



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

**Not reportable  
Case No: 2026-102060**

In the matter between:

**TSWAING LOCAL MUNICIPALITY** First Applicant

**ACTING MUNICIPAL MANAGER OF TSWAING  
LOCAL MUNICIPALITY** Second Applicant

**MAYOR OF TSWAING LOCAL MUNICIPALITY** Third Applicant

**SPEAKER OF TSWAING LOCAL MUNICIPALITY** Fourth Applicant

and

**MEC FOR COOPERATIVE GOVERNANCE,  
HUMAN SETTLEMENTS AND TRADITIONAL  
AFFAIRS** First Respondent

**TAU MATSIMELA ATTORNEYS INC** Second Respondent

**Coram:** Petersen ADJP

**Date heard:** 22 May 2026

**Delivered:** This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 14h00 on 25 May 2026.

**Summary:** Urgent application – interim interdictory relief – bifurcated application – Part A dismissed – Local Government: Municipal Systems Act 32 of 2000, s 106(1)(b) – Provincial oversight over municipalities – Intergovernmental Relations Framework Act 13 of 2005 – whether non-compliance with intergovernmental dispute resolution mechanisms ousts judicial jurisdiction – Rule 7(1) of the Uniform Rules of Court – authority of municipal manager – requirements for interim interdictory relief – whether audi alteram partem applies during a s 106 investigation, and if so to what extent, is a novel issue unresolved by authority – *Matzikama* paras 13–24 characterise s 106 as a monitoring and accountability mechanism, investigative rather than adjudicative in character, but do not address procedural fairness obligations during an investigation – novel audi question best ventilated in Part B – arguability of review grounds insufficient to establish prima facie right of requisite weight – harm contingent and not irreversible – balance of convenience favours judicial restraint where Provincial statutory oversight mechanism under challenge – costs reserved.

---

## JUDGMENT

---

**PETERSEN ADJP**

### INTRODUCTION

[1] This is the urgent Part A of a bifurcated application in which the applicants seek interim interdictory relief pending the determination of Part B, being review proceedings directed at setting aside the outcome of an investigation commissioned by the First Respondent (“the MEC”) in terms of s 106(1)(b) of the Local Government: Municipal Systems Act 32 of 2000 (“the Systems Act”).

[2] The applicants seek, in essence, an order suspending the operation and implementation of the investigation report compiled by the Second Respondent (“the Report”), together with the MEC’s directive requiring implementation of specified remedial measures flowing from that Report. The relief is framed on the premise that the investigation process was procedurally unfair and that, if implemented, the remedial measures will result in the revocation of the employment contracts of three senior officials of the Municipality.

[3] The application raises questions concerning the scope of Provincial oversight over Local Government, the requirements of procedural fairness in investigative processes undertaken pursuant to s 106 of the Systems Act, the relationship between intergovernmental dispute resolution mechanisms and judicial intervention, and the cumulative requirements for urgent interim interdictory relief.

[4] While the applicants raise review grounds that are not frivolous, the issue presently before this Court is narrower: whether the applicants have established entitlement to urgent interim relief of the kind sought.

## **BACKGROUND**

[5] The First Applicant is Tswaing Local Municipality, a municipality established in terms of section 155 of the Constitution.<sup>1</sup> The Second Applicant is the Acting Municipal Manager. The Third and Fourth Applicants are, respectively, the Mayor and the Speaker. The First Respondent is the Provincial MEC responsible for Cooperative Governance.

[6] Acting pursuant to a complaint concerning alleged maladministration within the Municipality, the MEC invoked s 106(1)(b) of the Systems Act and appointed the Second Respondent, a firm of attorneys, to conduct an investigation. Section 106 constitutes part of the statutory framework through which provincial government exercises oversight over municipalities where there are allegations of maladministration, fraud, corruption or failure to fulfil executive obligations. That oversight function is constitutionally significant. Local Government autonomy exists within a constitutional system of cooperative governance, not institutional isolation.

[7] The investigation culminated in a report dated 30 January 2026. Prior to its transmission to the Municipality, on 19 March 2026, the Head of Department in

---

<sup>1</sup> Constitution of the Republic of South Africa, 1996.

the Office of the MEC wrote to the Municipality conveying that the MEC had “*come to a considered decision to implement the recommendation of the investigation report.*” The letter informed councillors that implementation would proceed and invited them to make representations on findings prepared against them in the Report.

[8] On 20 April 2026, the MEC transmitted the Report to the Municipality, together with correspondence addressed to the Mayor and the Speaker, requiring the implementation of remedial measures in respect of paragraphs 98, 156, and 185 of the Report. These paragraphs relate to the revocation of the employment contracts of three senior officials of the Municipality. An implementation plan was required within seven days of receipt of the letter. The applicants launched this urgent application shortly thereafter.

## **PRELIMINARY ISSUES**

### ***Authority – Rule 7(1)***

[9] The MEC raised a challenge in terms of Rule 7(1) of the Uniform Rules of Court to the authority of Fihla Attorneys to act on behalf of the Municipality. In support of their authority, the applicants filed a document purporting to be a Council Resolution authorising the institution of these proceedings.

[10] The First Respondent challenges the validity of the Council Resolution on the following grounds. It was signed by the Speaker, who is the Fourth Applicant in these proceedings; no minutes or attendance register were provided; no indication was given that the statutory requirements relating to the calling of meetings or the standing orders had been complied with. Reliance was placed on *Manana v King Sabata Dalindyebo Local Municipality*<sup>2</sup> and *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council*<sup>3</sup> for

---

<sup>2</sup> *Manana v King Sabata Dalindyebo Local Municipality* (PA01/2024) [2025] ZALAC 27.

<sup>3</sup> *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC).

the proposition that a municipality may only act within the powers lawfully conferred upon it and that authority must be specifically and objectively demonstrated.

[11] The applicants respond that any challenge to the authority of the municipal manager to launch an application on behalf of a municipality must be brought by way of a separate Rule 7(1) notice directed specifically at the municipal manager. Reliance was placed on this Division's decision in *Mahikeng Local Municipality v Harrison*<sup>4</sup>, where I, still, in acting capacity, held that the legal position in this Division is clear, that a challenge to the authority of a municipal manager to launch proceedings must be brought by way of Rule 7(1). No such notice was filed; the Rule 7(1) challenge was directed at Fihla Attorneys. Furthermore, the First Respondent did not file a Rule 30A notice asserting that the applicants' response was inadequate. A council resolution constitutes *prima facie* proof that a juristic person has taken the relevant decision.

[12] I accept the applicants' submission. The Rule 7(1) challenge was directed at the authority of Fihla Attorneys, not at the authority of the municipal manager to institute the proceedings. No separate notice was filed challenging the municipal manager's authority. The point *in limine* accordingly fails. I proceed on the assumption, in the applicants' favour, that sufficient *prima facie* authority exists for the purposes of Part A.

### ***Intergovernmental dispute resolution***

[13] The MEC contends that the applicants were required to exhaust the dispute resolution mechanisms provided for in the Intergovernmental Relations Framework Act 13 of 2005 ("the IGRFA") before approaching this Court. Reliance is placed on *MEC Responsible for Local Government, Western Cape v Matzikama Local Municipality and Others*<sup>5</sup> as authority illustrating that the

---

<sup>4</sup> *Mahikeng Local Municipality v Harrison* (M209/2020) [2021] ZANWHC 87 (14 April 2021).

<sup>5</sup> *MEC Responsible for Local Government, Western Cape v Matzikama Local Municipality and Others* (747/2021) [2022] ZASCA 167; 2023 (3) SA 521 (SCA).

potential applicability of the IGRFA in the context of section 106 proceedings is an open question.

[14] The applicants advance two answers. First, s 39 of the IGRFA provides that where another Act furnishes an applicable dispute resolution mechanism, the IGRFA does not apply, and s 106 of the Systems Act provides such a mechanism. Secondly, s 2(3)(b) of the IGRFA requires that an organ of state be invited to participate in the intergovernmental dispute resolution process. The MEC never extended any such invitation. In argument, counsel for the applicants submitted that the MEC, as a permanent member of the intergovernmental forum contemplated in s 16 of the IGRFA, was at all times in a position to invite the Municipality to the table, and that his failure to do so undermines reliance on the Municipality's non-compliance.

[15] This matter has an intergovernmental dimension. It concerns a provincial executive function directed at a municipality and implicates the relationship between constitutional spheres of government. Section 41 of the Constitution obliges organs of state to make every reasonable effort to avoid litigation and to settle disputes through appropriate mechanisms. Courts must take those principles seriously.

[16] However, counsel for the MEC properly conceded that there is no clear law or jurisprudence regulating the applicability of the IGRFA specifically to a s 106 report and a MEC's recommendation arising from such report. The *Matzikama* appeal did not resolve this question, since the point was abandoned by the parties before pronouncement. I leave the question open since it does not affect the outcome of Part A. I also accept that the MEC's absence of an IGRFA invitation undermines any reliance on that mechanism as a jurisdictional bar.

## URGENCY

[17] The applicants advance the following grounds of urgency. The Report was served on the Municipality on 20 April 2026. The Municipal Council convened on 21 April 2026 and resolved to take the Report on review. The application was instituted on the first available sitting of the urgent court of this Division. If the interim interdict is not granted urgently, the remedial actions, specifically the revocation of the employment contracts of the three implicated senior officials, will be implemented before the review application in Part B can be heard. Counsel for the applicants submitted that the revocation of employment contracts is not susceptible to redress through ordinary labour law remedies. The only applicable mechanism under the Labour Relations Act in the context of an organ of state's employment decisions is a self-review under s 158(1)(h), which would require the Municipality itself to review the very decision it is implementing, a manifestly inadequate remedy.

[18] The MEC submits that the matter is not urgent. Reliance was placed on *Matamela Enterprise CC v George Municipality & 4 Others*<sup>6</sup> and *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*<sup>7</sup> for the applicable test. The sole basis for urgency, counsel submitted, is contained in paragraph 33 of the founding affidavit, which asserts only that the implicated applicants “*might*” and not “*will*” suffer revocation of their contracts of employment should the Mayor and Speaker implement the recommendations. This is conditional and remote. The Municipal Council has taken no resolution to implement the MEC's recommendations; indeed, on the applicants' own version, the Council disagrees with the Report. The application is accordingly premature.

[19] The applicable test is well established. Rule 6(12) of the Uniform Rules of Court requires an applicant to set forth explicitly the circumstances that render

---

<sup>6</sup> *Matamela Enterprise CC v George Municipality & 4 Others* (Case No 24-146973) (unreported, ZAWCHC).

<sup>7</sup> *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011).

the matter urgent and the reasons why substantial redress cannot be obtained at a hearing in due course. As the court held in *East Rock*, the decisive question is whether the applicant will be afforded substantial redress in an application in due course. The absence of substantial redress is not equivalent to the irreparable harm required for an interim interdict; it is something less. Delay in instituting proceedings is not on its own a ground for refusing to characterise a matter as urgent, but must be considered with an explanation and assessed against the question of substantial redress.

[20] The Report was transmitted to the Municipality on 20 April 2026, and the application was instituted in early May 2026. That interval is not insignificant in urgent proceedings. However, I accept the applicants' explanation that the Council first considered the Report on 21 April 2026 and that the process of briefing counsel and preparing papers required a short period. More fundamentally, the alleged harm remains conditional. The MEC's remedial measures will take effect only if the Full Municipal Council resolves to implement them, and on the applicants' own version, the Council disagrees with the Report. There is no evidence that a council meeting has been convened for the purpose of implementing the recommendations or that disciplinary proceedings are imminent.

[21] I accept that the MEC's correspondence, the HOD's letter of 19 March 2026, and the MEC's letter of 20 April 2026 are directive in character and reflect an intention to have the Report's recommendations implemented. The MEC has, in that sense, taken a decision. The applicants' concern about the tempo of implementation is therefore not without foundation. However, urgency cannot rest on conjectural future harm. By the time the application was argued on 22 May 2026, there was no evidence that the Municipality had submitted an implementation plan, instituted disciplinary processes, or revoked any employment contracts. The apprehension of harm remains hypothetical.

[22] That said, because urgency and the merits often overlap in interim interdict proceedings, I proceed to consider the application on its merits rather than striking the matter for lack of urgency.

### **THE APPLICABLE LEGAL PRINCIPLES**

[23] The requirements for an interim interdict are well established and were not in dispute. As formulated in *Setlogelo v Setlogelo*<sup>8</sup> and developed in subsequent authority. They are, a *prima facie* right, though open to some doubt; a well-grounded apprehension of irreparable harm if interim relief is not granted; a balance of convenience favouring the grant of the interdict; and the absence of an adequate alternative remedy. These requirements must be considered conjunctively and not in isolation, so that strength in one may compensate for relative weakness in another.

[24] The applicants placed reliance on *Air France-KLM SA and Another v SAA Technical SOC Ltd and Others*<sup>9</sup> for the formulation of these requirements and on *National Treasury v Opposition to Urban Tolling Alliance*<sup>10</sup> (“OUTA”) for the considerations applicable when interim relief is sought against the exercise of a public power. In OUTA, the Constitutional Court held that courts must carefully consider the probable impact of any restraining order on the constitutional and statutory powers and duties of the relevant organ of state.

[25] Counsel for the MEC submitted that OUTA in effect elevates the threshold in cases involving public power from a *prima facie* right to something closer to a clear right, given the separation of powers implications attending judicial restraint of statutory executive functions. A court should be slow to interfere with the constitutional and statutory functions of a provincial executive member unless it

---

<sup>8</sup> *Setlogelo v Setlogelo* 1914 AD 221.

<sup>9</sup> *Air France-KLM SA and Another v SAA Technical SOC Ltd and Others* [2016] ZAGPPHC 877 (3 September 2016).

<sup>10</sup> *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC).

is entirely persuaded that a clear case for relief exists. I deal with this submission in the analysis that follows.

### **A PRIMA FACIE RIGHT**

[26] The applicants contend that they have a *prima facie* right to procedurally fair administrative action. Their primary ground is that the Second Respondent failed to comply with the *audi alteram partem* principle, making adverse findings against the Municipality and implicated persons without affording them an adequate opportunity to be heard. In support of this ground, the applicants rely on *Masetlha v President of the Republic of South Africa*<sup>11</sup> and *Malan v City of Cape Town*<sup>12</sup> in which the Constitutional Court endorsed the formulation in *Traub* that when a statute empowers a public official or body to give a decision prejudicially affecting an individual in their liberty, property, or existing rights, that individual has a right to be heard before the decision is taken, unless the statute expressly or by implication indicates the contrary.

[27] More particularly, the applicants submit that the procedural defects are as follows. First, only one implicated person, Mr Mohali, received a letter setting out specific allegations against him and inviting a response. No equivalent individualised communication was directed to any other implicated official or councillor. Secondly, the letter directed to councillors was a generic communication, described in oral argument as a “*come one come all*” invitation, which did not identify specific allegations against the recipients and was not accompanied by the Report. Thirdly, the meeting scheduled for 3 December 2025 to engage councillors was attended by no one, because councillors had been committed elsewhere by the Deputy Minister on that day. The Report was accordingly finalised without any engagement with the affected parties. Counsel also relied on *Chairman, Board of Tariffs and Trade v Branco Incorporated (Pty)*

---

<sup>11</sup> *Masetlha v President of the Republic of South Africa* 2008 (1) SA 566 (CC), paras 74–75.

<sup>12</sup> *Malan v City of Cape Town* 2014 (6) SA 215 (CC), para 135.

*Ltd and Others*<sup>13</sup> for the proposition that in assessing what fairness requires, careful regard must be had to the scope of the proceedings, the source of jurisdiction, and the objective of the inquiry.

[28] The applicants further submitted that the Second Respondent failed to utilise the procedural tools made available by s 106(2) of the Systems Act, which imports the provisions of the Commissions Act 8 of 1947,<sup>14</sup> including the powers to summon witnesses, receive evidence under oath, and compel the production of documents. Instead, the Second Respondent merely requested documents from officials, and when those documents were not produced, proceeded to finalise and submit the Report without further process.

[29] The MEC disputes that the *audi alteram partem* principle was violated. It is contended that the applicants themselves deliberately elected not to cooperate with the investigation, thereby precluding themselves from relying on its procedural shortcomings. Counsel submitted, with some force, that it cannot be open to a party to obstruct an investigation and then assert non-compliance with the *audi* principle as a ground of review. The Report is, at best, a recommendation to the Municipal Council, not a binding instruction. The Municipal Council retains the prerogative to accept or decline the recommendations. The Council was not even cited as a respondent in these proceedings, yet it is the Council in which the ultimate decision-making authority vests.

[30] The applicants responded that the municipality and its council are not separate legal entities; the municipality acts through its council as a single juridical entity. Reliance was placed on *Nelson Mandela Bay Municipality v GABA*,<sup>15</sup> where the Supreme Court of Appeal confirmed that the Constitution does not clothe a municipal council with separate legal personality from the

---

<sup>13</sup> *Chairman, Board of Tariffs and Trade v Branco Incorporated (Pty) Ltd and Others* 2001 (4) SA 511 (SCA), para 14.

<sup>14</sup> Commissions Act 8 of 1947.

<sup>15</sup> *Nelson Mandela Bay Municipality and Others v GABA* 2022 (3) SA 239 (SCA).

municipality of which it is a component; a municipality acts and performs its functions through the agency of its council.

***The nature of a section 106 investigation: What Matzikama paras 13–24 establish***

[31] Against the parties' submissions on the *audi* question, it is necessary to consider carefully what the SCA said in *Matzikama* about the nature and purpose of s 106 investigations. In that case, the SCA was required to determine whether s 106(1) empowers an MEC to appoint an investigation into criminal conduct other than fraud or corruption. In addressing that question, the Court examined the constitutional and statutory architecture of s 106 in paragraphs 13 to 24 of the judgment, and its analysis illuminates the character of the s 106 mechanism and, by extension, the novelty of the *audi* question that the applicants seek to raise.

[32] What is conspicuous in paragraphs 13 to 24 of *Matzikama* is precisely what the SCA did not address. The Court was concerned with the *scope* of the s 106 power, what the MEC may investigate. It was not called upon to consider, and did not consider, the *process* requirements during the conduct of such an investigation. The following questions, all directly implicated by the applicants' challenge in the present case, were neither raised nor resolved in *Matzikama*. Whether the *audi alteram partem* principle applies during the fact-gathering phase of a section 106 investigation; at what stage of the investigative process, if at all, the principle is engaged; what content the principle bears in a mechanism described as investigative and monitoring in character rather than adjudicative; whether the procedural architecture of the Commissions Act, incorporated by s 106(2) of the Systems Act, displaces, supplements or co-exists with any common law or constitutional fairness requirements; and what the consequence of procedural non-compliance would be for the validity of the report and any remedial action flowing from it.

[33] This brings into focus the genuinely novel character of the *audi alteram partem* question as raised by the applicants. The applicants assert that s 106 investigations attract the *audi* principle at the fact-finding stage, before findings are made and before the MEC transmits the report to the municipality. The MEC disputes this on the basis that the investigation was not adjudicative, and separately on the basis that the applicants' own failure to cooperate disentitles them from invoking the principle. Neither position is supported by binding authority specifically in the s 106 context. *Matzikama* paras 13 to 24 characterise what section 106 is, a monitoring and accountability mechanism, investigative rather than adjudicative in character, but that characterisation neither resolves nor forecloses the *audi* question. Indeed, the investigative character of s 106 might be said to cut in either direction. It may support the conclusion that full *audi* obligations of the kind associated with adjudicative proceedings do not apply; or it may support the conclusion that some attenuated form of participation is required before adverse findings affecting employment and reputational interests are made. The answer to that question, and its consequences for the validity of the Report and the remedial actions, requires a full factual record, properly developed legal arguments, and careful analysis. It is an issue best ventilated in Part B.

[34] For present purposes, I accept that the applicants raise an arguable *prima facie* right. The novelty of the *audi* question in the s 106 context is itself a reason for caution at the interim stage. Where the asserted rights rest on an unresolved legal question of this kind, it is difficult to characterise the *prima facie* right as sufficiently established and weighty to justify judicial displacement of an ongoing statutory provincial oversight process. The applicants have not met the threshold.

### **IRREPARABLE HARM**

[35] The applicants contend that irreparable harm will materialise in the following respects. If the remedial actions are implemented, the employment

contracts of three senior officials will be revoked; that reputational and employment prejudice cannot be restored by any later success in Part B; and there is no adequate labour law remedy for revocation of employment contracts, since s 158(1)(h) of the Labour Relations Act provides only for self-review by the municipality, an inadequate remedy where the municipality is simultaneously the implementing party.

[36] The MEC submits that no immediate irreparable harm has been established. There is no evidence before this Court that the Municipal Council has resolved, or is imminently likely to resolve, to implement the MEC's recommendations. The harm is contingent on a chain of future events. A council meeting, a resolution, and an act of implementation. None of these has occurred or been shown to be imminent. Even if implementation steps were initiated, the contemplated disciplinary processes are themselves regulated, and the decisions arising from them are reviewable.

[37] The applicants' apprehension of harm is understandable given the directive character of the MEC's correspondence. However, an interim interdict requires a well-grounded apprehension of irreparable harm, not a reasonable anxiety about future contingencies. The harm asserted remains conditional on the municipal council taking a decision that it has not yet taken and, on the applicants' own account, is unlikely to take given the council's apparent disagreement with the Report. The alleged harm has not crystallised into imminent and irreversible prejudice. The applicants have accordingly failed to establish irreparable harm of the required kind.

### **BALANCE OF CONVENIENCE**

[38] The applicants submit that the balance of convenience strongly favours granting the interim interdict. They argue that the MEC will suffer no harm if the interdict is granted. The Report has been finalised and the MEC retains all his other regulatory and oversight options under s 106, including the ability to request

further reports, engage the municipality, and obtain a seconded official. By contrast, if the interdict is refused and the employment contracts are revoked before Part B is heard, the harm to the implicated officials will be irreversible.

[39] The MEC submits that the balance of convenience favours the MEC. The MEC is constitutionally and statutorily duty-bound to intervene in instances of maladministration and corruption in municipalities. The public interest, and in particular the interest of the residents of the North West Province in accountable local government, requires the MEC to exercise this oversight function. An interim restraining order at this stage would impede a constitutionally grounded mechanism and run contrary to the cooperative governance framework under Chapter 3 of the Constitution.

[40] The balance of convenience does not favour the applicants. Provincial oversight over municipalities is constitutionally significant. Courts must be circumspect before interfering with statutory oversight mechanisms at an interim stage, particularly where the harm alleged is contingent and adequate alternative remedies are available. As the Constitutional Court emphasised in *OUTA*, courts must carefully assess the probable impact of any restraining order on the constitutional and statutory functions of the relevant organ of state. The characterisation in *Matzika* of s 106 as a mechanism for monitoring, strengthening and ensuring accountability in local government reinforces this caution. To suspend the Report and its implementation before the merits of the review are ventilated would risk judicial overreach in circumstances where the harm the interdict is designed to prevent has not yet materialised and may not materialise at all, on the applicants' own papers.

### **ALTERNATIVE REMEDY**

[41] The applicants contend that there is no adequate alternative remedy. The revocation of employment contracts is not susceptible to reversal through ordinary labour law processes, since s 158(1)(h) of the Labour Relations Act, the

only applicable mechanism for an organ of state's employment decisions, requires self-review by the Municipality itself, which is the same party implementing the remedial action. Any success in Part B after implementation will be "vacuous".

[42] The MEC responds that the applicants have a range of adequate alternative remedies available to them. If and when the Municipal Council resolves to implement the MEC's recommendations, that council resolution is itself susceptible to review. If disciplinary proceedings are instituted, those proceedings are regulated, and their outcomes are independently reviewable. Should implementation steps create an imminent threat, targeted interim relief may be sought at that stage. The Part B review application remains available and constitutes an adequate interim alternative.

[43] The applicants have not established the absence of an adequate alternative remedy. Part B remains available and constitutes the appropriate forum for the ventilation of the review grounds raised, including, importantly, the novel *audi alteram partem* question in the s 106 context identified above. The applicants retain adequate remedies and have not demonstrated that those remedies are inadequate to protect their interests.

## **CONCLUSION**

[44] The applicants have raised issues deserving judicial consideration in Part B. However, Part A requires more than an arguable grievance. It requires exceptional justification for urgent interim judicial interference with statutory provincial oversight. The applicants have not established a *prima facie* right of requisite weight, a well-grounded apprehension of irreparable harm, a balance of convenience in their favour, or the absence of adequate alternative remedies. In particular, the central *audi alteram partem* question, whether and to what extent that principle operates during the conduct of a section 106 investigation, is a novel issue unaddressed by the existing authorities, including *Matzikama* paras 13 to

24, and is best determined in Part B upon a full record and properly developed arguments. The cumulative failure to meet the requirements for an interim interdict, viewed in light of the OUTA principle requiring circumspection when a court is asked to restrain the exercise of a constitutional and statutory oversight function, is fatal to Part A of the application.

**ORDER**

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

1. The application in Part A is dismissed.
2. Costs are reserved for determination in Part B. If the applicants fail to prosecute Part B of the application, the First Respondent may apply to the Registrar of this Court, on notice to the Applicants, for a date for consideration of the costs of this application.



---

**ACTING DEPUTY JUDGE PRESIDENT  
NORTH WEST DIVISION, MAHIKENG**

**Appearances:**

For the Applicants: Adv M Moeletsi  
Instructed by: Fihla and Associates, Mafikeng

For the First Respondent: Adv HJ Scholtz  
Instructed by: The State Attorney, Mafikeng