



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

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

SIGNATURE

DATE: 11 June 2026

Case No. 2026-113853

In the matter between:

MOTSUMI MATHE

Applicant

and

SEDIBENG DISTRICT MUNICIPALITY

First Respondent

**EXECUTIVE MAYOR,
SEDIBENG DISTRICT MUNICIPALITY**

Second Respondent

**MEC: GAUTENG DEPARTMENT OF COOPERATIVE
GOVERNANCE AND TRADITIONAL AFFAIRS**

Third Respondent

**ACTING MUNICIPAL MANAGER,
SEDIBENG DISTRICT MUNICIPALITY**

Fourth Respondent

JUDGMENT

WILSON J:

- 1 The Local Government: Disciplinary Regulations for Senior Managers, 2011 were adopted under section 120 of the Municipal Systems Act 32 of 2000. Regulation 6 (1) of those Regulations sets out the conditions under which a

municipal council may place any of its senior managers on precautionary suspension. As the regulation makes clear, a mere suspicion of misconduct is insufficient to suspend a senior manager. A municipal council must, in addition, have reason to believe that the relevant senior manager's continued presence at the workplace may jeopardise any investigation into the alleged misconduct; may endanger the well-being or safety of any person or municipal property; may be detrimental to stability in the municipality; or that the senior manager may interfere with potential witnesses or commit further acts of misconduct. These are jurisdictional requirements, in the sense that a senior manager may not be suspended unless at least one of them is present. A suspension in their absence is invalid.

2 Regulation 6 (2) provides further that “[b]efore a senior manager may be suspended, he or she must be given an opportunity to make a written representation to the municipal council why he or she should not be suspended, within seven (7) days of being notified of the council's decision to suspend him or her.” Read purposively, the regulation clearly envisages that the senior manager concerned will be provided not merely with a precis of the misconduct alleged against them, but also with the reasons why the municipal council has reason to believe that any of the jurisdictional requirements set out in regulation 6 (1) have been met.

3 The applicant, Mr. Mathe, is the municipal manager of the first respondent, Sedibeng Municipality. He was placed on precautionary suspension after the municipality decided that he may have misconducted himself in relation to a disciplinary process instituted against Sedibeng's chief financial officer, and in

the context of related litigation instituted against the municipality in this court. The details of the misconduct alleged are not important, save insofar as to observe that they are not inherently of the nature that leads to the reasonable suspicion that any of the regulation 6 (1) requirements have been met.

4 Before Sedibeng placed Mr. Mathe on precautionary suspension, it gave him notice of its intention to do so, and invited representations. It did not, however, identify any basis on which it asserted that any of the regulation 6 (1) requirements had been met. Mr. Mathe took the opportunity to make representations, in which he addressed the substantive allegations of misconduct against him at some length. He did not, however, address whether Sedibeng had the right to suspend him under regulation 6 (1).

5 Mr. Mathe's representations notwithstanding, Sedibeng's municipal council resolved, on 12 May 2026, to place Mr. Mathe on precautionary suspension for a period not exceeding 90 days. The relevant council resolution specifically notes that "the Municipal Manager fails to respond to the allegations brought against him as to why he should not be placed on precautionary suspension save for placing on record counter allegations". That absence, it seems to me, must be taken as critical to the municipal council's decision to suspend Mr. Mathe.

6 Mr. Mathe now applies to me to set aside his suspension on the basis that he was given no opportunity to be heard on Sedibeng's reasons for believing that the requirements set out in regulation 6 (1) were met. He argues that his failure to respond to those unidentified reasons was material to the decision to suspend him; that the failure to specifically identify those reasons rendered

his right to be heard nugatory; and accordingly that this failure vitiated the suspension itself.

7 In my view, Mr. Mathe is plainly correct. The regulations afford Mr. Mathe a right to remain in post pending disciplinary proceedings taken against him unless the regulation 6 (1) requirements are met and he has been given a reasonable opportunity to respond to the facts upon which a municipal council believes that they have been met. In this case, there is nothing on the record that indicates either that Sedibeng identified the facts on which it believed the regulation 6 (1) requirements had been met, or that it invited Mr. Mathe to be heard in relation to them. For that reason alone, Sedibeng's subsequent resolution was taken in breach of the statutorily prescribed conditions expressly placed on the exercise of its power to suspend Mr. Mathe, and accordingly in breach of the principle of legality enshrined in section 1 (c) of the Constitution.

8 Ms. Manganye, who appeared for Sedibeng, accepted the facts I have set out, but argued that regulations 6 (1) and (2) had substantially been complied with. I do not see how. Substantial compliance would have entailed the proposition either that the allegations of misconduct themselves were sufficient on their face to fulfil the regulation 6 (1) requirements, or that, notwithstanding Sedibeng's failure to advert to its reasons to believe that those requirements had been met in its notice of suspension, those reasons had, on the facts, been present to Mr. Mathe's mind when he made his representations. Ms. Manganye identified no facts that could be marshalled in support of either of those propositions. None appear from the record.

9 It was further submitted that this application is not urgent. But the clear illegality I have identified, together with the fact that the precautionary suspension Mr Mathe challenges will long-since have expired when this matter comes to be heard in the ordinary course, are sufficient to dispose of that contention. Ms. Manganye also argued that Mr. Mathe's reliance on the Promotion of Administrative Justice Act 2 of 2000 ("PAJA") precluded a successful challenge to a municipal council resolution. It is true that Sedibeng's resolution is not subject to PAJA review, but Mr. Mathe also relied upon section 1 (c) of the Constitution, under which the resolution may plainly be challenged. And it is the glaring illegality that I have identified which falls foul of the principle of legality section 1 (c) entrenches.

10 It was finally argued that the decision of the Constitutional Court in *Long v South African Breweries (Pty) Ltd* (2019) 40 ILJ 965 (CC) disentitles Mr. Mathe to any relief. But that cannot be. *Long* confirms that where there is no specific right to a hearing before a precautionary suspension is imposed, the absence of such a hearing does not in itself render the suspension unfair under the Labour Relations Act 66 of 1995, so long as the precautionary suspension is otherwise fairly imposed (see *Long*, paragraphs 24 and 25). This case is different. Not only was Mr. Mathe statutorily entitled to make pre-suspension representations under the Regulations, those representations could only be meaningful once the municipal council had reason to believe that any one of the requirements set out in regulation 6 (1) had been met, and its reasons for so believing had been communicated to Mr. Mathe. Here, none of that happened.

11 Mr. Mathe seeks interim relief setting aside his suspension pending a review in the ordinary course. Mr. Scholtz, who appeared for Mr. Mathe, accepted that, insofar as he seeks the setting aside of his suspension, Mr. Mathe in fact asks for a final order. That order is plainly justified. It goes without saying that my order does not preclude Sedibeng from identifying any facts on which it considers that the requirements set out in regulation 6 (1) have been met, from hearing Mr. Mathe in relation to those facts, and from suspending him once it has seriously considered Mr. Mathe's representations. The purpose of my order is not to prejudge Mr. Mathe's case, but to ensure that it is dealt with according to law.

12 Mr. Scholtz submitted that the illegality in this case is so brazen as to justify a costs order as between attorney and client. I agree, and it will be so ordered.

13 For all these reasons –

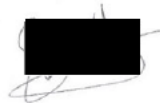
13.1 The applicant's non-compliance with the requirements prescribed by the Uniform Rules of Court pertaining to form, process, service and time periods is condoned, and this application is heard as one of urgency in terms of rule 6 (12).

13.2 The resolution taken by the first respondent's council on 12 May 2026 to place the applicant on precautionary suspension is constitutionally invalid, and is set aside.

13.3 The first, second and fourth respondents are ordered forthwith to allow the applicant to resume his duties as municipal manager, and to comply with the Local Government: Disciplinary Regulations for

Senior Managers, 2011, made under section 120 of the Municipal Systems Act 32 of 2000, when taking any further steps against the applicant.

- 13.4 The first respondent is pay the costs of this application on the scale as between attorney and client.



S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 11 June 2026.

HEARD ON: 9 June 2026

DECIDED ON: 11 June 2026

For the Applicant: WP Scholtz
Instructed by Scholtz Attorneys Inc

For the First, Second
and Fourth Respondents: MS Manganye
Instructed by GMI Attorneys Inc