



CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 34/26

In the matter between:

THABANG MOTJAMELA

Applicant

and

GEORGE LOCAL MUNICIPALITY

Respondent

Neutral citation: *Motjamela v George Local Municipality* [2026] ZACC 31

Coram: Mhlantla ADCJ, Dambuza J, Kollapen J, Majiedt J, Mathopo J, Nuku AJ, Rogers J and Tshiqi J.

Judgment: Dambuza J (unanimous)

Prior order on: 28 May 2026

Decided on: 7 July 2026

Summary: Vexatious litigant — development of the common law — mental health assessment order — right to dignity — right to freedom and security of person — right to privacy — inherent jurisdiction to protect court processes

ORDER

On direct appeal from the High Court of South Africa, Eastern Circuit Local Division, Thembalethu (High Court):

1. Leave to appeal directly to this Court against part of the order of the High Court in *George Local Municipality v Motjamela* (267/25) [2025] ZAWCHC 473 is granted.
2. Leave to cross-appeal directly to this Court against part of the order of the High Court in *George Local Municipality v Motjamela* (267/25) [2025] ZAWCHC 473 is granted.
3. The appeal is upheld in part.
4. The cross-appeal is upheld in part.
5. Paragraphs (a) to (c) of the order of the High Court in *George Local Municipality v Motjamela* (267/25) [2025] ZAWCHC 473 are set aside and substituted with the following:
 - “(a) The respondent may not institute any legal proceedings in any court or any inferior court against the applicant in relation to his terminated employment contracts under the Expanded Public Works Programme without the leave of that court, or any judge thereof, or that inferior court, as the case may be.
 - (b) The Registrar of the High Court, Eastern Circuit Local Division, Thembalethu is directed to transmit a copy of this order to the Registrar of the Labour Court and also to cause it to be published in the *Government Gazette*. The applicant is to cover the costs of such publication, and may recover half of such costs from the respondent if the applicant so elects.
 - (c) Should the respondent continue to make, utter, publish and distribute disparaging or defamatory statements alleging violations of his basic human and fundamental rights, fraud, exploitation, racism and discrimination by the applicant and/or its employees, court administrative support staff at any court or any judge of any court or presiding officer in any inferior court, the applicant is

granted leave to approach this court, on the same papers duly supplemented, in order to seek appropriate relief.”

6. The Registrar of this Court is directed not to accept any further applications from the applicant in respect of matters relating to the applicant’s employment under the Expanded Public Works Programme contracts and matters arising from this order in which rescission, direct access or leave to pursue a direct appeal is sought.
7. Each party shall bear its own costs.

JUDGMENT

DAMBUZA J (Mhlantla ADCJ, Kollapen J, Majiedt J, Mathopo J, Nuku AJ, Rogers J and Tshiqi J concurring):

Introduction

[1] On 28 May 2026, this Court issued an order granting direct leave to appeal in relation to two orders of the High Court of South Africa, Eastern Circuit Local Division, Thembaletu (High Court). Paragraph 4 of that order stated that reasons and further orders in this matter would follow in due course. These are the reasons and further orders.

[2] The applicant, Thabang Motjamela, seeks leave to appeal directly to this Court against three orders of the High Court. That Court barred him from initiating legal proceedings without leave, on the basis that he was a vexatious litigant (vexatious litigant order). The High Court also issued an interim and final order that Mr Motjamela submit himself for a mental health assessment at George Hospital, George, in the Western Cape before initiating any further applications in that Court or any other court of similar or inferior court status (mental health assessment order). The application to

appeal directly to this Court is opposed by the respondent, the George Local Municipality (Local Municipality).

Background facts

[3] Mr Motjamela is an indigent, unemployed, self-represented litigant. In 2018, he was employed under the Expanded Public Works Programme by the Local Municipality for two fixed terms of approximately five months each. The second contract expired in December 2018. Mr Motjamela and several other employees under Expanded Public Works Programme contracts (public works contracts) lodged a dispute with the South African Local Government Bargaining Council (Bargaining Council) seeking a ruling that the Local Municipality employ them permanently. The presiding Commissioner in those proceedings dismissed the claim in November 2019 on the basis that their contracts had been temporary. Mr Motjamela then approached the Commission for Conciliation, Mediation and Arbitration (CCMA) seeking the same result and arguing that he had been unfairly excluded from a subsequent hiring process by the Local Municipality. The CCMA found the case to be without merit, and the Commissioner took the view that Mr Motjamela's referral was vexatious.

Litigation history

[4] Mr Motjamela launched review applications in the Labour Court of South Africa, Cape Town, challenging both the Bargaining Council and CCMA decisions. However, as he failed to provide transcripts for the CCMA hearing from 2021 to 2024, the Labour Court found that his CCMA review had lapsed. The Bargaining Council review was dismissed on 13 December 2023. Mr Motjamela then filed an application for leave to appeal to the Labour Appeal Court, which was dismissed on 12 February 2024. He then petitioned the Labour Appeal Court directly. That application was dismissed on 2 April 2024.

[5] Mr Motjamela's first application to this Court for leave to appeal the decisions of the Labour Court and Labour Appeal Court was dismissed on 16 July 2024 for lack

of prospects of success. He then attempted to have the Local Municipality criminally prosecuted for fraud in the High Court of South Africa, Western Cape Division, Cape Town, but was advised by the Registrar that criminal charges may not be entertained on civil court rolls. He then attempted to lay charges of fraud against the Local Municipality with the South African Police Service, which the National Prosecuting Authority ultimately declined to pursue due to insufficient evidence. Mr Motjamela then launched a further review of the Labour Court's dismissal of his application relating to the CCMA decision, seeking to have the matter reinstated and the rule requiring the filing of transcripts suspended. That application was dismissed on 28 November 2024.

[6] This was followed by Mr Motjamela's urgent High Court application against the Local Municipality seeking an order of reinstatement, compensation and damages. That application was dismissed on 2 May 2025. An attempt to launch a petition to the Supreme Court of Appeal failed due to Mr Motjamela filing the application for leave to appeal by way of email, contrary to the rules of that Court.

[7] The Local Municipality approached the High Court seeking an order that Mr Motjamela be declared a vexatious litigant, as well as an interdict preventing him from making defamatory public accusations of fraud and discrimination against it. On 20 October 2025, the High Court granted an order barring Mr Motjamela from instituting legal proceedings against any person in any court or inferior court without the leave of that court.¹ The order also permitted the Local Municipality to seek additional relief to the effect that, if Mr Motjamela continued to make defamatory statements about the Local Municipality, it could seek further relief, including a court-ordered inquiry into Mr Motjamela's mental health.²

¹ *George Local Municipality v Motjamela* [2025] ZAWCHC 473 (*Motjamela I*) at para (a) of the order.

² *Id* at para (c) of the order.

[8] Mr Motjamela filed an application for leave to appeal the order of 20 October 2025 and a further application for the recusal of the presiding High Court Judge, Thulare J, from presiding over the leave to appeal proceedings. Mr Motjamela alleged bias and discrimination on the part of the Judge, based on an interaction between himself and the Judge on 1 September 2025, when Mr Motjamela attempted to enter the High Court without submitting to a security check during a protest outside the courthouse. This interaction occurred after the Local Municipality's application for the vexatious litigant order had been heard, but before judgment was handed down. The Local Municipality opposed both of Mr Motjamela's applications.

[9] On 3 November 2025, the High Court delivered a judgment suspending the applications for leave to appeal and recusal, pending Mr Motjamela submitting himself for a mental health assessment within 10 days of the date of the order.³ As part of the order, the Court recorded that it appeared that Mr Motjamela was, "by reason of mental illness or intellectual disability not capable of understanding the proceedings to make a proper case".⁴ Mr Motjamela did not submit himself for this assessment. On 20 January 2026, the High Court issued a final order dismissing Mr Motjamela's suspended applications for leave to appeal and recusal, and barring him from filing any new applications or re-enrolling the dismissed applications unless accompanied by a report on his mental health.⁵ The dismissal of the suspended application for leave to appeal resulted in the vexatious litigant order coming into force.

[10] On 21 January 2026, Mr Motjamela filed an application for leave to appeal with the Supreme Court of Appeal via email. As with the previous application, this application has not proceeded as it did not comply with that Court's rules requiring filing in person, by post or by courier.

³ *Motjamela v George Local Municipality* [2025] ZAWCHC 510 (*Motjamela II*) at paras (a) and (d) of the order.

⁴ *Id* at para (b) of the order.

⁵ *Motjamela v George Local Municipality* [2026] ZAWCHC 9 (*Motjamela III*) at paras 1 and 2 of the order.

In this Court

Applicant's submissions

Jurisdiction and leave for direct appeal

[11] Mr Motjamela submits that the Court's constitutional jurisdiction is engaged because the High Court's vexatious litigant order, coupled with the refusal of the Supreme Court of Appeal to allow him to file the application for leave to appeal electronically, have constructively barred his access to the courts, in violation of his rights under section 34 of the Constitution. In addition, he argues that the mental health assessment orders are unlawful and infringe his right to dignity under section 10 of the Constitution, his section 12 right to freedom and security of the person, and his section 14 right to privacy. He contends that it also contributes to the constructive denial of his access to the courts by setting an unconstitutional condition precedent for his ability to file any new application in the High Court or Labour Court. He also contends that it is in the interests of justice to grant leave to appeal, as the issues raised are of importance to indigent litigants, deciding them is in the public interest and there are good prospects of success.

Merits

[12] With regard to the merits of his challenge to the vexatious litigant order, Mr Motjamela submits that the matter was *res judicata* (a matter already decided) because of a prior decision by the High Court in a matter between himself and the Garden Route District Municipality (District Municipality), in which the Court declined to grant the requested vexatious litigant order.⁶ He further contends that the vexatious litigant order in the current matter is "overbroad, indefinite and imposed without consideration of less restrictive means", as it prevents him from filing any claim against any person, not just against the Local Municipality. He highlights that the mental health assessment order was never sought by the Local Municipality, and was not based on

⁶ *Garden Route District Municipality v Motjamela*, unreported decision of the Western Cape High Court, Thembalethu, Case No 529/24 (11 December 2024) (*Garden Route District Municipality*).

any expert evidence. He further alleges bias and discrimination on the part of the Judge, arising from their interaction on 1 September 2025.

[13] Regarding his attempt to petition the Supreme Court of Appeal, Mr Motjamela asserts that he is an indigent, self-represented litigant who cannot afford to deliver his application in person or by mail. He states that approximately 15 of his cases before various courts in the country have been blocked as a result of the vexatious litigant order, and that the refusal of the Supreme Court of Appeal to process his emailed application has severely prejudiced his right of access to courts.

Respondent's submissions

Jurisdiction and leave to appeal

[14] The Local Municipality argues that Mr Motjamela has not raised any issue engaging this Court's constitutional or general jurisdiction, and that this is a further incident of vexatious litigation on his part.

Merits

[15] The Local Municipality argues that Mr Motjamela's refusal to comply with the Supreme Court of Appeal's filing rules due to his alleged indigence is not a valid basis for granting leave to appeal directly to this Court. It contends that it is not in the interests of justice to grant leave to appeal as there are little prospects of success on appeal. The argument is that this application is part of Mr Motjamela's baseless litigation relating to the two public works contracts, which the vexatious litigant order is aimed at preventing. Vexatious litigant declarators do not unjustifiably limit a party's section 34 rights, the Local Municipality argues. In addition, it contends that Mr Motjamela has not made out a proper case for intervention by this Court based on the other rights that he has referred to. Regarding the legality of the mental health assessment order, the Local Municipality submits that the High Court appropriately exercised its discretionary powers under section 173 of the Constitution.

[16] The Local Municipality contends that if this application is set down, it must be granted leave to cross-appeal the High Court order to limit the scope of the vexatious litigant order to litigation brought against the Local Municipality (as opposed to “any person”), as it had requested in its original application to the High Court. It further seeks a costs order against Mr Motjamela if his application is unsuccessful, because it cannot continue to spend public funds litigating this matter.

Analysis

Jurisdiction

[17] The unsolicited mental health assessment order implicates Mr Motjamela’s rights to dignity, physical and psychological integrity and privacy, which are protected under sections 10, 12 and 14 of the Constitution, respectively. In addition, the vexatious litigant order impacts his right of access to courts under section 34 of the Constitution. Therefore, the constitutional jurisdiction of this Court is engaged.

Merits

Vexatious litigant order

[18] With regard to the merits of the application, Mr Motjamela has not demonstrated that the order in *Garden Route District Municipality* renders this matter *res judicata*. As Khampepe J stated in *Ascendis*:⁷

“The requirements of *res judicata*, although trite, can be summed up as follows: (i) there must be a previous judgment by a competent court (ii) between the same parties (iii) based on the same cause of action, and (iv) with respect to the same subject-matter, or thing.”⁸ (Footnote omitted.)

[19] While the High Court’s decision in *Garden Route District Municipality* falls within the same constellation of issues as the current matter – namely, Mr Motjamela’s

⁷ *Ascendis Animal Health (Pty) Ltd v Merck Sharp Dohme Corporation* [2019] ZACC 41; 2020 (1) BCLR 1 (CC); 2020 (1) SA 327 (CC).

⁸ *Id* at para 71.

attempts to secure permanent employment through persistent litigation – the parties in that matter were different from the Local Municipality’s application. So were the causes of action and the specific subjects of the litigation.

[20] A court may declare a person to be a vexatious litigant where the interests of justice require, in particular where such an order is necessary for the effective functioning of the courts or where such an order is necessary to protect innocent parties from the costs, harassment and embarrassment of meritless litigation.⁹ In doing so, courts must consider the litigation history of the matter at hand, and may consider related matters involving the same litigant if such matters are placed before them or come to their attention. They may consider the number of cases lodged by the litigant, the merits and outcomes of such cases and the relationship between these cases and the other parties involved in the matter at hand. What is central are indications that litigation is being abusively employed to achieve a desired outcome through persistence, rather than merit.

[21] However, courts must be cautious not to conflate mere persistence with a lack of merit. Prolific bona fide yet unsuccessful litigation should not be seen as evidence of vexatious litigation. Rather, a court has the discretion to grant a vexatious litigant order, if sought, where the evidence before it indicates a pattern of litigation aimed at “manipulat[ing] the functioning of the courts so as to achieve a purpose other than that for which the courts are designed”,¹⁰ thus abusing the court’s processes and encumbering responding parties.

[22] Regarding the basis of the vexatious litigant order in this case, the High Court highlighted the extensive litigation history of this matter and other related matters before the Labour Court, the Labour Appeal Court and this Court.¹¹ It found that

⁹ *Beinash v Ernst & Young* [1998] ZACC 19; 1999 (2) SA 116 (CC); 1999 (2) BCLR 125 (CC) (*Beinash*) at para 15.

¹⁰ *Id* at para 17.

¹¹ *Motjamela I* above n 1 at para 13.

Mr Motjamela refused to accept that the multiple cases that he had brought against the Local Municipality had no merit.¹² It further noted that he had intimidated opponents, blamed Judges and accused them of bias whenever decisions were made against him and exhibited general disregard for court practice and procedure while hiding behind the fact that he is a self-represented litigant.¹³

[23] Section 2(1)(b) of the Vexatious Proceedings Act¹⁴ (VPA) provides:

“If, on application made by any person against whom legal proceedings have been instituted by any other person or who has reason to believe that the institution of legal proceedings against him is contemplated by any other person, the court is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court, *whether against the same person or against different persons*, the court may, after hearing that person or giving him an opportunity of being heard, order that *no legal proceedings shall be instituted by him against any person in any court or any inferior court without leave of the court, or any judge thereof, or that inferior court, as the case may be*, and such leave shall not be granted unless the court or judge or the inferior court, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is *prima facie* ground for the proceedings.” (Emphasis added.)

[24] The vexatious litigant order issued by the High Court reads, in relevant part:

“No legal proceedings shall be instituted by the respondent against any person in any court or any inferior court without the leave of that court, or any judge thereof, or that inferior court, as the case may be.”¹⁵

[25] The order directly reflects the language of the VPA. This Court upheld the constitutionality of the VPA and an order reflecting its broad language in *Beinash*.¹⁶ A

¹² Id.

¹³ Id.

¹⁴ 3 of 1956.

¹⁵ *Motjamela I* above n 1 at para (a) of the order.

¹⁶ *Beinash* above n 9 at paras 21 and 23.

vexatious litigant order does not, in itself, deny an applicant access to the courts in contravention of section 34 of the Constitution, but rather regulates the conduct of a vexatious litigant in the public interest to prevent further meritless litigation.¹⁷

[26] Mr Motjamela's reliance on the Supreme Court of Appeal's decision in *Wixley*¹⁸ for the proposition that vexatious litigant orders are exceptional and must be narrowly tailored and proportionate is misguided. In *Wixley*, the Supreme Court of Appeal, while considering the basis for striking-out scandalous, vexatious or irrelevant material from affidavits,¹⁹ condemned abuse of court process and defined such abuse as utilising judicial mechanisms for ulterior motives, oppression or extortion.²⁰ However, Mr Wixley had not sought a vexatious litigant order against Mr Beinash. In that sense, *Wixley* does not assist in the interpretation or application of the VPA.

[27] Nevertheless, while the High Court correctly examined the extensive litigation history relating to the public works contracts, the order it crafted extends beyond these matters. It encompasses any proceeding against any party which Mr Motjamela may wish to bring, regardless of its merit. It does not appear that any evidence of Mr Motjamela litigating abusively in matters unrelated to the public works contracts was put before the High Court. Further, the order that had been sought by the Local Municipality was limited in scope to litigation relating to Mr Motjamela's erstwhile employment with it, as is reflected in its conditional application to cross-appeal before this Court.

[28] Section 2(1)(b) of the VPA affords courts true discretion when crafting orders against vexatious litigants. This Court has rightly warned against appellate courts interfering with the discretionary orders of lower courts, unless such discretion has not

¹⁷ Id at para 19.

¹⁸ *Beinash v Wixley* [1997] ZASCA 32; [1997] 2 All SA 241 (A); 1997 (3) SA 721 (SCA).

¹⁹ Id at 732I-J.

²⁰ Id at 734E-H and 736E-F.

been exercised judicially by the lower court.²¹ In this matter, the order of the High Court went beyond both the relief sought by the Local Municipality and what could be reasonably supported by the evidence before it. The vexatious litigant order should thus be set aside and replaced with an order appropriately tailored to the evidence that was before the High Court.

Mental health assessment order

[29] Apart from the fact that the Local Municipality never sought a mental health assessment order, the basis for the remark made by the High Court that Mr Motjamela appeared to be incapable of understanding the court proceedings because of mental illness or intellectual disability is not apparent from the record. For clarity, the order of the High Court, dated 3 November 2025, reads in relevant part:

- “(a) The application for leave to appeal and the application for recusal are both temporarily suspended and postponed pending the report as envisaged in (b).
- (b) It appears to the court that the applicant is by reason of mental illness or intellectual disability not capable of understanding the proceedings to make a proper case, therefore the court directs that the matter be enquired into and be reported on.
- (c) The enquiry shall be conducted and reported on by the Head of George Hospital or by another psychiatrist delegated by the Head concerned.
- (d) The applicant shall present himself to the Head of George Hospital or to the psychiatrist delegated by the Head, within ten (10) days of this order, for arrangements to be made for the enquiry and report and shall subject himself to all the directions of the Head or his delegatee.
- (e) The Registrar of the Circuit Court, Thembalethu, is directed to provide the Head of George Hospital with a certified copy of the entirety of the court file in these proceedings, as well as a file containing copies of emails which the applicant sent or ccd to her in relation to this matter.

²¹ See, for example, *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd* [2015] ZACC 22; 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC) at para 88.

- (f) The application for leave to appeal and application for recusal are postponed to Tuesday 20 January 2026 for the report.”²²

[30] Our Constitution protects both the physical and psychological integrity of the individual under section 12(2).²³ This Court has held that the stigmatisation and marginalisation of persons suffering from mental illness impinges on not only their section 12 rights, but also on their basic right to dignity under section 10.²⁴ A challenge to an individual’s mental health and legal capacity, particularly one made from the bench in open court, cannot be approached with laxity or carelessness.

[31] The presumption, in our law, that every adult person is mentally well, competent to pursue litigation and legally responsible for their actions until the contrary is proven arises against this background. This presumption undergirds South African criminal and civil law alike. It expresses fundamental tenets of our constitutional order that every person is equal before the law,²⁵ and enjoys inherent dignity and the right to have that dignity respected.²⁶ However, as the High Court correctly noted in this case, this presumption is rebuttable.²⁷ There are numerous circumstances in which this presumption may be rebutted to ensure just and fair treatment to litigants before the courts.

[32] In criminal matters, this commonly arises where it appears to the court that, by reason of mental illness or intellectual disability, an accused at the time of the alleged offence lacked the requisite capacity to appreciate the unlawfulness of their actions and to act accordingly, or lacks the capacity to understand the proceedings in order to make

²² *Motjamela II* above n 3 at paras (a)-(f) of the order.

²³ See, for example, *AB v Minister of Social Development* [2016] ZACC 43; 2017 (3) BCLR 267 (CC); 2017 (3) SA 570 (CC) at para 66.

²⁴ See, for example, *De Vos N.O. v Minister of Justice and Constitutional Development* [2015] ZACC 21; 2015 (2) SACR 217 (CC); 2015 (9) BCLR 1026 (CC) at para 46.

²⁵ Section 9 of the Constitution.

²⁶ Section 10 of the Constitution.

²⁷ *Motjamela I* above n 1 at para 16.

a defence. In such circumstances, their trial and conviction, without recognising and accounting for their mental illness or intellectual disability, would constitute a gross injustice. The court must stay the proceedings and direct that a mental health inquiry be conducted to determine such person's capacity to understand the proceedings and/or criminal responsibility. This procedure is governed by sections 77, 78 and 79 of the Criminal Procedure Act²⁸ (CPA).

[33] In civil proceedings, our legal system has well-established processes for the appointment of a *curator ad litem* (court-appointed representative for legal proceedings) to assist persons lacking legal capacity in cases where persons appear to be unable to prosecute or defend themselves against an action or manage their estate in their own right.²⁹ Such appointments are normally obtained by way of an application to the High Court at the instance of a concerned party such as a family member or caregiver of the incapacitated person. Such a representative may also be appointed by the court under its inherent jurisdiction if deemed necessary to prevent an injustice to a person due to their apparent lack of legal capacity.³⁰ In such instances, the role of the *curator ad litem* is primarily to inquire into the mental health of the person, and to recommend an appropriate course of action to the court, including advising on whether an application should be made to declare that the person lacks legal capacity.³¹

[34] The High Court invoked none of these procedures in this case. Instead, it relied on its inherent jurisdiction under section 173 of the Constitution to import statutory criminal procedure into civil proceedings by developing the common law,³² reasoning thus:

“It would be intolerable and could lead to great uncertainty if Courts could be approached and continue to entertain multiplicity of matters, ranging from voluminous

²⁸ 51 of 1977.

²⁹ Rule 57 of the Uniform Rules of Court.

³⁰ See, for example, *Niekus v Niekus* 1947 (1) SA 309 (C) at 310 (*Niekus*).

³¹ *Id.*

³² *Motjamela II* above n 3 at para 6.

emails to court support staff and almost daily applications instituted by persons whose mental and intellectual disability are in doubt, and Judges in the civil courts could do nothing and actually do nothing about it. The system would be unsustainable. The administration of justice would be in disrepute if legitimate cases could not find available dates expeditiously because Judges were bogged down by cases which did not deserve to be on the rolls in the first place. It is appropriate to exercise inherent power in a situation in which there is a vacuum because legislation and rules regulating a particular situation, like the present, have not been passed . . . Sections 77, 78 and 79 of the [CPA] read with section 27 of the Mental Health Care Act³³ [(MHCA)] and its regulations provide procedures ordinarily followed by the courts in cases where persons appearing before the courts appear to the courts to not be capable of understanding the proceedings so as to make a proper case, and where the court direct[s] that the matter be enquired into and reported on.”³⁴ (Footnote added.)

[35] The Superior Courts Act³⁵ and the MHCA regulate the processes and procedures for mental health assessments in circumstances other than criminal trials. The High Court seems not to have considered these statutes. It did not consider that section 9(1) of the MHCA sets out the circumstances in which health establishments may render mental health care, treatment and rehabilitation services. The section provides:

- “(1) A health care provider, or a health establishment may provide care, treatment or rehabilitation services to or admit a mental care user only if—
- (a) the user has consented to the care, treatment and rehabilitation services or to admission;
 - (b) authorised by a court order or a Review Board; or
 - (c) due to mental illness, any delay in providing care, treatment or rehabilitation services or admission may result in the—
 - (i) death or irreversible harm to the health of the user,
 - (ii) user inflicting harm to himself or herself or others, or

³³ 17 of 2002.

³⁴ *Motjamel II* above n 3 at para 6.

³⁵ 10 of 2013.

- (iii) user causing serious damage to or loss of property belonging to him or her or others.”

[36] Furthermore, section 26 of the MHCA regulates the circumstances in which involuntary mental health care may be provided. The section provides:

- “(1) Subject to section 9(1)(c), a mental health care user may not be provided with assisted care, treatment and rehabilitation services at a health establishment as an outpatient or inpatient without his or her consent, unless—
 - (a) a written application for care, treatment and rehabilitation services is made to the head of the health establishment concerned and he or she approves it; and
 - (b) at the time of making the application—
 - (i) there is reasonable belief that the mental health care user is suffering from a mental illness or severe or profound mental disability, and requires care, treatment and rehabilitation services for his or her health or safety, or for the health and safety of other people; and
 - (ii) the mental health care user is incapable of making an informed decision on the need for the care, treatment and rehabilitation services.”

[37] Section 27(1)(a) of the MHCA provides that “[a]n application . . . may *only* be made by the spouse, next of kin, partner, associate, parent or guardian of a mental health care user”.³⁶ Similarly, rule 57 of the Uniform Rules of Court makes provision for an interested party (often a family member) to bring an application aimed at appointing a legal professional to assist a person who lacks legal capacity due to mental illness, intellectual disability or physical incapacity. The founding affidavit in that application, together with the prescribed medical reports, sets out the basis for the need for the legal assistance sought. In both the MHCA and rule 57, there is no authority provided for the

³⁶ Emphasis added.

court, on its own and without a detailed evidentiary basis, to order a mental health assessment of a party to civil proceedings, nor can such authority be reasonably inferred from section 27 of the MHCA.

[38] I have been able to locate one other mental health assessment order that is similar to the one under consideration, in the matter of *SM*.³⁷ In that judgment, delivered by the same Judge as in this case, the High Court directed that the applicant's family be contacted to begin an application for assisted care under section 27(1)(a)(ii) of the MHCA, and that if the family was unwilling to pursue such an application, the applicant was to present himself for a mental health assessment.³⁸ As with this matter, the order appears to be based solely on the Court's observations relating to the applicant's behaviour.

[39] The anomaly in both mental health assessment orders³⁹ is the absence of an application for assisted care, treatment or rehabilitation detailing the basis for the suspicion that the person concerned is suffering from a mental illness or incapacity as provided in the MHCA or rule 57.

[40] It bears repeating that the Local Municipality never sought the mental health assessment order, nor was such an order supported by any evidence before the High Court. The judgment references persistent emails from Mr Motjamela to court

³⁷ *S v SM* [2021] ZAWCHC 260; 2022 (1) SACR 313 (WCC).

³⁸ *Id* at para 10.

³⁹ For comparison, the order in *SM* *id* reads:

- “1. The Minister of Defence is to trace the relatives of the plaintiff and provide all the necessary assistance for them, if they so elect, to file an application as envisaged in section 27(1)(a)(i) of the [MHCA] before the end of the month of February 2022.
2. The Minister of Defence is to file a report in respect of para 1 to be tabled at the date to which this matter is postponed.
3. Should the spouse, next of kin, partner, associate, parent or guardian of the plaintiff all be unwilling, incapable or not available to make such an application, the plaintiff shall present himself before the District Surgeon, Cape Town, on or before 9 March 2022 for consideration of section 27(1)(a)(ii) of the [MHCA].
4. The matter is postponed to 15 March 2022.”

staff and interactions between him and the Judge during the courthouse protest on 1 September 2025, subsequent to the hearing of the vexatious litigant application but prior to the judgment being handed down on 20 October 2025.⁴⁰ The issue of a mental health assessment was raised for the first time in that judgment,⁴¹ the only evidentiary basis cited being the Judge's opinion on Mr Motjamela's maturity and understanding of the law.⁴²

[41] It is true that courts have the power to develop the common law, taking into account the interests of justice.⁴³ However, they must do so in a principled manner, to promote the spirit, purport and objects of the Bill of Rights.⁴⁴ In this case, the High Court never considered the rationale behind the provisions of the existing prescribed procedure, which require an evidentiary basis for referral of a person for mental health assessment. It also did not consider the wider impact of the change it sought to effect on the existing laws. The Court applied a procedure akin to the provisions of section 77 of the CPA, which is designed to ensure a fair trial and protection of an accused person and the public in criminal proceedings. This it did in circumstances where there was no evidence that, during the court proceedings, Mr Motjamela might be suffering from mental illness or intellectual disability. The Court did not inquire into the suitability of the existing laws for the purpose it sought to achieve.

[42] The Court in *Niekus* emphasised that, before interfering with an adult's right to control their own affairs, a proper inquiry into their mental condition is required.⁴⁵ It stressed the necessity for a neutral party, the *curator ad litem*, to be appointed on behalf of the person in question to assist both them and the court. Incidentally, in his

⁴⁰ *Motjamela II* above n 3 at para 4.

⁴¹ *Motjamela I* above n 1 at paras (b)-(e) of the order.

⁴² *Id* at para 16.

⁴³ Section 173 of the Constitution.

⁴⁴ Section 39(2) of the Constitution. See also *Masiya v Director of Public Prosecutions, Pretoria* [2007] ZACC 9; 2007 (2) SACR 435 (CC); 2007 (5) SA 30 (CC); 2007 (8) BCLR 827 (CC) at para 31.

⁴⁵ *Niekus* above n 30 at 310.

application to this Court, Mr Motjamela attached an application to the High Court seeking an order that the mental health assessment order be varied to conform with the procedure for curatorship set out under rule 57, closely aligning with the approach adopted in *Niekus*. This process protects the individual concerned from the indignity of having to facilitate the proving or disproving of their mental capacity and preserves the adjudicative role of the court free from the perception of bias for or against the individual in question. The High Court's departure from the procedures established under the MHCA and rule 57 cannot be sustained. The matter should have been disposed of through the granting and operation of an appropriately-tailored vexatious litigant order. Neither the law nor necessity compelled the High Court to go further. It is for these reasons that this Court, in the order granted on 28 May 2026, set aside the mental health assessment orders.

Continuing vexatious litigation

[43] One final issue must be addressed in relation to Mr Motjamela's relentless campaign of litigation before this and other Courts. At the time that this Court issued its order on 28 May 2026, Mr Motjamela had two additional applications before this Court relating to the same constellation of matters involving the public works contracts and his efforts to obtain permanent employment with the Local Municipality or the District Municipality.⁴⁶

[44] One of these applications, CCT 363/25 *Motjamela v Garden Route District Municipality*, substantively replicates CCT 316/23 *Motjamela v Garden Route District Municipality*, which was dismissed by this Court in 2024 for lack of reasonable prospects of success. Another application, CCT 44/26 *Motjamela v Labour Court of Cape Town*, involves a second applicant, Deneo Motjamela, but follows the same pattern as the matters I have just described. While considering the current matter, this Court received a further application from Mr Motjamela seeking directions clarifying

⁴⁶ CCT 363/25 *Motjamela v Garden Route District Municipality* and CCT 44/26 *Motjamela v Labour Court of South Africa, Cape Town*.

whether the vexatious litigant order remains in effect pending the determination of this appeal, and an order affirming his ability to continue to pursue litigation before other courts if it does not.

[45] Since issuing the order of 28 May 2026, this Court has received four further applications from Mr Motjamela relating to employment disputes with the Local Municipality and the District Municipality. These applications all relate to the public works contracts, Mr Motjamela's dissatisfaction with subsequent hiring processes with the Local Municipality and District Municipality or related litigation initiated in lower courts or tribunals.⁴⁷ Three of these applications relate directly to Mr Motjamela's dispute with the Local Municipality.⁴⁸ The fourth substantively replicates Mr Motjamela's arguments in CCT 363/25 *Motjamela v Garden Route District Municipality*, which itself centres on the same issues as in Mr Motjamela's unsuccessful application to this Court in CCT 316/23 *Motjamela v Garden Route District Municipality*.⁴⁹

[46] Additionally, since 2023 Mr Motjamela has brought four applications before this Court, including three applications for leave to appeal which were dismissed for lack of reasonable prospects of success⁵⁰ and an application for direct access which was dismissed as no case had been made out for direct access.⁵¹ In two of these matters, he filed rescission applications following this Court's initial decisions, both of which were similarly dismissed as no case was made out for rescission.⁵² With the exception of CCT 262/24 *Motjamela v Dispute Resolution Commission*, which relates to a deceased

⁴⁷ CCT 169/26 *Motjamela v George Local Municipality*; CCT 172/26 *Motjamela v Commission for Conciliation, Mediation and Arbitration (George)*; CCT 182/26 *Motjamela v Garden Route District Municipality*; and CCT 183/26 *Motjamela v George Local Municipality*.

⁴⁸ CCT 169/26 *Motjamela v George Local Municipality*; CCT 172/26 *Motjamela v Commission for Conciliation, Mediation and Arbitration (George)*; and CCT 183/26 *Motjamela v George Local Municipality*.

⁴⁹ CCT 182/26 *Motjamela v Garden Route District Municipality*.

⁵⁰ CCT 316/23 *Motjamela v Garden Route District Municipality*; CCT 99/24 *Motjamela v South African Local Government Bargaining Council*; and CCT 262/24 *Motjamela v Dispute Resolution Commission*.

⁵¹ CCT 125/24 *Motjamela v George Local Municipality*.

⁵² CCT 99/24 *Motjamela v South African Local Government Bargaining Council* and CCT 316/23 *Motjamela v Garden Route District Municipality*.

estate dispute, all of these applications relate to Mr Motjamela's ongoing disputes with the Local Municipality and District Municipality over the public works contracts and his subsequent efforts to obtain permanent employment. Cumulatively, these cases present a pattern of wanton and reckless litigation against a variety of parties directly or tangentially involved with Mr Motjamela's employment disputes.

[47] The proliferation of meritless applications in this Court at Mr Motjamela's instance is every indication that he will continue in this vein if measures are not taken to staunch this flow. The provisions of the VPA do not apply in this Court, nor has any application been brought before this Court requesting that Mr Motjamela be restrained from pursuing further litigation before it. However, this Court cannot allow its resources to be expended to this extent on one litigant without good cause. The suspension of lower court orders pending determination of the appeal to this Court creates a perverse incentive for Mr Motjamela, and similar vexatious litigants, to inundate this Court with meritless applications. This both squanders the finite resources of this Court, prejudicing meritorious applicants, and denies finality to parties unfortunate enough to have drawn the ire of such serial litigants. It is thus in the interests of justice that this Court goes beyond merely substituting the High Court's vexatious litigant order with an appropriately-tailored alternative.

[48] As stated earlier in this judgment, section 173 of the Constitution empowers this Court to protect and regulate its processes and to develop the common law, taking into account the interests of justice.⁵³ It thus falls within this Court's inherent jurisdiction to protect its processes from further abuse by Mr Motjamela by directing its Registrar not to accept any further applications or filings from him relating to the subject matter of this application or the additional applications mentioned in this judgment.

⁵³ See, for example, *S v Pennington* [1997] ZACC 10; 1997 (4) SA 1076 (CC); 1997 (10) BCLR 1413 (CC) at para 22.

Costs

[49] The Local Municipality seeks an order of costs against Mr Motjamela. It says it has used public funds to repeatedly repel Mr Motjamela's litigation and cannot continually expend resources defending frivolous and baseless litigation. While I am mindful of the extensive and abusive nature of Mr Motjamela's litigation in this matter, this must be balanced with his status as an indigent, self-represented litigant. It must further be noted that the Local Municipality argued in favour of the unlawful mental health assessment order in its submissions to this Court and sought only to limit the scope of the vexatious litigant order through its conditional cross-appeal. Mr Motjamela has enjoyed partial success in this matter. While it is a pyrrhic victory, as he remains barred from litigating these matters further, it would be irregular for this Court to grant costs against Mr Motjamela in light of the circumstances of this case. Therefore, each party shall bear its own costs.

Order

[50] The following order is made:

1. Leave to appeal directly to this Court against part of the order of the High Court in *George Local Municipality v Motjamela* (267/25) [2025] ZAWCHC 473 is granted.
2. Leave to cross-appeal directly to this Court against part of the order of the High Court in *George Local Municipality v Motjamela* (267/25) [2025] ZAWCHC 473 is granted.
3. The appeal is upheld in part.
4. The cross-appeal is upheld in part.
5. Paragraphs (a) to (c) of the order of the High Court in *George Local Municipality v Motjamela* (267/25) [2025] ZAWCHC 473 are set aside and substituted with the following:

“(a) The respondent may not institute any legal proceedings in any court or any inferior court against the applicant in relation to his terminated employment contracts under the Expanded Public

Works Programme without the leave of that court, or any judge thereof, or that inferior court, as the case may be.

- (b) The Registrar of the High Court, Eastern Circuit Local Division, Thembaletu is directed to transmit a copy of this order to the Registrar of the Labour Court and also to cause it to be published in the *Government Gazette*. The applicant is to cover the costs of such publication, and may recover half of such costs from the respondent if the applicant so elects.
 - (c) Should the respondent continue to make, utter, publish and distribute disparaging or defamatory statements alleging violations of his basic human and fundamental rights, fraud, exploitation, racism and discrimination by the applicant and/or its employees, court administrative support staff at any court or any judge of any court or presiding officer in any inferior court, the applicant is granted leave to approach this Court, on the same papers duly supplemented, in order to seek appropriate relief.”
6. The Registrar of this Court is directed not to accept any further applications from the applicant in respect of matters relating to the applicant’s employment under the Expanded Public Works Programme contracts and matters arising from this order in which rescission, direct access or leave to pursue a direct appeal is sought.
 7. Each party shall bear its own costs.