



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

Not reportable

Case No: 2026-177070

In the matter between:

GATVOL LOBBY GROUP NPC

Applicant

and

**THE NGAKA MODIRI MOLEMA
DISTRICT MUNICIPALITY**

First Respondent

**THE MEC FOR COOPERATIVE GOVERNANCE,
HUMAN SETTLEMENTS AND
TRADITIONAL AFFAIRS, NORTH WEST**

Second Respondent

CLLR NTHABISENG SHUPING N.O.

Third Respondent

DR AUCHALIE MOTHUPI

Fourth Respondent

CORAM: PETERSEN J

HEARD: 14 August 2026

Delivered: This judgment was handed down electronically, circulated to the parties' legal representatives by email, uploaded to CaseLines, and released to SAFLII. The date and time for handing down the judgment are deemed to be 15h00 on 19 August 2026.

Summary: Urgent application – Part A seeks interim interdictory relief pending review, in Part B, of the alleged removal of the Fourth Respondent as Acting Municipal Manager of the First Respondent – Urgency not established – Want of urgency ordinarily sounds in striking from the roll rather than dismissal – Full argument heard on the merits - No resolution removing the Fourth Respondent exists, and none was required – Her acting

appointment terminated automatically by effluxion of time under section 54A(2A) of the Local Government: Municipal Systems Act 32 of 2000 before the impugned meeting of 3 July 2026 – Alternative construction under section 54A(6)(a) rejected – Substantial compliance with the notice requirements for the meeting of 3 July 2026 – *Dryer v Ngaka Modiri Molema District Municipality* distinguished – Relief incompetent having regard to section 54A(2A) read with section 54A(3)(b) – Material non-joinder of the current Acting Municipal Manager – Applicant’s standing doubtful on the basis of section 38(b) of the Constitution of the Republic of South Africa, 1996 – No material weight attached to the Fourth Respondent’s explanatory affidavit – Part A dismissed with costs on Scale C.

JUDGMENT

PETERSEN J:

Introduction

[1] This is an urgent application brought in two parts. This court is seized with Part A, in which the applicant, Gatvol Lobby Group NPC (‘Gatvol’), seeks interim relief. Gatvol seeks the suspension of what it describes as a resolution of the Municipal Council of the first respondent, the Ngaka Modiri Molema District Municipality (‘the Municipality’), taken on or about 3 July 2026, and restraining the respondents from recognising anyone other than the fourth respondent, Dr Auchalie Mothupi, as Acting Municipal Manager pending Part B. In Part B Gatvol seeks the review and setting aside of the same decision on legality and, in the alternative, PAJA grounds. The Municipality, the third respondent Cllr Nthabiseng Shuping, the Speaker of the Municipal Council (‘the Speaker’), and the second respondent, the MEC for Cooperative Governance, Human Settlements and Traditional Affairs, North West (‘the MEC’), oppose the application. The fourth respondent, Dr Mothupi, has filed a notice to abide together with an ‘Explanatory Affidavit’, the weight of which is itself in issue.

[2] The central dispute, on a careful reading of the papers, is whether the Council resolved to remove Dr Mothupi from office at a Special Meeting on 3 July 2026, as Gatvol contends, or whether, as the Municipality, the Speaker and the MEC contend, Dr Mothupi’s acting appointment had already lapsed by operation of law some two weeks earlier, on 19 June 2026. On the evidence of the Municipality and the Speaker, there would be no decision for this court to interdict. Oral argument extended this dispute considerably beyond what the papers alone disclosed.

[3] Gatvol is a non-profit civic lobby group concerned with governance in the Municipality’s area of jurisdiction, a district municipality established under the Local Government: Municipal Structures Act 117 of 1998. The MEC is the Provincial Executive Authority responsible for Local Government. The Speaker is cited in her representative capacity as Presiding Officer of the Council. Dr Mothupi is the erstwhile Acting Municipal Manager.

Background

[4] The following is common cause. In November 2025 the Municipality's permanent Municipal Manager, Mr O.A. Losaba, was placed on precautionary suspension pending disciplinary proceedings, and the Council requested the MEC, under s54A of the Local Government: Municipal Systems Act 32 of 2000 ('the Systems Act'), to second a person to act in his stead. The MEC seconded Dr Mothupi from 18 December 2025 for the maximum initial three-month period under s54A(2A)(a). On 19 March 2026 the Council sought, and the MEC granted, the maximum further three-month extension under s54A(2A)(b), to 19 June 2026, exhausting the cumulative six-month ceiling in s54A(2A).

[5] A more detailed chronology, which emerged in oral argument and was not seriously disputed, is succinctly as follows. The Council itself resolved on 19 December 2025 to approve Dr Mothupi's appointment following the MEC's secondment. On 12 June 2026 the Executive Mayor wrote to the Speaker requesting a special sitting before 18 June 2026 to process a new secondment ahead of the impending expiry. The meeting did not take place on 18 June 2026. Dr Mothupi's extended term expired on 19 June 2026. On 20 June 2026 the MEC concluded a secondment agreement with Mr France Temeki Mabokela. Notice of a special sitting was given at 19h45 on 1 July 2026, with the agenda circulated the next day. The sitting on 3 July 2026 approved Mr Mabokela's appointment as Acting Municipal Manager for 6 July to 6 October 2026.

[6] Gatvol's founding case is that the 3 July 2026 meeting in truth resolved to remove Dr Mothupi, and did so on a procedurally defective basis, notice given only some forty hours in advance, short of the forty-eight hours required by clause 5.1 of the Council's Standing Rules of Order. Gatvol further asserts that no agenda was circulated in advance of the notice; and that councillor objections were raised on the day. The Municipality and the Speaker's answer is that no resolution removing Dr Mothupi was ever taken. Dr Mothupi's appointment lapsed by effluxion of time on 19 June 2026 without any Council decision being required, and the 3 July 2026 meeting did no more than fill the resultant vacancy. They admit the notice shortfall but plead substantial compliance, the meeting having been quorate with more than twenty-one of the Council's forty-one members participating virtually.

[7] In reply, Gatvol recast its case to 'whether impugned conduct is described as a resolution, a decision, an implementation, a termination, an expiry or an appointment cannot determine the legality of what in fact transpired.' Counsel for Gatvol submitted this was foreshadowed at paragraphs 47 to 50 of the founding affidavit. Counsel for the Municipality and the Speaker disputed this, submitting that the passage in truth confirms an impermissible new case in reply, fusing four analytically distinct exercises of public power, the Speaker's decision to convene the meeting, the Council's resolution appointing Mr Mabokela, the Executive Mayor's implementation of that resolution, and the automatic expiry of Dr Mothupi's term, into a single, un-pleaded composite 'decision'. I return to this below.

[8] Dr Mothupi did not oppose the application but filed a notice to abide together with an affidavit described as 'explanatory', filed on 6 August 2026. This followed Gatvol's heads of argument, which confirmed the chronology of her secondment and asserted that

she was given no notice, no disciplinary process, and no opportunity to make representations before her term ended. The Municipality and the Speaker filed a further answering affidavit on 12 August 2026 directed specifically at that affidavit. I deal with the weight of Dr Mothupi's affidavit below.

The Issues

[9] The issues in this application include (a) condonation for the late filing of the Municipality's answering affidavit; (b) urgency, and whether any urgency is self-created; (c) Gatvol's standing; (d) non-joinder of Mr Mabokela; (e) whether a resolution removing Dr Mothupi exists, alternatively whether her appointment terminated automatically by effluxion of time, and whether s 54A(6)(a) avails Gatvol on an alternative construction; (f) the lawfulness of the notice and quorum for the 3 July 2026 meeting; (g) the weight of Dr Mothupi's explanatory affidavit; (h) the requirements for an interim interdict, including prospects of success in Part B; (i) the competence of the relief sought; and (j) costs.

Urgency

[10] I deal first with urgency. A court seized of an urgent application must be satisfied that the applicant will not obtain substantial redress in the ordinary course, and that any delay in launching the application has been adequately explained.¹

[11] The impugned meeting took place on 3 July 2026. On Gatvol's own account, it first consulted its attorneys only on 10 July 2026. A letter of demand followed on 13 July 2026, affording the respondents until 17 July 2026 to respond. On 18 July 2026, after they failed to do so, Gatvol re-instructed its attorneys to proceed. Counsel was briefed on 20 July 2026, and the application was issued on 22 July 2026, some nineteen days after the impugned meeting. Nowhere in the founding affidavit, and nowhere in argument, is the initial period between 3 and 10 July 2026 addressed with specificity, save a letter of demand addressed to the Municipality. Counsel for Gatvol, pressed on this gap, could point to nothing beyond the chronology set out above.

[12] What emerges from the papers as a whole, including the founding affidavit's own characterisation of 'exceptional urgency', is that the true driver of urgency is not ongoing, irreparable prejudice from Dr Mothupi's absence from office, but the risk that Part B will not be finally determined, or will be overtaken by events, before the Local Government elections on 4 November 2026. Counsel for Gatvol did not disavow this when it was raised with him, relying instead on *Kaunda and Others v President of the Republic of South Africa*² for the proposition that relief which risks becoming academic is itself a recognised basis for urgency. That, however, is a concern about the practical utility of eventual relief in Part B, not a case of ongoing prejudice that could not await the ordinary roll; tellingly, Dr Mothupi's own affidavit asserts no personal urgency of her own.

¹*Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another t/a Makin's Furniture Manufacturers* 1977 (4) SA 135 (W) at 137E-G; *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196; [2011] JOL 28844 (GSJ) para 6.

²*Kaunda and Others v President of the Republic of South Africa* [2004] ZACC 5; 2005 (4) SA 235 (CC); 2004 (10) BCLR 1009 (CC).

[13] Counsel for Gatvol further relied on *South African Informal Traders Forum v City of Johannesburg* and *South African Social Security Agency v Minister of Social Development*³ for the proposition that a delay of this order does not disqualify an applicant who has genuinely attempted pre-litigation engagement, and that a shortcoming in explicitly canvassing urgency need not be fatal where the circumstances are apparent from the papers as a whole. Even accepting that some pre-litigation engagement occurred, that does not explain the specific, unexplained gaps in the chronology, nor does it displace the more fundamental point that the driving force behind the application was the election timetable rather than any redress that could not await the ordinary course. Urgency which is self-created, arising from the applicant's own delay, or a decision to let a matter ripen before approaching the court, does not entitle a litigant to an abridged timetable. Gatvol was aware of the substance of its complaint from, at the latest, 3 July 2026, and nothing on the papers or in argument explains a delay of this length.

[14] I am accordingly not satisfied that Gatvol has discharged the onus of establishing urgency. On that ground alone, Part A is not properly before this court on the urgent roll.

Struck from the roll, or determined on the merits?

[15] Ordinarily, a finding that urgency has not been established results in an application being struck from the roll, leaving the applicant free to re-enrol on proper notice and in compliance with the Rules. Want of urgency, as Cameron JA explained in *Commissioner, South African Revenue Service v Hawker Air Services (Pty) Ltd; Commissioner, South African Revenue Service v Hawker Aviation Services Partnership and Others*⁴, 'relates to form, not substance, and is not a prerequisite to a claim for substantive relief'. The appropriate order for that reason is 'generally... to strike the application from the roll.' A court that dismisses an application on the ground only that it lacked urgency at its inception accordingly misdirects itself, for urgency is not itself a basis on which the substance of a claim can be found wanting.

[16] This matter, however, did not proceed on the urgency point alone. Both sides argued the full merits, at length and without reservation, on a complete record. The Municipality and the Speaker, in their Heads of Argument and Practice Note, sought not a mere striking of the application but its dismissal, submitting, with reliance on *Roets N.O. and Another v SB Guarantee Company (RF) (Pty) Ltd and Others*⁵, that striking would serve only to return Gatvol to the ordinary roll with a claim that, on a full ventilation of the papers, is bound to fail, and which would in any event become moot before the Local Government elections on 4 November 2026 could be determined. I agree that this is the appropriate course, not because urgency has failed, which could found no more than a

³*South African Informal Traders Forum and Others v City of Johannesburg and Others; South African National Traders Retail Association v City of Johannesburg and Others* [2014] ZACC 8; 2014 (4) SA 371 (CC); 2014 (6) BCLR 726 (CC) paras 35–38; *South African Social Security Agency and Another v Minister of Social Development and Others* [2018] ZACC 26; 2018 (10) BCLR 1291 (CC).

⁴*Commissioner, South African Revenue Service v Hawker Air Services (Pty) Ltd; Commissioner, South African Revenue Service v Hawker Aviation Services Partnership and Others* [2006] ZASCA 51; 2006 (4) SA 292 (SCA); [2006] 2 All SA 565 (SCA) para 9.

⁵*Roets N.O. and Another v SB Guarantee Company (RF) (Pty) Ltd and Others* [2022] ZAGPJHC 754 para 26.

striking of the application from the roll, but because the parties have placed the full merits before me, and I propose, for the reasons that follow, to determine and dispose of them.

Condonation

[17] The Municipality's answering affidavit was filed some three days late, explained by the need to consult the Council's constituent structures and secure confirmatory affidavits within the compressed timetable Gatvol itself imposed. That explanation, while economically expressed, identifies both the cause and the modest duration of the delay, and no prejudice to Gatvol has been shown. Condonation is granted.

Standing

[18] Gatvol asserts standing on three bases. Its own interest as a civic body; the public interest in lawful and accountable local government; and, under s 38(b) of the Constitution,⁶ as a person acting on behalf of Dr Mothupi. The third basis does not survive scrutiny, Dr Mothupi is manifestly capable of acting, and has in fact acted, in her own name by filing an affidavit in these proceedings. A litigant does not acquire s 38(b) standing simply because another person elects not to be an applicant. The own-interest and public-interest bases are on firmer footing. Constitutional standing is construed generously,⁷ and a civic organisation with a demonstrated interest in a municipality's governance, challenging what it contends is an unlawful exercise of public power, ordinarily has sufficient interest to be heard. I am satisfied Gatvol has standing on the public-interest basis, whatever the ultimate merit of its complaint.

Non-joinder

[19] A party with a direct and substantial interest in the order sought must be joined, failing which the proceedings are liable to be stayed.⁸ Mr Mabokela currently holds the office of Acting Municipal Manager under a secondment agreement and Council resolution for the period 6 July to 6 October 2026. The relief sought would restrain his recognition in that capacity and require that Dr Mothupi resume functions he is presently exercising. His legal position, remuneration and standing to continue performing those functions are all directly implicated. He has not been joined, and no explanation has been offered for the omission. This is a material non-joinder, and on this ground alone the relief sought could not, in its present form, be granted.

Whether a resolution removing Dr Mothupi exists

[20] This issue occupied the greater part of oral argument. There is, and never was, a resolution removing Dr Mothupi. The minutes of the 3 July 2026 meeting, public documents Gatvol could have obtained on request, record only the approval of Mr Mabokela's secondment and one unrelated item. Gatvol has placed before the court no

⁶Section 38(b) of the Constitution of the Republic of South Africa, 1996.

⁷*Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* 1996 (1) SA 984 (CC) para 165.

⁸*Judicial Service Commission and Another v Cape Bar Council and Another* 2013 (1) SA 170 (SCA) para 12; *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) at 657.

minute, resolution or other primary document recording a decision to remove her. I accept, on the papers, that no such document exists.

[21] Gatvol's answer, set out at paragraph [7] above, is that the absence of a document formally titled a removal resolution is not decisive. I do not accept this. What occurred between 19 June and 3 July 2026 involved, at most, four distinct and separately empowered exercises of public power, the Speaker's decision to convene the sitting, the Council's resolution appointing Mr Mabokela, the Executive Mayor's implementation of that resolution, and the automatic expiry of Dr Mothupi's term, which required no exercise of power at all. Gatvol's difficulty is not one of nomenclature. Its notice of motion and founding affidavit sought to interdict and review a single composite decision that, on the uncontested documentary record, does not exist as such. A re-characterisation in reply cannot supply what was never pleaded, and to the extent Gatvol now advances a materially different case directed at these several distinct exercises of power, that is impermissible on the papers as they stand.

[22] Independently of the existence of a resolution, I am satisfied that Dr Mothupi's appointment terminated automatically by effluxion of time. Section 54A(2A)(a) of the Systems Act, introduced by the Local Government: Municipal Systems Amendment Act 7 of 2011, caps an acting appointment at three months, extendable once, in special circumstances, by a further three months under s 54A(2A)(b), a cumulative maximum of six months, beyond which s 54A(3)(b) permits no further extension. Dr Mothupi's initial appointment ran the maximum three months from 18 December 2025, and the Council's extension of 19 March 2026 exhausted the further three months to 19 June 2026. On this construction her appointment lapsed automatically on that date, and nothing further was required, or permitted, to end it.

[23] Counsel for Gatvol advanced an alternative construction under s 54A(6)(a), which permits a council to request a secondment 'in the advertised position until such time as a suitable candidate has been appointed', submitting that Dr Mothupi's appointment was open-ended, tied to finalisation of the disciplinary process against Mr Losaba, as the MEC's secondment letter and the Council's confirming resolution are said to provide. I do not accept this, for three reasons. First, s 54A(6)(a) is textually tied to s 54A(4), which requires a council to advertise a vacant post nationally. It has no application here, since the substantive post was never vacant, Mr Losaba having remained in office throughout on suspension. Second, the parties' own conduct is inconsistent with an open-ended appointment. There would have been no occasion for the extension sought and granted on 19 March 2026 had the appointment already been indefinite. Third, even on its own terms, a condition in a secondment letter cannot lawfully extend an appointment beyond the statutory ceiling in s 54A(2A) read with s 54A(3)(b). Neither Council nor MEC may do by agreement what the statute forbids, consistently with the principle, articulated in *Fedsure Life Assurance v Greater Johannesburg Transitional Metropolitan Council*⁹, that organs of state may exercise no power beyond that conferred by law. This conclusion is reinforced by the Constitutional Court's reasoning in *Minister of Safety and Security v*

⁹*Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* [1998] ZACC 17; 1999 (1) SA 374 (CC); 1998 (12) BCLR 1458 (CC) para 58.

*South African Hunters and Game Conservation Association*¹⁰, that a term fixed by statute and known to the holder from the outset lapses by operation of law without any administrative decision being required. Dr Mothupi knew, from the outset of each period, precisely when her appointment would expire absent a further extension; nothing needed to be decided by the Council to end it on 19 June 2026.

[24] It follows that no resolution removing Dr Mothupi exists, that none was required, and that her appointment terminated automatically some two weeks before the impugned meeting. To the extent Gatvol's re-characterised case contends that the several distinct and lawful exercises of power identified above nonetheless amount, cumulatively, to an unlawful displacement reviewable under the principle of legality, that belongs, if pursued at all, in a properly pleaded Part B. It does not supply Part A with an identifiable exercise of power for an interim interdict to bite upon.

Notice and quorum

[25] Notice of the 3 July 2026 sitting was given some forty hours before the meeting, short of the forty-eight hours prescribed by clause 5.1 of the Standing Rules of Order. This is admitted, but the Municipality and the Speaker plead substantial compliance, maintaining that the shortfall was of the order of eight hours, the agenda was circulated the following day well in advance of the meeting, and the meeting was, in the event, quorate, with more than twenty-one of forty-one members participating. I am satisfied there was substantial compliance. The shortfall was modest and no councillor has deposed to having been prevented from attending or participating, and the meeting was properly quorate.

[26] Gatvol relied heavily on this Division's recent decision in *Dryer v Ngaka Modiri Molema District Municipality*¹¹, where a comparable notice shortfall in a special sitting of the same Council was found jurisdictional, resulting in the setting aside of a resolution and reinstatement of the applicant. *Dryer* is distinguishable on at least three grounds. There, an identifiable resolution existed to review and set aside, whereas here none exists. *Dryer* concerned an elected councillor's removal from a political committee chairpersonship under the Council's own rules and the Structures Act, not an administrative secondment under s 54A that lapsed on its own terms regardless of notice. And there was no statutory bar there, as there is here under s 54A(2A) read with s 54A(3)(b), to the applicant resuming office. *Dryer* is, in any event, the decision of a single judge of this Division and accordingly persuasive rather than binding. Without disagreeing with its approach to notice defects on its own facts, I do not consider it dictates a different outcome here.

The weight of Dr Mothupi's explanatory affidavit

[27] The Municipality and the Speaker's further answering affidavit raises two complaints about Dr Mothupi's explanatory affidavit. That it is, in substance, a co-applicant's affidavit filed under cover of an explanatory affidavit, directed at bolstering

¹⁰*Minister of Safety and Security v South African Hunters and Game Conservation Association* [2018] ZACC 14; 2018 (2) SACR 164 (CC); 2018 (10) BCLR 1268 (CC) para 25.

¹¹*Dryer v Ngaka Modiri Molema District Municipality and Others* [2026] ZANWHC 195 (27 July 2026).

Gatvol's case rather than assisting the court impartially. Dr Mothupi also lacks personal knowledge of the events she purports to confirm, her own term having ended before the 3 July 2026 meeting. There is force in both. An explanatory affidavit filed by a party electing to abide should confine itself to facts within that party's own knowledge, offered even-handedly. It is not a vehicle to argue the applicant's case by another name. To the extent Dr Mothupi's affidavit restates and adopts, rather than independently corroborates, the narrative already advanced by Gatvol, it adds nothing this court can treat as an independent evidentiary contribution.

[28] One aspect does fall within her own knowledge, that she was given no notice, no disciplinary process and no opportunity to make representations before her term ended. That evidence is of limited materiality once it is accepted that her term ended automatically by operation of s 54A(2A), which requires no notice or hearing, any more than the expiry of a fixed-term contract does. I attach no material weight to the explanatory affidavit, whether as to the conduct of the 3 July 2026 meeting, of which she had no personal knowledge, or as to the absence of a hearing before her term lapsed, which is legally immaterial.

The interim interdict and competence of the relief

[29] An applicant for an interim interdict must establish a prima facie right, even if open to doubt; a well-grounded apprehension of irreparable harm; a balance of convenience favouring interim relief; and the absence of any other satisfactory remedy.¹² Where interim relief is sought pending a review, the court must also form a preliminary view of the applicant's prospects of success in that review.¹³ On the findings made above, no resolution removing Dr Mothupi exists, her appointment lapsed by effluxion of time before the impugned meeting, there was substantial compliance with the notice requirements, and Gatvol's re-characterised case does not cure the absence of any reviewable exercise of power. Gatvol's prospects of success in Part B are poor, and no prima facie right has been established.

[30] There is a further, independent difficulty. The relief sought would have the practical effect of reinstating Dr Mothupi to an office she is, on the undisputed statutory chronology, no longer entitled to hold, her six-month maximum tenure having already been exhausted by 19 June 2026. Section 54A(2A) read with s 54A(3)(b) permits no further extension, whether by the Council, the MEC, or, it must follow, this court. A court cannot grant an interdict which practical effect is to require an organ of state to act contrary to its empowering legislation. The relief sought in Part A is, on this ground too, incompetent. I would add, without deciding it, that the Respondents' submission on mootness has considerable force. The Local Government elections on 4 November 2026 will, in the ordinary course, further diminish the practical utility of any relief in Part B before a review could realistically be finalised. Part B is not before this court and remains outstanding.

¹²*Setlogelo v Setlogelo* 1914 AD 221 at 227.

¹³*South African Informal Traders Forum and Others v City of Johannesburg and Others; South African National Traders Retail Association v City of Johannesburg and Others* [2014] ZACC 8; 2014 (4) SA 371 (CC); 2014 (6) BCLR 726 (CC) para 25.

Nothing in this judgment finally determines it, though the findings above will plainly bear on its prospects.

Costs

[31] The dismissal of Part A does not absolve Gatvol of the costs consequences of having launched the application. The respondents were put to the expense of preparing and arguing a full opposition on a compressed timetable of Gatvol's own choosing. Costs should follow the result.

[32] The Municipality and the Speaker seek costs on Scale C, relying on *Biowatch's*¹⁴ own recognition that its protection is not unqualified, and on the observation that *Biowatch* 'gives no free pass to cost-free, ill-considered, irresponsible ... litigation.'¹⁵ Gatvol's application was not shown to have been brought in bad faith, and it did raise a genuine, if ultimately unsuccessful, question as to the propriety of the process by which Dr Mothupi's tenure ended. That said, its premise, that a specific removal resolution existed, was contradicted by public documents reasonably available to it, its s 38(b) standing was opportunistic and untenable, and its re-characterisation of its own case in reply was unhelpful to the orderly determination of the matter.

[33] The selection of the applicable scale under the Uniform Rules of Court; Rule 67A(3), read with Rule 69(7), is a separate enquiry from the question addressed above. It turns not on the conduct of the losing party but on '...the complexity of the matter; and the value of the claim or importance of the relief sought'¹⁶ This was a multi-respondent constitutional legality review turning on the proper construction of s 54A of the Systems Act, argued on a record exceeding 550 pages, with senior counsel appearing for Gatvol. Those factors, independently of any question of bad faith, justify costs on Scale C.

[34] Costs of Part A will accordingly be awarded against Gatvol on Scale C, including the costs of two counsel where so employed.

Order

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

1. Part A of the application is dismissed.
2. The Applicant is to pay the costs of Part A of the First, Second and Third Respondents, inclusive of the costs of two counsel where so employed, on the party and party scale, Scale C.

¹⁴*Biowatch Trust v Registrar, Genetic Resources and Others* 2009 (6) SA 232 (CC) paras 21–24.

¹⁵*S S v V V S* [2018] ZACC 5; 2018 (6) BCLR 671 (CC) para 37; *Limpopo Legal Solutions and Another v Eskom Holdings SOC Limited* [2017] ZACC 34; 2017 (12) BCLR 1497 (CC) para 41.

¹⁶*T.P.N v Road Accident Fund* (unreported, KZD case no 11807/2017 dated 11 June 2024) para [43].


A H PETERSEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

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For the Second Respondent:

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The State Attorney, Mahikeng

For the Fourth Respondent:

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