



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 1057/2024

In the matter between:

THE MUNICIPAL MANAGER OF THE UMDONI LOCAL MUNICIPALITY	FIRST APPELLANT
THABISILE NDLELA	SECOND APPELLANT
THE SPEAKER OF THE COUNCIL OF THE UMDONI LOCAL MUNICIPALITY	THIRD APPELLANT
COUNCIL OF THE UMDONI LOCAL MUNICIPALITY	FOURTH APPELLANT
UMDONI LOCAL MUNICIPALITY	FIFTH APPELLANT
RAVINAND MAHARAJ	SIXTH APPELLANT
EXECUTIVE COMMITTEE OF THE COUNCIL OF THE UMDONI LOCAL MUNICIPALITY	SEVENTH APPELLANT
THE MAYOR OF THE COUNCIL OF THE UMDONI LOCAL MUNICIPALITY	EIGHTH APPELLANT

and

SHAMILA SOOKHRAJ	FIRST RESPONDENT
DEMOCRATIC ALLIANCE	SECOND RESPONDENT

Neutral Citation: *The Municipal Manager of the Umdoni Local Municipality and Others v S Sookhraj and Another* (1057/2024) [2026] ZASCA 65 (6 May 2026).

Coram: MOLEFE and KGOELE JJA and DIPPENAAR,
GOVINDJEE and NORMAN AJJA

Heard: 23 February 2026

Delivered: 6 May 2026.

Summary: Municipal law – Local Government: Municipal Structures Act 117 of 1998 – interpretation of s 43(2) – whether the allocation of seats on a municipal executive committee is fixed for the duration of a council's five-year term – or whether it must be re-calculated whenever by-elections alter the composition of the council – Local Government: Municipal Systems Act 32 of 2000 – costs order against the municipal manager.

ORDER

On appeal from: KwaZulu-Natal Division of the High Court, Durban (Nkosi ADJP, sitting as court of first instance):

The appeal is dismissed with costs, including the costs of two counsel.

JUDGMENT

Molefe JA (Kgoele JA and Dippenaar, Govindjee and Norman AJJA concurring):

[1] This is an appeal against the judgment and order of the KwaZulu-Natal Division of the High Court, Durban (the high court), granting declaratory and interdictory relief in favour of the respondents. The high court declared the decision by the first appellant, the Municipal Manager of the Umdoni Local Municipality (the Municipal Manager), to be unlawful and the appointment of the first respondent, Councillor Shamila Sookhraj, to be valid.

[2] The crisp issue to be determined is whether, on a proper interpretation of s 43 read with ss 45, 46 and 47 of the Local Government: Municipal Structures Act 117 of 1998 (the Structures Act),¹ the composition of an executive committee may, during a Municipal Council's five-year term, be altered as a consequence of a by-election taking place. The appellants framed the specific issue to be determined by this Court in its notice in terms of rule 8(8)(a) of the Rules of the Supreme Court of Appeal of South Africa, 1998, and the respondents agreed that the appeal hinged exclusively on the issue as formulated by the appellants.

¹ Local Government: Municipal Structures Act 117 of 1998 was amended by the Local Government: Municipal Structures Amendment Act 3 of 2021.

[3] However, in their heads of argument, the appellants also addressed the issue of the Municipal Manager's breach of s 55 of the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act). The high court found that the Municipal Manager had egregiously breached her duties, resulting in a punitive costs order being granted against her, jointly and severally with the other appellants.

[4] At the hearing of this appeal, the appellants argued that the costs order granted was not justified and should be set aside. Counsel, however, conceded that the appellants were bound to the issues as set out in terms of rule 8(8)(a). That concession was properly made, and the issues surrounding the costs order do not form part of the issues to be determined by this Court.

Background

[5] The fifth appellant, the Umdoni Local Municipality (Umdoni Municipality) is a category B municipality established in terms of s 12 of the Structures Act. Following the November 2021 municipal elections, the Council of the Umdoni Local Municipality (the Council), the fourth appellant, had 37 councillors elected to serve in the Council. The African National Congress (ANC) held 17 seats, the second respondent, the Democratic Alliance (DA) held seven, and the other parties and independents held 13.

[6] Within 14 days of its election, the Council determined the composition of the Executive Committee of the Umdoni Municipality (Exco), the seventh respondent, in accordance with s 45 of the Structures Act. The Council applied the formula prescribed in ss 43(2)(a) to (c) of the Structures Act, and seats were proportionally allocated to the Exco. The ANC occupied three seats, the DA two, and the other parties and independents occupied two. The DA appointed Councillor Edwin Baptie to one of its two allocated Exco seats.

[7] On or about 26 November 2021, a councillor resigned from the DA. A by-election was held for ward 13, a ward previously won by and represented by the DA. The ANC won the by-election, causing the ANC Council seats to increase from 17 to 18 seats. By losing the by-election, the DA's Council seats decreased from seven to six seats. Representation on the Council was appropriately amended.

[8] On 29 August 2022, Councillor Baptie resigned as a councillor and also vacated his office as a member of Exco in terms of s 47(1)(c) of the Structures Act. This created a vacancy in one of the two Exco seats allocated to the DA. On 9 November 2022, the DA's authorised representative, the Chief Whip, Councillor Singh, advised the Municipal Manager and the Speaker of the Council of the Umdoni Municipality, the third appellant, that the DA had appointed Councillor Sookhraj to fill the vacancy that arose on the Exco pursuant to s 43(2)(e) of the Structures Act.

[9] Instead of implementing the DA's appointment of Councillor Sookhraj, the Municipal Manager prepared a report dated 25 January 2023, recommending that the Council either re-determine the composition of the Exco in light of the by-election results, or 'simply effect the changes occasioned by the changes in Council'. At an ordinary Council meeting held on 25 January 2023, the Municipal Manager tabled a report recommending the re-determination of the Exco composition.

[10] On 22 February 2023, following a presentation by Ms N Zamisa from COGTA,² an ANC councillor moved a motion that Councillor Ravinand Maharaj, the sixth appellant, be appointed to fill the vacancy created by Councillor Baptie. The motion was passed by Council vote and Councillor Maharaj, an ANC member, was appointed to Exco.

² COGTA is the Department of Cooperative Governance and Traditional Affairs, a key government department in South Africa.

[11] Pursuant thereto, Councillor Sookhraj and the DA instituted an urgent application in the high court to, inter alia, have the election of Councillor Maharaj to Exco to fill the vacancy declared unlawful. On 24 March 2023, by consent, the high court (per Nicholson AJ) declared the election of Councillor Maharaj unlawful, and his appointment was nullified.

[12] The issue that remained to be adjudicated by the high court was who had the right to appoint a councillor to fill an Exco vacancy; this involved a proper interpretation of s 43(2) of the Structures Act. The high court (per Nkosi ADJP) favoured the respondents' interpretation and held that the 2021 amendment to s 43(2) introduced an intention on the part of the Legislature to reserve, to a political party, a seat allocated to it on the Exco for the term of the Municipal Council. The political party to which a seat had been allocated, in this instance the DA, was empowered to appoint a councillor to fill the vacancy. This resulted in it declaring the appointment of Councillor Sookhraj valid. The high court further found the conduct of the Municipal Manager to be 'blatant and egregious', and a punitive costs order was made against her.

[13] Aggrieved by the high court's decision, the appellants applied for leave to appeal, which was dismissed. On petition, leave to appeal was granted to this Court.

[14] As stated, the crisp issue to be determined is the proper interpretation of s 43(2) of the Structures Act, namely whether: (a) as contended by the appellants, the composition of an Exco may, during a Council's five-year term, be altered as a consequence of by-elections taking place and a change in the composition of the Council being effected thereby (the proportionality interpretation); or (b) as contended by the respondents, the right of political parties to appoint members to Exco is fixed within 14 days of the Council's election and only terminates when the municipality has changed or when the

next Council is elected (categorised by the appellants as ‘the textual interpretation’).

Legal Framework

[15] The Local Government: Municipal Structures Amendment Act 3 of 2021, governs the election of municipal executive committees. Section 43 of the Structures Act provides:

‘43 Composition of executive committees

(1) (a) If the council of a municipality establishes an executive committee, it must determine a number of councillors necessary for effective and efficient government, provided that no more than 20 per cent of the councillors (fractions to be disregarded) or 10 councillors, whichever is the least, are determined.

(b) An executive committee may not have less than three members.

(2) The award of seats on the executive committee to political parties or political interest must be determined in the following manner -

(a) the number of seats won by a political party or political interest divided by the total number of councillors determined for that municipality in terms of section 20 and multiplied by the number of seats on the executive committee;

(b) if the calculation in paragraph (a) gives a surplus, that surplus must compete with the other similar surpluses, and be awarded to the highest surplus;

(c) if there is an equality of the surpluses, the result must be determined by lot;

(d) the political party or political interest to which seats are allocated to on the executive committee must, through an authorised representative, appoint their representatives to occupy such seats;

(e) in the event of a vacancy arising on the executive committee, the political party or political interest to which the seat was allocated to will, through an authorised representative, appoint a councillor to fill that vacancy; and

(f) nothing precludes a political party or political interest from nominating a councillor from another political party or political interest to one or more of its allocated seats.’

[16] Section 45 is relevant. It provides:

‘45 Determination of members of executive committees

A municipal council must determine the members of its executive committee from among its members at a meeting that must be held-

- (a) within 14 days after the council's election;
- (b) if it is a district council, within 14 days after the last of the local councils has appointed its representatives to the district council; or
- ...

[17] Section 46 provides that 'the members of an executive committee are determined for a term ending, subject to s 47, when the type of the municipality has been changed...or [when] the next municipal council is declared elected'; while s 47(2) provides that 'the filling of a vacancy in an executive committee is subject to s 43'.

[18] Section 47(1) provides:

- '(1) A member of an executive committee vacates office during a term if that member-
- (a) resigns as a member of the executive committee;
 - (b) is removed from office as a member of the executive committee in terms of section 53; or
 - (c) ceases to be a councillor.'

[19] Section 160(8) of the Constitution provides the foundational framework for participation in Municipal Councils. It provides:

- 'Members of a Municipal Council are entitled to participate in its proceedings and those of its committees in a manner that –
- (a) allows parties and interests reflected within the Council to be fairly represented;
 - (b) is consistent with democracy; and
 - (c) may be regulated by national legislation.'

Principles and competing arguments

[20] There are no material factual disputes in this appeal. The issue relates solely to the legal issue of statutory interpretation. This appeal is about the implications of a vacancy arising in an executive committee, how a councillor

can be appointed to fill that vacancy, and whether a change in the composition of a Council during its five-year term necessarily mandates a change in the composition of the executive committee. It is noteworthy that the by-elections occurred as a result of a vacancy which arose in the Council in November 2021. That by-election on 2 July 2022 resulted in the DA forfeiting a seat in the Council to the ANC. Councillor Baptie resigned with effect from 29 August 2022, sometime after the by-election in ward 13.

[21] In terms of the oft-cited *Endumeni* judgment of this Court, it is well established that the correct approach to interpretation requires a unitary approach to the language used in the relevant provision, in the light of the ordinary rules of grammar and syntax, the words in which the provision appears, and the apparent purpose to which it is directed.³ Interpretation of statutes within the prism of the Constitution does not require a distortion of the language used so as to extract a meaning beyond that which the words can reasonably bear. It requires that the language be interpreted as far as possible and without undue strain so as to favour compliance with the Constitution.

[22] Beyond the general *Endumeni* framework, the Constitution imposes a specific interpretative obligation on courts. Section 39(2) of the Constitution mandates that ‘when interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights’. The Constitutional Court in *Chisuse and Others v Director-General Department of Home Affairs and Another*⁴ cautioned:

‘However, in seeking a constitutional interpretation in accordance with their obligations under section 39(2) of the Constitution, courts must not lose sight of the fact that the

³ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) para 18.

⁴ *Chisuse and Others v Director-General, Department of Home Affairs and Another* [2020] ZACC 20; 2020 (10) BCLR 1173 (CC); 2020 (6) SA 14 (CC) para 54.

construction given to legislation must still be reasonable. Strained readings of texts, no matter how well-intentioned, can lead to dissonance.’

[23] The appellants’ foundational submission is that the interpretation proffered by the respondents and favoured by the high court did not engage with the Constitution, its provisions on the establishment of Municipal Councils, and its values and principles. This, so the argument goes, resulted in an outcome that was faithful only to the text, to the exclusion of context and purpose. They argue that the respondents’ interpretation is inconsistent with the Constitution, because it allows a party that had lost electoral support to retain seats on the Exco.

[24] Central to this contention is the appellant’s reliance on the provisions of s160(8)(a) of the Constitution in arguing that there must be proportionality on the executive committee of the Council.⁵ Reliance is also placed on s 157(2) of the Constitution in terms of which the election of members to a municipal council must be in accordance with national legislation which must prescribe a system of proportional representation. It is contended that once there has been a by-election which alters the number of seats allocated to any particular political party, there must be an alteration in the composition of the executive committee. This would apply, irrespective of whether there is a vacancy on the Exco or not. The appellants contend that the respondents’ interpretation is inimical to fair, proportionate, and democratic representation of political parties in the Council and Exco and is inconsistent with s 160(8)(a), and therefore unconstitutional. Alternatively, they contend that the said sections of the Structures Act are inconsistent with s 160(8)(a) (fair representation), s 160(8)(b) (consistent with democracy), and s 195(1)(f) (accountability), to the extent that they permit a reallocation of seats in the Exco only upon a change in the type of municipality or the election of a new Council.

⁵ As read with ss 1(d), 157(2)(b) and 195(1) and (2) of the Constitution.

[25] In response, the respondents rely on the principle of subsidiarity⁶ in pointing out that the appellants did not launch any frontal attack on the constitutionality of the Structures Act or any of the relevant provisions. This, the appellants accepted, arguing that if their interpretation were accepted, it would be entirely consistent with the Constitution and thus no frontal challenge was necessary. This challenge is not a direct constitutional attack on s 43(2) itself.

[26] Insofar as the appellants' interpretation is based on what they term 'proportionality', their reliance does not avail them. Section 157(2) of the Constitution refers to the election of members of a municipal council in accordance with national legislation which must prescribe a system of proportional representation. Section 160(8) which pertains to participation of members of a municipal council in its proceedings and committees, in turn requires fair representation, not mathematical proportionality. The Constitutional Court in *Socialist Agenda of Dispossessed Africans v Minister of Cooperative Governance and Traditional Affairs (SADA)*,⁷ was asked to declare s 43(2)(c) of the Structures Act unconstitutional because it resolves tied surplus vote calculations for Exco seats 'by lot' (sortition), rather than by strict proportional calculation. The court held:

'What is constitutionally required in terms of section 160(8) of the Constitution bears on the participation of members of the council. They are entitled to participate in the council's proceedings and the council's committees, in a manner that allows parties and interests reflected within the council to be fairly represented, in a fashion that is consistent with democracy. That section does not require that members of political parties be proportionally represented on executive committees as elected to the council.

⁶ The principle of subsidiarity requires that, where legislation has been enacted to give effect to a constitutional right, a court must adjudicate the matter through that legislation rather than directly under the Constitution, unless the legislation itself is challenged as constitutionally invalid. See *Mazibuko and Others v City of Johannesburg and Others* [2009] ZACC 28; 2010 (3) BCLR 239 (CC); 2010 (4) SA 1 (CC) para 73. See also *My Vote Counts NPC v Speaker of the National Assembly and Others* [2015] ZACC 31; 2016 (1) SA 132 (CC) para 54.

⁷ *Socialist Agenda of Dispossessed Africans v Minister of Cooperative Governance and Traditional Affairs* [2025] ZACC 26; 2026 (1) BCLR 13 (CC).

Rather it entitles members of a council to participate in proceedings of committees in a fairly representative manner and consonant with democratic principles.’⁸

[27] As held in *SADA*, s 160(8) does not require proportional representation in executive committees. It requires fair representation through meaningful participation. It cannot, therefore, be unconstitutional for s 43(2)(e) to preserve seat allocations for the term, notwithstanding mid-term changes in Council composition. Moreover, s 43(2)(f) permits a political party to nominate a councillor from another political party to fill its allocated seat. If this is constitutionally permissible, then preserving original seat allocations through s 43(2)(e) is equally permissible.

[28] It can thus not be concluded, as argued by the appellants, that the respondents’ interpretation is unconstitutional. It was common cause that the appellants had not mounted any frontal challenge to the constitutionality of s 43(2)(e) of the Structures Act.

Analysis

[29] In analysing the relevant provisions, the starting point is the text, bearing in mind the context and purpose of the provisions. The 2021 Structures Act amendment introduced s 43(2) in its current form. Prior to 2021, s 43(2) was brief and general, requiring only that executive committees be composed such that parties were represented ‘in substantially the same proportion’ as in Council. The Legislature replaced this with a formulaic approach, expressly distinguishing between initial allocation (ss 43(2)(a)-(d)) and vacancy-filling (s 43(2)(e)). The Legislature did not differentiate between circumstances where a vacancy arises on resignation or removal from a committee or if someone ceases to be a councillor - in which event there would inevitably be a by-election. The same process would be followed in either of those eventualities.

⁸ Ibid para 35.

This separation suggests legislative intent to create temporal stability in the Exco composition.

[30] The critical phrase in the amended s 43(2)(e) is ‘the political party or political interest to which the seat was allocated to’. The past tense ‘was allocated’ refers to a completed historical event, namely the initial determination of Exco composition within 14 days of the Council’s election pursuant to ss 43(2)(a) to (d) and s 45 of the Structures Act. Had the Legislature intended a re-calculation at the time of every vacancy, it would have used a present or future tense formulation such as ‘to which the seat is allocated’ or ‘to which the seat would be allocated’. Instead, it used the definite past tense, referring to the original allocation event.

[31] This textual choice is reinforced by s 43(2)(d), which uses the present tense passive construction ‘to which seats are allocated’ to describe the contemporaneous appointment process following initial seat allocation. In contrast, s 43(2)(e) uses ‘to which the seat was allocated’, because it describes vacancy-filling that occurs after the initial allocation has been completed. The definite article ‘the seat’ denotes a specific, identified seat that ‘was allocated’ to a particular party at the time of the initial Exco determination. The language clearly creates a vested entitlement: the party retains the right to fill that seat for the duration of the Exco term, regardless of subsequent fluctuations in Council representation. Furthermore, the word ‘appoint’ in s 43(2)(e) confirms autonomous party authority. The political party does not nominate or propose a candidate subject to Council approval; it exercises an independent appointment power.

[32] Section 43 must not be read in isolation, but in the context of ss 45, 46 and 47. Section 45 creates a single definitive moment for Exco determination:

‘within 14 days after the council is elected’. The word ‘must’ is mandatory.⁹ No provision exists for subsequent re-determination during the term, except in limited circumstances under s 47(1) (vacancies) or s 53 (removal by Council resolution). Section 46 provides that Exco members ‘are determined for a term ending’ when either the type of municipality changes or the next Council is declared elected. By-elections are not listed as a termination event. If the Legislature intended by-elections to trigger Exco re-composition, it would have expressly provided for this.

[33] Section 47(2) provides that the filling of a vacancy in an executive committee is subject to s 43. The appellants contend that this requires a re-application of the entire formula in s 43(2)(a) using current Council numbers. This interpretation is incorrect and is not supported by the text. First, it ignores s 43(2)(e), which is the specific provision within s 43 addressing vacancy filling. Second, ‘subject to’ does not carry a pre-determined legal meaning; its effect depends on the context.¹⁰ Third, if s 47(2) required the re-application of the formula in s 43(2)(a), then s 43(2)(e) would be redundant. Fourth, the appellants’ interpretation renders s 43(2)(e) meaningless.

[34] Regarding purpose, s 152 of the Constitution provides that the objects of local government include ‘to provide democratic and accountable government for local communities’ and ‘to ensure the provision of services to communities in a sustainable manner’. This legislative design promotes two policy objectives. First, municipalities, particularly hung Councils, experience chronic instability when minor shifts in Council seats trigger total Exco reshuffling. This paralyses service delivery and undermines effective governance. Second, requiring Exco

⁹ *Minister of Environmental Affairs and Tourism and Others v Pepper Bay Fishing (Pty) Ltd; Minister of Environmental Affairs and Tourism and Others v Smith* 2004 (1) SA 308 (SCA); [2003] 4 All SA 1 (SCA) para 32.

¹⁰ *Pangbourne Properties Ltd v Gill & Ramsden (Pty) Ltd* 1996 (1) SA 1182 (A) at 1187I-1188A. See also *Command Protection Services (Gauteng) (Pty) Ltd t/a Maxi Security v SA Post Office Ltd* [2012] ZASCA 160; [2013] 1 All SA 266 (SCA); 2013 (2) SA 133 (SCA) para 19.

re-determination after every by-election creates administrative complexity, potential disputes, and frequent disruption to municipal operations.

[35] General municipal elections determine overall Council composition, and derivatively, the Exco. These occur every five years and reflect a comprehensive electoral mandate. Ward by-elections address specific, localised vacancies in individual wards. They do not constitute a municipal-wide electoral event and do not provide a fresh mandate for the Council or Exco as a whole. It is rational for the Legislature to decide that Exco composition should be stable for the five-year term, with proportionality assessed only at the time of general elections.

[36] I agree with the high court that the allocation of seats on a municipal executive committee under s 43(2) of the Structures Act is fixed for the duration of the Council's five-year term. It is not re-calculated whenever by-elections alter the composition of the Council. By-elections are not a termination event. The interpretation is consistent with the Constitution. The DA's appointment of Councillor Sookhraj on 9 November 2022 was therefore lawful.

[37] In my view, the appellants' argument ignores the changes brought about by the amendment of the Structures Act. It further ignores and strains the wording of the text and distorts the context and purpose of the relevant provisions. The right of political parties or political interests under the Structures Act to appoint members to an executive committee is fixed within 14 days of the Council's election. Such a right would only terminate when the municipality has changed, or the next Council is declared elected. It follows that the appeal must fail.

[38] I therefore make the following order:

The appeal is dismissed with costs, including the costs of two counsel.

D S MOLEFE
JUDGE OF APPEAL

Appearances:

For the Appellants: I Topping SC and S Luthuli

Instructed by: T.L Mbili Attorneys, Durban
Honey Attorneys, Bloemfontein

For the Respondents: W Shapiro SC and D Sive

Instructed by: Minde Schapiro & Smith Inc, Bellville
Symington De Kok Attorneys, Bloemfontein.