



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION MAHIKENG**

Not reportable

CASE NO: 078112-2026

In the matter between:

LESEGO SEAMETSO

Applicant

And

CITY OF MATLOSANA LOCAL MUNICIPALITY

1st Respondent

MUNICIPAL COUNCIL OF THE CITY OF

MATLOSANA LOCAL MUNICIPALITY

2nd Respondent

THE MAYOR OF THE CITY OF MATLOSANA

LOCAL MUNICIPALITY: FIKILE CASWELL

MAHLOPHE

3rd Respondent

THE SPEAKER OF THE MUNICIPAL COUNCIL

OF MATLOSANA LOCAL MUNICIPALITY:

STELLA MONDLANE-NGWENYA

4th Respondent

**MEC: NORTH WEST DEPARTMENT OF
CO- OPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS**

5th Respondent

Coram: Matlhape AJ

Heard: 17 April 2026

Delivered: Judgment was handed down electronically by circulation to the parties' legal representatives by email and released to SAFLII. The date and time for handing down of the judgment are deemed to be 16h00 on 28 April 2026.

Summary: Urgent application – Authority to act in terms of Rule 7(1) – Absent written Council Resolution to act on behalf of the Municipality – No effective opposition to the applicant's application.

ORDER

1. The ordinary rules pertaining to form, service, and notice are dispensed with and that this matter is heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court.
2. The impugned decisions of the second and third respondents to suspend the applicant as the Municipal Manager of the first respondent are

stayed with immediate effect pending finalisation of Part B of this application (review application);

3. The Council Resolutions to appoint the Acting Municipal Manager is stayed pending finalisation of Part B of the application.
4. The applicant is allowed to resume her duties as the first respondent's Municipal Manager, with immediate effect, and the respondents are ordered not to hinder or unlawfully interfere with the duties of the applicant.
5. The first, second and fourth respondents are ordered to pay the costs of this application on a party-and-party basis on Scale B, jointly and severally, the one paying the other to be absolved.

JUDGEMENT

MATLHAPE AJ

Introduction

[1] The applicant instituted urgent proceedings in terms of Rule 6 (12) of the Uniform Rules of Court, seeking the relief set out in its amended notice of motion in the following terms:

“PART A

1. That the ordinary rules pertaining to form, service, and notice be dispensed with and that this matter be heard as one of urgency in terms of Rule 6 (12) of the Uniform Rules of Court.
2. That the impugned decision(s) of the second and third respondent to suspend the applicant as the Municipal Manager of the first respondent be stayed with immediate effect pending finalisation of Part B of this application (review application);
3. That in the event that an acting Municipal Manager is appointed prior to the hearing of this application, such Council Resolutions are set aside and reviewed alternatively stayed pending finalisation of Part B of the application.
4. That the applicant is allowed to resume with her duties as the first respondent's Municipal Manager, immediately, and the respondents are ordered not to hinder or unlawfully interfere with the aforesaid.
5. Cost against first to fifth respondents jointly and severally on an attorney and client scale;
6. Further and or alternative relief

PART B

1. That any preceding Council Resolution(s) by the second and third respondent, placing the applicant on precautionary leave and/or suspension, is declared invalid and unlawful and is set aside;

2. Cost against the first to fourth respondents jointly and severally, the one paying the other to be absolved on an attorney-client scale;
3. Further and or alternative relief.

[2] The relief sought before me is confined to that set out in Part A. I shall therefore not deal with Part B, as it does not serve before this Court.

The Parties

[3] The applicant is the duly appointed Municipal Manager of the first respondent.

[4] The first respondent is the city of Matlosana Local Municipality, being a local municipality, with full legal capacity duly established in terms of inter alia Section 155 of the Constitution of the Republic of South Africa, Act 108 of 1996 and the Municipal Structures Act 117 of 1998.

[5] The second respondent is the Municipal Council of the City of Matlosana Local Municipality.

[6] The third respondent is the Mayor of the City of Matlosana Local Municipality, Mr Fikile Caswell Mahlophe.

[7] The fourth respondent is the Speaker of the Municipal Council of the City of Matlosana Local Municipality, Mrs Stella Mondlane-Ngwenya.

[8] The fifth respondent is the Member of the Executive Council (MEC): North West Department of Co-Operative Governance And Traditional Affairs. No relief is sought against the fifth respondent.

Background

[9] The applicant was appointed as the Municipal Manager of the first respondent on 31 December 2022, a position she held until her suspension, as will be discussed herein below.

[10] On 2 March 2026, the applicant received correspondence from the office of the third respondent concerning Council Resolution CC 34/2026, indicating the second respondent's intention to place her on "precautionary leave" in relation to alleged irregularities pertaining to the mid-year assessment for the period 1 July 2025 to 31 December 2025. In that correspondence, the applicant was invited to submit written representations as to why such precautionary measures should not be implemented.

[11] In her response, the applicant raised several procedural concerns. She contended that the ten categories of alleged misconduct, arising from the tabled

mid-year report, were vague and lacked sufficient particularity to enable a meaningful response. She further asserted that the Municipal Public Accounts Committee (“MPAC”) had not adopted the report and, as such, no definitive outcome had been reached. In these circumstances, she submitted that the request for representations was unreasonable, unjust, and non-compliant with Regulation 6(2) of the Disciplinary Regulations for Senior Managers. She also contended that the process was inconsistent with constitutional principles of fairness and legality.

[12] Upon receipt of the applicant’s response, the Mayor prepared a report calling upon the second respondent to consider the applicant’s representations.

[13] Having considered the applicant’s reply, the third respondent concluded that there were insufficient grounds to justify a precautionary suspension at that stage. He cautioned that any decision to suspend a Municipal Manager must comply with the applicable legislative framework. He further emphasised that such a decision requires the existence of prima facie evidence, a formal council resolution, and notification to the MEC for Local Government and the Minister for Co-operative Governance within the prescribed timeframes.

[14] Notwithstanding the aforesaid cautions, a council meeting was convened, and a resolution was adopted on 31 March 2026 placing the applicant on precautionary suspension.

[15] On 1 April 2026, the applicant was served with a letter of suspension issued from the office of the third respondent.

[16] Thereafter, on 7 April 2026, a further Special Council resolution was adopted appointing an Acting Municipal Manager in place of the applicant.

[17] These events prompted the applicant to institute the present proceedings on an urgent basis, challenging the lawfulness of her suspension.

[18] The application initially served before Reid J on 7 April 2026 on an urgent *ex parte* basis. The notice of motion at that stage sought relief in Parts A, B and C. The matter was struck from the roll. The applicant thereafter amended her notice of motion and filed a supplementary affidavit explaining the basis for such amendment. Both documents are dated 7 April 2026.

[19] The matter subsequently came before me on 17 April 2026.

[20] It is apposite to note that the Acting Municipal Manager subsequently deposed to the answering affidavit on behalf of the first, second and fourth respondents.

[21] It is necessary to record that the third respondent, being the Mayor, filed a notice to abide the proceedings. Notwithstanding this stance, he deposed to an explanatory affidavit in which he states that he had cautioned the Municipal Council and the Speaker against proceeding with the suspension without adherence to proper procedure. Those cautions, however, were disregarded.

[22] In response thereto, the first, second and fourth respondents launched an application in terms of Rule 30(2)(b), contending that the third respondent filed the explanatory affidavit without compliance with the Uniform Rules of Court and without seeking condonation. They accordingly seek an order setting aside the affidavit as an irregular step. The third respondent opposes that application.

[23] The applicant, in turn, delivered a notice in terms of Rule 7(1), disputing the authority of the attorneys representing the first, second and third respondents, and calling upon them to produce proof of authority, including a written power of attorney and a council resolution authorising opposition to the proceedings.

[24] In response, the attorneys produced a letter together with a power of attorney issued by the Acting Municipal Manager purporting to authorise them to act. They further appended an extract outlining the general functions of various municipal structures and the duties assigned thereto.

[25] The applicant persists in her Rule 7(1) challenge, contending that no valid council resolution has been produced authorising the opposition of these proceedings, and further asserting that a number of councillors do not support such opposition.

Issues for Determination

[26] The issues for determination are the following:

[26.1] Whether the respondents are duly authorised to act on behalf of the Municipality;

[26.2] Whether the third respondent's explanatory affidavit constitutes an irregular step within the meaning of Rule 30;

[26.3] Whether the applicant will obtain substantial redress in due course; and

[26.4] Whether the applicant is entitled to the relief sought on the merits.

Legal Framework

Authority to act

[27] Rule 7(1) provides as follows:

“7(1) Power of attorney

Subject to the provisions of subrules (2) and (3), a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of court on good cause shown at any time before judgment, be disputed, whereafter, such person may no longer act unless he satisfied the court that he is authorized to act, and to enable him to do so, the court may postpone the hearing of the action or application”.

[28] Rule 30(2) of the Uniform Rules of Court as follows:

*“(2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged, and may **be made only if—***

(a) the Applicant has not himself taken a further step in the cause with knowledge of the irregularity;

(b) the Applicant has, within ten days of becoming aware of the step, by written notice afforded his opponent an opportunity of removing the cause of complaint within ten days; and

(c) the application is delivered within fifteen days after the expiry of the period referred to in paragraph (b).”

Analysis: Rule 7(1)

[29] The applicant takes issue with the fact that the attorneys of record for the first, second and fourth respondents are acting without the authorisation of the municipality in that there is no written resolution from council empowering them to act as such. The aforesaid respondents contend that the attorneys are duly authorised by virtue of a delegation of power signed by the Acting Municipal Manager.

[30] It begs to mention the fact that the respondents did not produce any written resolution from the Municipal Council.

[31] Prior to engaging with the substantive merits, it is incumbent upon this Court to first determine whether the applicant employed the appropriate procedural mechanism to challenge the respondents' authority to act on behalf of the Municipality.

[32] In ***Mahikeng Local Municipality v Harrison***, Petersen AJ (as he then was) articulated the applicable principle with clarity as follow¹:

“In this Division the legal position is clear. Any challenge to the authority of a Municipal Manager to launch an application on behalf of a municipality must be brought by way of Rule 7(1). The Respondent has not challenged the authority of

¹ (M209/2020) [2021] ZANWHC 87 (14 April 2021) at para 19

the Municipal Manager by way of Rule 7(1) and the point in limine on locus standi must accordingly fail.”

[33] In the matter before me, the applicant has impugned the authority of the Acting Municipal Manager by invoking the procedure contemplated in Rule 7(1). It follows, in my view, that the correct procedural route has been adopted. Having dealt with this aspect, I proceed to consider the legal position concerning the necessity of a council resolution authorising action on behalf of the Municipality.

[34] In *Manana v King Sabata Dalindyebo Municipality* the court held as follows ²:

“ [36] *The Act provides the framework within which a municipality must function. As is to be expected, the Act is replete with provisions recognising that executive authority vests in the council and in nobody else. Indeed, ordinary legislation is not constitutionally capable of divesting a municipal council of its executive authority – or any part of it – and the construction of a statute that would produce that result must be avoided if it is possible to do so.*²

[37] *The first submission that was made on behalf of the municipality was that the resolution to which I have referred is not relevant because the power to appoint employees vests in the municipal manager and not in the municipal council. For that submission counsel relied on s 55(1)(a)-(e) of the Act – in particular*

² [2010] ZASCA 144 at paras 14 to 17

subsection (e). Confining myself to the relevant part of that subsection it reads as follows:

‘As head of administration the municipal manager of a municipality is, subject to the policy directions of the municipal council, responsible and accountable for – (e) the appointment of staff ...’

- [38] *A municipal council is not capable in practice of exercising its executive authority by running the day-to-day affairs of the municipality and it employs staff to do that on its behalf. In the past it was common for municipal councils to confer the appropriate authority upon their staff by delegation of all or some of its executive powers. Such a delegation of power does not ordinarily divest the delegator of the power to perform the particular function itself. As the authors of De Smith’s Judicial Review express it:¹⁰*

‘[I]t has sometimes been stated that delegation implies a denudation of authority.... This cannot be accepted as an accurate general proposition. On the contrary, the general rule is that an authority which delegates its powers does not divest itself of them’

- [39] *In my view s 55(1) is no more than a statutory means of conferring such power upon municipal managers to attend to the affairs of the municipality on behalf of the municipal council. There is no basis for construing the section as simultaneously divesting the municipal council of any of its executive powers. Indeed, as I have already pointed out, the Constitution vests all executive authority – which includes the authority to appoint staff – in the municipal council and legislation is not capable of lawfully divesting it of that power. To the extent that there might be any ambiguity in the statute in that respect it must be construed to avoid that result.*

[35] In *Carewell Holdings 5 (Pty) Ltd v Ditsobotla Local Municipality and Another* this Court, per Reddy J held that³:

“The Acting Municipal Manager, as in the present application, can depose to an affidavit in support of an application. No authorisation is required for the Acting Municipal Manager to depose an affidavit. What is however required, is authorisation from the Municipal Council to institute legal proceedings. The golden thread that runs through the contentions of Carewell Holdings since the genesis of this application on 27 July 2023, is the call for compliance with Rule 7(1) Notice. This is the crisp issue in this application predicated on the Rule 7(1) notice, which was not addressed in the agent application before REID J, which will be shown is dispositive of the application.”

[36] Similarly, in this case, there is no council resolution authorising Mabapa Inc. Attorneys to act on behalf of the Municipality nor is there council resolution authorising these proceedings.

[37] The aforesaid respondents have failed to produce any resolution authorising its opposition. Instead, what they have produced is a power of attorney as well as a schedule depicting duties assigned to the municipal structures.

³ 1396/22) [2023] ZANWHC 153 (1 September 2023)

[38] For the reasons already articulated, this failure renders the opposition procedurally defective. While Rule 7(1) provides the orthodox mechanism, this Court cannot ignore a clear failure of authority where the issue has been expressly raised.

[39] It is necessary to distinguish between the authority to take the decision to suspend and the authority to defend that decision in litigation.

[40] These are separate exercises of public power requiring independent authorisation. The respondent has failed to produce any resolution authorising its opposition.

[41] Where the authority of an organ of state is expressly placed in issue, and the organ of state fails to demonstrate such authority, a court is not obliged to ignore the defect purely for want of formalism.

[42] In the present matter the challenge was clearly raised and the respondent had opportunity to respond and no proof was forthcoming. In these circumstances, the respondent has failed to discharge the evidentiary burden resting upon it. The reliance on a general extract outlining municipal functions does not cure this defect, as it does not demonstrate a specific decision by council to litigate.

[43] In the absence of such resolution, the authority to oppose these proceedings is, at best, doubtful. This is particularly so in circumstances where the applicant contends that there is internal disagreement within council regarding the opposition of this application. While such disagreement is not determinative, it underscores the necessity for clear and unequivocal proof of authority. There is therefore no proper opposition from the First, Second and Fourth Respondents in this matter. Even on a strict approach, the absence of any resolution justifies an adverse inference.

[44] Having found that the respondents do not have the requisite authority to represent the Municipality, I do not see the necessity to delve into any of the remaining issues.

Costs

[45] The general rule is that costs should follow the result. This general rule does not impugn the discretion of this Court. I am of the view that the conduct of the first, second and fourth respondents should be frowned upon, hence the order of costs against them.

Order

[47] In the result, the following order is made:

1. The ordinary rules pertaining to form, service, and notice are dispensed with and that this matter is heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court.
2. The impugned decisions of the second and third respondents to suspend the applicant as the Municipal Manager of the first respondent are stayed with immediate effect pending finalisation of Part B of this application (review application);
3. The Council Resolutions to appoint the Acting Municipal Manager is stayed pending finalisation of Part B of the application.
4. The applicant is allowed to resume her duties as the first respondent's Municipal Manager, with immediate effect, and the respondents are ordered not to hinder or unlawfully interfere with the duties of the applicant.
5. The first, second and fourth respondents are ordered to pay the costs of this application on a party-and-party basis on Scale B, jointly and severally, the one paying the other to be absolved.

2
[REDACTED]

B MATLHAPE

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Appearances:

Judgment reserved: 17 April 2026

Judgment handed down: 28 April 2026

For the Applicants: Mr Scholtz

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