of the roll was therefore on 02 April 2026. By the close of the roll, only a notice of intention to oppose and an answering affidavit had been filed on CaseLines. It was only on 07 April 2026, around 10h00, that the court realised that the other documents, such as the notice of motion, founding affidavit, and heads of argument, had been uploaded to CaseLines on 06 April 2026, at 18h38. These documents exceed 200 pages.

[5] Upon realising that the application is not compliant with the Practice Directives regarding failure to upload the documents by the close of the roll, the Applicant had a choice to remove the matter from the roll, or to seek condonation to be heard as a normal urgent application, which he did not do. This meant that the Application now

had to show exceptional circumstances warranting its being heard on an extreme urgency basis. The court was put under extreme pressure to hear a matter without a prior and proper reading opportunity, which should be reserved only for deserving and exceptional cases. The Applicant had not dealt with such circumstances in the papers. He only dealt with urgency. The court should frown upon this conduct, especially because, even on normal urgency, the application dismally fails to meet the required minimum threshold.

[6] Background.

The Applicant avers that he was appointed as Head of the Department (HOD) of Cooperative Governance and Traditional Affairs (COGTA), by the then Premier of Mpumalanga, Ms. Mtshweni-Tsipane, for a fixed period of three years, commencing on 01 August 2016 and expiring on 31 August 2019.¹ No supporting documents were attached by the Applicant regarding this appointment.

[7] After this contract expired, the Applicant was transferred to the office of the Premier by Ms. Mtshweni-Tsipane, and a fixed three-year contract was signed on 24 February 2020, commencing on 01 March 2020 and ending on 28 February 2023, and his position was that of Deputy Director General (DDG) in the Office of the Premier. Although this was a new contract after the first fixed-term contract had expired, the letter from Ms. Mtshweni-Tsipane still called it “a transfer”, and it was done in terms of section 12(3)(b) of the Public Service Act, Proc. 103 of 1994 (the PSA).² Although he was appointed DDG from the start, he was receiving the HOD's salary and benefits as though the appointment was for the HOD of COGTA. No clear and coherent explanation was proffered for this arrangement.

¹ See paragraph 8 of the founding affidavit on p. 001-10 on the Court-on-line. There could be a mistake on the dates or factual averments, as Ms. Mtshweni-Tsipane only became a Premier for Mpumalanga from 20 March 2018 to June 2024 after serving as Acting Premier in July 2017, February 2018 - 14 March 2018, according to <https://www.gov.za/about-government/former-leaders>. She did, however, serve as the MEC of COGTA from 2014 to 2018. Again, a 3-year contract commencing on 01 August 2016 would not expire on 31 August 2019. Nothing turns on these, as the Respondents did not raise issues regarding them, and they are not, strictly speaking, before the court.

² See Annexure PN1 on p. 1-32 on Court-on-line.

- [8] This contract was not renewed at the end of February 2023. As a result, the Applicant retired and received his benefits as provided in section 16(3) of the PSA.
- [9] After the termination of this fixed term in 2023, the Applicant lodged a dispute of unfair dismissal in terms of section 186 of the Labour Relations Act, to the General Public Service Sectoral Bargaining Council. The dispute was over the former Premier's failure to renew his contract, despite his expectation that it would be renewed. On 30 October 2023, Mr. MN Mampuru, the then Director-General: Office of the Premier, entered into a Settlement Agreement with the Applicant. Under the Settlement Agreement, the parties agreed that the Applicant's fixed-term employment contract was extended for three years, commencing on 01 March 2023 and terminating on 28 February 2026.
- [10] In the Settlement Agreement, the parties also agreed to conclude a written employment contract. This was done on 14 November 2023. On that date, Ms. Mtshweni-Tsipane, the Premier at the time, entered into a written contract with the Applicant. According to the employment contract, the appointment of the Applicant was for a period of three years (36 months) commencing on 01 March 2023 and terminating on 28 February 2026.
- [11] The bone of contention has been the interpretation and the lawfulness of Clause 5 of the contract of employment, particularly Clause 5.5 thereof. Clause 5 of the contract provides:

“5.1 The Employer must, in writing, confer with the Employee at least four calendar months before the expiry of the term contemplated in clause 1.1 whether he proposes to retain the Employee in service for any extended period not exceeding five years or not. If the Employee is so informed of such intention to retain him in service for extended term, he shall inform the Employer with one calendar month from the date of that communication of his acceptance.

5.2 If agreement is reached that the Employee's term of office is extended, this contract shall be amended through an addendum indicating new term and changes (if any) in remuneration and duties of the Employee.

5.3 If the Employer does not renew the contract period beyond the initial term as stated in clause 1, the Employee shall be entitled to the applicable pension and other benefits (if any).

5.4 If the Employee is transferred in terms of section 12(3) of the Act, the Parties shall either amend this contract through an addendum or a new contract.

5.5 In terms of section 12(3)(e) (ii) of the Act, the Employee will become permanent employee of the Office of the Premier of Mpumalanga , entitled to receive the salary and conditions of service attached to the post of Deputy Director: Institutional Development in the Office of the Premier at the expiry of the current employment i.e 28 February 2026, owing to the transfer from the Department of Cooperative Governance and Traditional.

[12] Although the interpretation and lawfulness of this clause is not for this court to determine, the parties presented their arguments, including the lawfulness of the contract, as though part B was before the court. I suppose, besides displaying the prospects of success or lack thereof, when part B is heard, the parties must have been conscious that a determination on whether the First Respondent terminated the employment contract was dependent on these contractual provisions and the interpretation thereof. To the extent that the relief sought under part A requires such a determination, the court shall now proceed with the contractual interpretation.

[13] The Applicant avers that the decision terminating his employment contract is unlawful because it was made by a person (the First Respondent) who lacked the authority to do so under the law. Section 12(1)(b) of the PSA provides,

- (1) 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.

[14] Urgency.

The aspect of urgency was raised by the Respondents as a point *in limine*. The Respondents urge the court to strike the application from the roll for lack of urgency, meaning it should be heard as a normal application. In support of this submission, the Respondents argue that the Applicant had always been aware that his employment contract was scheduled to end on 28 February 2026, after a three-year or 36-month period.

[15] In contrast, the Applicant denies that he had always been aware of this state of affairs. According to him, it was only on 04 March 2026, upon receipt of the First Respondent's letter confirming that his contract had expired, that he became aware that he would not be permanently employed as provided in his contract of employment. He regards the First Respondent's letter as a termination of employment, hence his prayer in the notice of motion is for that letter to be suspended. His belief is that, once suspended, the status *quo* shall be reinstated, meaning he would now be permanently employed. But the question is whether permanent employment was the status *quo* prior to receipt of this letter.

[16] Rule 6(12)(b) of the Uniform Rules of the High Court provides,

In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which it is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.

As Coetzee J remarked in *Luna Meubel Vervaardigers (Edms) Bpk v Makin (t/a Makin's Furniture Manu)*,³ this was undoubtedly the most abused rule in various Divisions of the High Court.

[17] It is therefore apposite to look into the First Respondent's letter dated 04 March 2026. In it, the First Respondent wrote,

EXPIRY OF YOUR EMPLOYMENT CONTRACT AS THE DEPUTY INSTITUTIONAL DEVELOPMENT IN THE OFFICE OF THE PREMIER.

1. Reference is made to above-mentioned matter.
2. Kindly note that it is confirmed that your employment contract expired on the 28th February 2026 as per your employment contract.
3. Regarding the letter written by your good self to the Premier on the 25th February 2026, please find attached the legal opinions received from Public Service Commission and Department of Public Service and Administration for your ease of reference.

[18] The determination on whether the First Respondent's letter terminated the employment contract is relevant as it shall explain if the Applicant knew or should have known that his employment contract ended on 28 February 2026. If the Applicant knew or should have known that his employment contract expired, there would be no urgency in the application. If, however, he only realised that the contract had expired upon receipt of the First Respondent's letter, that would create some urgency in the application. That urgency would be in respect of the loss of income resulting from the unexpected termination of employment.

[19] Discussion.

[20] The court is called upon to determine if, upon proper interpretation of the contract signed between the Applicant and the former Premier, an expectation was created that permanent employment shall become automatic in favour of the

³ 1977 (4) SA 135 (W) at p. 136B-C.

Applicant, once the three-year fixed term expires. If read in isolation from the other contractual clauses, Clause 5.5 gives rise to many misconceptions. Some of these include the lawfulness and enforceability of the contract, and the removal of the employer's and employee's right to voluntarily bind themselves into an employment contract several years in advance.

[21] On the face of it, Clause 5.5 appears to be an employment contract within an employment contract, meant to bind other persons, long after the role players shall have left the office. If this were allowed, it could easily result in officers occupying employers' offices and signing employment contracts that bind their successors, rendering new employment contracts unnecessary. What is worrying in this regard is that, if taken at face value, Clause 5.5 ignores the statutory provisions governing how permanent positions are to be filled through an open and fair competition open to all.

[22] Upon closer reading of the contract as a whole, it becomes apparent that nothing changes it from being a fixed-term contract to a permanent one. The following clauses in the contract have been analysed.

19.1 Clause 1 provides that the appointment of the Applicant was for a period of three years (36 months) commencing on 01 March 2023 and terminating on 28 February 2026. This clause is reinforced by Clause 4, which provides for the termination of employment upon completion of the term or extended term of office, which is regarded as retirement under section 16(3) of the Act.

19.2 Clause 5.2 further provided that if agreement is reached that the Employee's term of office is extended, this contract shall be amended through an addendum indicating the new term and changes (if any) in remuneration and duties of the Employee. No such addendum was signed.

Clause 5.4 further provides for an addendum in the event of a transfer under section 12(3) of the PSA. No such addendum was signed.

19.3 The parties did not abandon their right to negotiate into a new contract as Clause 5.1 creates an obligation on the Employer to inform the Employee, at least four months before the contract could expire, if he intended keeping the Employee in public service. The Employee would, in turn, have to respond at least one month before the end of the contract. Four months before the end of the contract, no offer was made, and the Applicant tendered no acceptance.

19.4 Understanding that parties may not reach any agreement in respect of prospects of being a permanent employee, Clause 5.3 provides that if the Employer does not renew the contract period beyond the initial term as stated in Clause 1, the Employee shall be entitled to the applicable pension and other benefits.

[23] It is not surprising that the Second Respondent was given two legal opinions from different sources,⁴ that cautioned against implementing the clauses of this contract. They also opined that the contract was unlawful. The Premier was also advised to take steps to recover the money spent under the guise that the Applicant was transferred as HOD, whereas in fact he was newly hired as DDG following the end of the initial contract.

[24] Presuming that the employment contract is lawful, for purposes of determining part A of the application, in light of the clauses referred to under paragraph 19 above, there is no basis for concluding that the Applicant only realised upon receipt of the letter from the First Respondent that he was not a permanent employee. At the very least, when no offer was made, some four months before the end of the fixed

⁴ See Annexure PN8, being the opinion from the Director, Legal Services – Department of Public Service and Administration on p. 1-55 on Court-on-line, and duplicated Annexure PN8, being the legal opinion from the Mpumalanga Public Service Commission.

contract, he should have realised that the contract would expire without that offer. Urgency, if any, set in at that very moment.

[25] The letter from the First Respondent dated 04 March 2026 cannot be construed as a letter of termination of employment. At the time it was written, the contract had already lapsed by some four days. It was written to confirm that the contract had expired. Even if the letter by the First Respondent is set aside, it would not result in the revival of what had been terminated by the passage of time. The prerequisites for concluding permanent employment as per clause 5 (see paragraph 19 above) were not engaged or met. The status *quo* would therefore be the expired contract. This does not, however, suggest that the Applicant does not have a remedy if he is of the view that he is entitled to permanent appointment following the expiry of his contract or that the contract is lawful. A case, however, was not made for the application to be heard urgently or that he would suffer prejudice for which there would be no substantial redress at a hearing in due course.

[26] Facts in this application can be distinguished from those in *Apleni v The President of the Republic of South Africa and Another*,⁵ or *Sibanyoni v Speaker of the City of Mbombela*⁶ which were referenced by the counsel for the Applicant. In those matters, the court found an urgency in respect of all of them. Both involved the suspension of applicants (public servants) without following due process or by persons without the requisite powers under any law. These suspensions took place several years before the end of their contracts. The decisions to suspend them were abrupt and unexpected, and the unlawfulness of the suspensions was too obvious in both cases.

[27] The current case involves an officer who served the fixed-term contract to the end without premature termination or suspension, in circumstances that not only

⁵ All SA 728 GP 25 October 2017

⁶ (2107/2025) [2025] ZAMPMBHC 102 (2 October 2025).

suggest that the employment contract may have been unlawful, but the notice of motion suggests that the First Respondent should turn a blind eye to the possible glaring unlawfulness and/or wasteful expenditure identified in the legal opinions. The notice of motion demands that the contract be implemented despite these lacunae. If this approach is adopted, it may result in circumstances in which more harm or prejudice may be suffered, not only by the Respondents but also by the general public, in respect of public funds. The Applicant failed to show that he will not get substantial redress in due course. It will also be in the interest of justice that a decision be taken only after the lawfulness of the contract clauses is fully engaged.

[28] This application has to be struck from the roll for lack of urgency.

[29] Costs.

There is no reason why costs should not follow the outcome. Had the Respondents asked for punitive costs, the court would be inclined to grant them, given the non-compliance referred to above.⁷ The Respondents chose not to seek punitive costs or costs on a higher-than-normal scale, even after waiting for about two hours in court, owing to the Applicant's late uploading of the founding papers. This remained their approach despite the court's disapproval, expressed at the beginning of the hearing.

[30] Order.

For the reasons above, the following order is made:

30.1 The application is struck off the roll for lack of urgency.

30.2 The Applicant is ordered to pay the costs of this application, including the costs of two counsel.

⁷ See paragraphs 3-5 above.



TV RATSHIBVUMO

DEPUTY JUDGE PRESIDENT

MPUMALANGA DIVISION OF THE HIGH COURT

APPEARANCES:

FOR THE APPLICANT:

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INSTRUCTED BY:

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MBOMBELA**

JUDGMENT RESERVED ON:

07 APRIL 2026

JUDGMENT DELIVERED ON:

13 APRIL 2026