

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2026-112542

|             |                                                                                   |
|-------------|-----------------------------------------------------------------------------------|
| (1)         | REPORTABLE: NO                                                                    |
| (2)         | OF INTEREST TO OTHER JUDGES: NO                                                   |
| (3)         | REVISED: YES                                                                      |
| 28 May 2026 |  |
| DATE        | SIGNATURE                                                                         |

In the matter between:

**ECONOMIC FREEDOM FIGHTERS**

Applicant

and

**THE SPEAKER OF COUNCIL: EKURHULENI  
METROPOLITAN MUNICIPALITY**

First Respondent

**THE EXECUTIVE MAYOR EKURHULENI  
METROPOLITAN MUNICIPALITY**

Second Respondent

**THE MUNICIPAL MANAGER: EKURHULENI  
METROPOLITAN MUNICIPALITY**

Third Respondent

**CITY OF EKURHULENI METROPOLITAN  
MUNICIPALITY**

Fourth Respondent

**MEC FOR FINANCE, GAUTENG PROVINCE**

Fifth Respondent

**MINISTER OF FINANCE**

Sixth Respondent

**MEC FOR COOPERATIVE GOVERNMENT AND  
TRADITIONAL AFFAIRS, GAUTENG**

Seventh Respondent

**MINISTER FOR COOPERATIVE GOVERNMENT  
AND TRADITIONAL AFFAIRS**

Eighth Respondent\

**ALL OTHER PARTIES REPRESENTED IN  
COUNCIL, EKURHULENI METROPOLITAN  
MUNICIPALITY**

Ninth Respondent

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## **JUDGMENT**

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### **CRUTCHFIELD J**

- [1] The applicant, Economic Freedom Fighters, approached this court by way of urgency for interim interdictory relief against the Speaker of Council, Ekurhuleni Metropolitan Municipality ("the Speaker"), interdicting the Speaker from applying a voice vote to the 2026/2027 annual budget vote, scheduled for Thursday, 28 May 2028, at 10h00.
- [2] Furthermore, the applicant sought an order *inter alia* directing the Speaker to conduct the 2026/2027 annual budget vote through a mechanism producing and individual count of counsellors voting in support and in accordance with s30(2) of the Local Government: Municipal Structures Act 117 of 1998 ('the Structures Act') and Section 169(3)(b) of the Constitution.
- [3] The above-mentioned relief is claimed pending the applicant's review application issued on 13 May 2026 ("the review application"), wherein the applicant seeks a declaratory order that in terms of section 172(1)(a) of the Constitution, that the Standing Orders By Law 2023 of the Council is constitutionally invalid to the extent that it fails to make specific provision for a voting mechanism capable of satisfying s30(2) of the Structures Act and Section 106(3)(b) of the Constitution.
- [4] The first, second, third and fourth respondents, respectively the Speaker of Council: Ekurhuleni Metropolitan Municipality, the Executive Mayor: Ekurhuleni Metropolitan Municipality, the Municipal Manager: Ekurhuleni Metropolitan

Municipality and City of Ekurhuleni Metropolitan Municipality, oppose the application, both on the urgency and the merits thereof.

- [5] The balance of the respondents, respectively the fifth to ninth respondents, being the MEC for Finance, Gauteng Province, the Minister of Finance, the MEC for Cooperative Governance and Traditional Affairs, Gauteng, the Minister of Cooperative Governance and Traditional Affairs and all other parties represented in Council, Ekurhuleni Metropolitan Municipality, do not participate in the application before me.
- [6] I heard this matter during the course of the day on Wednesday, 27 May 2026, the application having been set down for hearing in accordance with the practices of this urgent court, on Tuesday, 26 May 2026.
- [7] The 2026/2027 annual budget ("the budget"), is to be delivered and voted on, on Thursday 28 May 2026, commencing at 10h00.
- [8] The Council agreed during December 2025 that the 2026/2027 annual budget meeting would take place on 28 May 2026.
- [9] On 10 March 2026, the Council adopted the adjustment 2025/2026 budget. That was more than two months ago.
- [10] The applicant, in order to succeed in the relief claimed in this application, must comply firstly with the requirements of Rule 6(12) of the Rules of this Court. The applicant must set out the concise facts that it alleges render the matter urgent and demonstrate that it will not be afforded substantial redress at a hearing in due course.
- [11] On 13 May 2026, the applicant issued the review application aforementioned, referred to colloquially in these proceedings as the "main application". On 14 May 2026, the applicant sought an undertaking from the Speaker not later than 15 May 2026, that the annual 2026/2027 budget vote scheduled for 28 May 2026, be conducted by formal division.

- [12] No response was forthcoming from the Speaker and the applicant, on Monday, 18 May 2026, issued the application before me enrolled for hearing on Tuesday, 26 May 2026.
- [13] In the discrete section headed “urgency” in the applicant’s founding affidavit, the applicant relies on the various grounds in respect of the urgency of this application.
- [14] The applicant, in paragraph 76 of the founding affidavit states *inter alia* that in the event that the annual budget is declared adopted, the harm either occurs on 28 May 2026 or it does not occur at all. Accordingly, the applicant does not know how the budget vote will be conducted on 28 May 2026.
- [15] In respect of the reasons proffered by the applicant as to why it cannot obtain substantial redress at a hearing in due course, the applicant contends that the harm will be complete before the matter can be heard on the ordinary motion roll given the delay in obtaining dates on the opposed motion roll in the face of the budget vote being on 28 May 2026.
- [16] Furthermore, the applicant contends that once the budget is declared adopted, immediate implementation follows. Thus, the financial commitments pursuant to the adoption of the budget will be completed by the time that the matter comes before an ordinary motion court.
- [17] Furthermore, the applicant afforded the first respondent an opportunity to resolve the matter without litigation by requesting a written undertaking. The letter of demand was addressed to the first respondent within less than 24 hours of the institution and service of the main application with a specific demand in respect of the 2026/2027 budget vote. No response was forthcoming from the first respondent and thus the applicant alleged that the urgency of the application was a result of the so-called “silence” on the part of the first respondent in failing to respond to the applicant’s request for an undertaking.
- [18] The applicant further alleged that the review application was already instituted and delivered before the urgent application allegedly became necessary.

Accordingly, the urgency was the result of the first respondent's silence and not the result of any failure on the part of the applicant.

- [19] The applicant alleged that the urgency of the matter was not self-created in that the applicant, on 13 March 2026, three days prior to the alleged unlawful adoption of the 2025/2026 adjustment budget, gave notice of the alleged constitutional breach and procedural irregularities involved in the voting procedure in respect thereof.
- [20] The applicant relied on the decision in *East Rock Trading 7 (Pty) Ltd & Another v Eagle Valley Granites (Pty) Ltd & Others*,<sup>1</sup> for its contention that the urgency of the application was not "self-created" insofar as the delay was caused or at least contributed to by "attempts to settle the matter or collect more facts with regard thereto".
- [21] The applicant referred further to *Grieve v Denel (Pty) Ltd*,<sup>2</sup> to the effect that the applicant identified the legal basis of his challenge through research while preparing for a disciplinary hearing.
- [22] The applicant contended that it was unaware initially of the alleged constitutional invalidity of the Standing Orders By Laws ("the standing orders"), of the Council and only realised as much whilst preparing the review application. The applicant issued that review application on 13 May 2026, some two weeks prior to the date of the 2026/2027 budget vote.
- [23] The applicant itself referred to certain dates that it alleges are significant in assessing the alleged urgency of the application. The first was 10 March 2026, on which date the applicant alleged the harm crystallised. The applicant contended that prior to 10 March 2026, there was no concrete evidence that a voice vote would be applied to the 2026/2027 budget vote decision. Whilst the applicant knew as from during December 2025 that the 2026/2027 budget vote would be held on 28 May 2026, it was only on 10 March 2026, the date upon which the Council adopted or passed the 2025/2026 adjustment budget, that

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<sup>1</sup> *East Rock Trading 7 (Pty) Ltd & Another v Eagle Valley Granites (Pty) Ltd & Others* (11/33767) [2011] ZAGPJHC 196 ("East Rock").

<sup>2</sup> *Grieve v Denel (Pty) Ltd* [2003] 4 BLLR 366 (LC) ("*Grieve*") at [7].

the method of conducting the vote in respect of the 2026/2027 budget vote, became apparent.

- [24] 10 March 2026, it has to be said, was some two months prior to 13 May 2026. The applicant issued the review application on 13 May 2026. It is somewhat surprising that the applicant required a period as long as approximately two months, from 10 March to 13 May 2026, to consult, research and issue the review application pursuant to which the alleged constitutional invalidity of the standing orders became apparent.
- [25] The issue of the review application on 13 May 2026, does not justify the delay in issuing this urgent application, on 18 May 2026 prior to the budget vote on 28 May 2026.
- [26] The applicant had more than two months in which to take all such steps as it contends were necessary or required to perform the appropriate research and conduct the necessary preparation in respect of the review application and also this urgent application in respect of the 2026/2027 budget vote. The applicant knew from December 2025 that the budget vote would be conducted on 28 May 2026. It knew from 10 March 2026 that a voice vote would likely be adopted in respect of the budget vote.
- [27] The delay of some two months in issuing an application as serious and as far-reaching as this urgent application, whilst affording the respondents an impossibly constrained period of time in which to oppose the application and for this court to deal with the matter and prepare a judgment, was simply not adequately or cogently explained by the applicant.
- [28] Furthermore, this court, an extremely busy court, cannot and should not be expected to deliver a cogent and properly reasoned judgment on issues as significant and serious as those articulated in this application, on such short notice and in such a limited period of time. It matters not that the application was heard on 27 May 2026 and not 26 May 2026. That was the result of the pressure of the roll. The fact is that this application should never have been set down for hearing on Tuesday 26 May 2026, in circumstances where a full set

of affidavits was not prepared or yet ready on Thursday, 21 May 2026, with the date of the budget vote on 28 May 2026.

- [29] The alleged attempts at settlement relied upon by the applicant, refer to the letter addressed to the Speaker on 14 May 2026. The applicant sought an undertaking that the budget vote be conducted by “formal division”. There is no explanation of what is intended by the applicant by the phrase “formal division”. The Speaker did not respond. Some four days thereafter, on 18 May 2026, the applicant issued the urgent set down for hearing, in terms of the practice applicable to this court, on Tuesday, 26 May 2026.
- [30] The applicant’s attempt to blame the Speaker or the Council’s failure to respond to the correspondence of 14 May 2026, for the delay in bringing this application does not withstand scrutiny. The date of 14 May 2026, in the face of the date of the budget vote being 28 May 2026, some two weeks thereafter, was already far too late.
- [31] The undertaking sought from the Speaker in terms of the correspondence of 14 May 2026, is not justifiable in terms of section 30(2) of the Structures Act.
- [32] The demand made by the applicant of the Speaker in the correspondence of 14 May 2026 was at variance with the relief sought by the applicant in the urgent application. The relief sought in the correspondence differed from that claimed in the urgent application. Accordingly, I cannot find that the demand made of the Speaker on 14 May 2026, or the Speaker’s failure to reply played any part in the delay in launching the application.
- [33] This court’s practice directive dated 4 October 2021, applicable to the management of this urgent court, requires that a full set of papers, including a replying affidavit, be placed before the court by the Thursday at noon prior to the Tuesday on which the matter is set down for hearing.
- [34] The applicant failed dismally to comply with that directive. The applicant required the respondents to deliver their notice of intention to oppose the application, if any, on Wednesday, 20 May 2026, two days after delivery of the application, and for the respondents to deliver their answering affidavit on

Friday, 22 May 2026, some three days thereafter. The replying affidavit was to be delivered on Monday, 25 May 2026. The applicant set the urgent application down for hearing on 26 May 2026 in circumstances where the replying affidavit, the last affidavit, was to be delivered on the previous day, Monday 25 May 2026. This resulted not only in enormous pressure being placed on this court, but also pressurising the respondents unduly and unnecessarily, effectively affording them an unjustifiably constrained period in which to answer to the applicant's case in a cogent manner, and prepare their appearance in this court. It must be emphasised that the issues raised by this application are of a serious nature. The applicant's launch of this application and the time constraints imposed by the applicants on the respondents do not allow for proper consideration of those issues.

- [35] My office received the respondents' heads of argument at approximately 21h30 on the evening of Tuesday, 26 May 2026, after the date on which the matter was set down for hearing. The prejudice to the respondents and to this court is not justifiable by the applicant.
- [36] Accordingly, the applicant's delay from 10 March 2026 to 18 May 2026, the date of upon which this urgent application was issued, is insufficiently explained by the applicant. The applicant's alleged consultation and preparation with its attorneys over a two month period in respect of the review application, is not a cogent answer by the applicant to the respondents' averments that the application is not urgent.
- [37] The applicant ought to have issued this application shortly after 10 March 2026. The applicant's failure to issue this application within a reasonable time after 10 March 2026 significantly undermines the applicant's contention that the matter is urgent and ought to be enrolled and considered accordingly.
- [38] The review application was launched after the adoption on the 10 March 2026 of the adjustment budget. The applicant waited until the budget had been adopted and the harm allegedly crystallised prior to bringing the review application. However, the applicant did not adopt the same procedure in respect of the budget vote on 28 May 2026. The applicant's urgent application

is based on supposition, on what may or may not transpire during the course of the budget vote on 28 May 2026.

- [39] It may transpire that the conduct of the budget vote on 28 May 2026 is acceptable to the applicant, in which case this entire application will have been wasted. It is not sufficient to base relief as sought by the applicant, on supposition and inference. This court operates on facts and thus there is no harm to the applicant in waiting until the budget vote is conducted. Thereafter, if the facts give rise to an issue, the applicant can approach a court accordingly, based on facts.
- [40] This urgent application does not have to be heard this week and would better be heard after the vote takes place on 28 May 2026, and the applicant is armed with facts and not assumptions.
- [41] The applicant has remedies available to it once the budget is passed, assuming that that does transpire on 28 May 2026. It is then open to the applicant to approach a court based on facts and to seek the appropriate relief, in the same manner as the applicant did in respect of the review application. The applicant's urgent application, at this stage, is based on speculation and assumption and is premature.
- [42] Thus, the applicant has substantial redress available to it at a hearing in due course, if required, after the vote on 28 May 2026, as envisaged in rule 6(12)(b).
- [43] The fact that this matter potentially deals with the constitutional invalidity of the standing orders, does not in and of itself, mean that the application is urgent.<sup>3</sup>
- [44] Furthermore, the standing orders provide for internal remedies to be complied with by the applicant prior to the application being issued. The applicant's stance that it is not required to exhaust the internal remedies available to it contained in the standing orders, prior to the applicant approaching this court, cannot be supported.

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<sup>3</sup> *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC* (2023/067290) [2023] ZAGPJHC 846 (1 August 2023).

- [45] Rule 8 of the standing orders ("Rule 8"), provides *inter alia* that the council may, by resolution, dispense with or suspend a provision of these rules for a specific period and purpose.
- [46] The provisions of Rule 8 provide *inter alia* that the Council may by resolution dispense with or suspend a provision of the rules for a specific period and purpose.
- [47] Rule 8(4) of the standing orders provides that a motion under the rule may be introduced without notice and must indicate the reason for and duration of the proposed suspension. Rule 8(5) provides that the suspension of a provision must be limited in its operation to the particular purpose and duration for which the suspension has been approved.
- [48] In terms of Rule 8, it was open to the applicant to achieve the results sought in terms of this application. Rule 8 provides that a counsellor wishing to propose a resolution suspending a provision of the rules must do so by introducing a motion for the suspension of the rule and following the procedure set out in Rule 86.
- [49] Nothing stopped a Councillor of the applicant from proposing a resolution suspending a provision of the rules by introducing a motion for such suspension in terms of the procedures set out in Rule 8(5).
- [50] The provisions of Rule 8 were available to the applicant and would in effect, upon an application of the provisions thereof, have allowed the applicant to achieve a result having an equivalent purpose and outcome to the relief sought by the applicant before me.
- [51] Furthermore, Rule 6 of the standing orders permits the Council *inter alia* to amend, revoke or add a rule. Recourse to Rule 6 would also have permitted the applicant to achieve a result substantially similar to the relief sought by the applicant in this urgent application.
- [52] These alternate remedies afford to the applicant substantial redress in respect of the issues raised in this application.

- [53] The applicant's failure to comply with the internal remedies available to it impacts upon the alleged urgency of the application. The court in *Itshegetseng v African National Congress & Others*<sup>4</sup> held that insofar as the applicant wrote to the Speaker but failed to take up the procedure set out in terms of the internal remedies relevant in that matter, that application was brought prematurely "because the applicant has not invoked the internal processes available to him. For that reason, too, the matter does not meet the test of urgency".<sup>5</sup>
- [54] Upon an application of *Itshegetseng*, the application before me is similarly premature in that the applicant failed to exhaust the available internal remedies available to it, and did not advance cogent reasons for its failure to do so, including that those internal remedies were unavailable, inadequate or futile.<sup>6</sup>
- [55] The applicant had an obligation to exhaust the internal dispute resolution mechanisms available to it in terms of the standing orders.
- [56] In the circumstances, the application is not urgent as envisaged in terms of rule 6(12)(b) and stands to be struck off the roll.
- [57] As regards the costs of the application, the costs should follow the order on the merits. Both the applicant and the respondents used two counsel and costs on scale C are appropriate given that the issues involved some complexity.
- [58] At approximately 21h11, on 27 May 2026, subsequent to this application being argued to completion before me, the applicant sent to my secretary by email a request to introduce new evidence comprising a video recording of the Council's sitting of 10 March 2026. The video allegedly depicts the manner in which the Voice Vote was conducted in respect of the adoption of the 2025/2026 adjustment budget.
- [59] The letter or application to submit additional evidence, is a further reason why this application is not urgent and should not be dealt with on the merits at this stage. Once the budget vote has been conducted and the relevant facts

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<sup>4</sup> *Itshegetseng v African National Congress & Others* (2026/056424) [2026] ZAGPJHC 347 (30 March 2026).

<sup>5</sup> *Id* at [8].

<sup>6</sup> *Itshegetseng* at [19].

collated, the applicant, in the event that it has reason to complain, can then approach a court for the appropriate redress based on all the facts.

[60] In the circumstances the application to submit further evidence is denied.

[61] In the circumstances, I grant the following order:

1. The application to submit further evidence is denied.
2. The application is struck off the roll with costs, including the costs of two counsel where two counsel were utilised, such costs to be on scale C.

I hand down the judgment.

  
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**CRUTCHFIELD J**  
**JUDGE OF THE HIGH COURT**  
**JOHANNESBURG**

For the Applicant:

Adv L Moela together with Adv K M  
Rammai instructed by Thabela Inc  
Attorneys.

For the First to Fourth Respondents:

Adv E N Sithole together with Adv Liferu  
instructed by M B Mabunda Inc.

Date of the hearing:

27 May 2026.

Date of the judgment:

28 May 2026.