



**THE HIGH COURT OF SOUTH AFRICA  
(NORTHERN CAPE DIVISION, KIMBERLEY)**

**Reportable/Not Reportable**

**Case no: 2026 - 172086**

In the matter between:

**KAGISHO KLAAS TEISE**

**Applicant**

and

**JOHN TAOLO GAETSEWE DISTRICT MUNICIPALITY**

**First Respondent**

**CLLR PULANE MOGATLE-THOANE: N.O.  
EXECUTIVE MAYOR OF JOHN TAOLO  
GAETSEWE DISTRICT MUNICIPALITY**

**Second Respondent**

**CLLR IKGOPOLENG AISENG: N.O. SPEAKER OF  
THE MUNICIPAL COUNCIL OF JOHN TAOLO  
GAETSEWE DISTRICT MUNICIPALITY**

**Third Respondent**

**ACTING MUNICIPAL MANAGER: JOHN TAOLO  
GAETSEWE DISTRICT MUNICIPALITY**

**Fourth Respondent**

**MEC FOR COOPERATIVE GOVERNANCE, HUMAN  
SETTLEMENT AND TRADITIONAL AFFAIRS,  
NORTHERN CAPE PROVINCE**

**Fifth Respondent**

**Neutral citation:** *Teise v John Taolo Gaetsewe District Municipality and Others*  
(2026 - 172086) 25 August 2026.

**Coram:** Mamosebo J.

**Heard:** 24 July 2026.

**Delivered:** 25 August 2026.

**Summary:** Urgent application – Declaratory relief – Precautionary suspension of Municipal Manager – Regulation 6 of Local Government: Disciplinary Regulations for Senior Managers, 2010 – Precautionary suspension not unlawful and not unfair.

---

### ORDER

---

1. The forms, service and time periods provided for in the Uniform Rules of Court are dispensed with, and the applicant's non-compliance therewith is condoned, and the matter is heard as one of urgency in terms of Rule 6(12).
2. The application is dismissed with costs.

---

### JUDGMENT

---

#### **Mamosebo J**

- [1] The applicant, Mr Kagisho Klaas Teise, seeks urgent relief in the form of a declaratory order to enforce his common law, contractual and constitutional rights against the first to fourth respondents. The relief sought, as appearing in the Notice of Motion, is couched in the following terms:

- '1. Dispensing with the Rules relating to forms, service, and time periods as prescribed by the Uniform Rules of Court and directing that this application be enrolled and heard as an urgent application in terms of Rule 6(12).

2. That the notice calling for a Special Council meeting and issued by the Third Respondent as well as the Special Council meeting held on Monday, 13 July 2026 at 12h00 be declared unlawful, invalid and be set aside.
3. That the notice of suspension served upon the Applicant dated 14 July 2026 be declared unlawful, null and void and be set aside.
4. That the purported temporary suspension of the Applicant be set aside.
5. Directing that the Applicant must resume his duties as the Municipal Manager of the First Respondent with immediate effect and on the date of making this Order of Court.
6. That the First to Third respondents be ordered to comply with Regulation 6 of the Local Government: Disciplinary Regulations for Senior Managers, 2010<sup>1</sup> in relation to the process that must be undertaken preceding a lawful suspension of the Applicant.
7. That the First to Third Respondents be ordered to pay the costs of this application, jointly and severally, the one paying the others to be absolved.'

[2] The applicant has been the Municipal Manager of John Taolo Gaetsewe District Municipality since 01 June 2023. The first respondent is John Taolo Gaetsewe District Municipality ("the Municipality"). The second respondent is Counsellor Pulane Mogatle-Thoane, in his/her capacity as the mayor of the Municipality ("the Mayor"). The third respondent is Counsellor Ikgopoleng Aiseng, in his/her capacity as the speaker of the Municipality ("the Speaker"). The fourth respondent is the Acting Municipal Manager of the Municipality. The fifth respondent is the Member of the Executive Council for Cooperative Governance, Human Settlement and Traditional Affairs, Northern Cape Province, who has filed a notice to abide the decision of the Court.

[3] The first to fourth respondents oppose this application on the merits, they did not challenge this Court's jurisdiction. The applicant does not seek relief

---

<sup>1</sup> GN 344, GG 34213, 21 April 2011.

under the Labour Relations Act 66 of 1995, nor does he allege an unfair labour practice. His challenge is directed at the legality of the Municipal Council's resolution and the alleged non-compliance with the Local Government: Disciplinary Regulations for Senior Managers, 2010 and his contract of employment. The matter therefore falls within this Court's jurisdiction.

### ***Urgency***

- [4] In the applicant's founding affidavit, he contends that the application is urgent because the Municipal Council's decision to place him on a precautionary suspension with immediate effect (i.e. before affording him an opportunity to make representations) is unlawful and affects his right to dignity as a senior officer in the Municipality. The applicant further maintains that his suspension directly violates the Local Government: Disciplinary Regulations for Senior Managers, 2010, and his contract of employment. Because the current term of the councillors ends in November 2026, a hearing in due course may be academic, so avers the applicant.
  
- [5] The respondents countered the submission of urgency, contending that the matter is not urgent. They aver that the applicant has failed to set forth explicitly the circumstances that render the matter urgent. The respondents insist that the application does not satisfy any of the established principles on urgency. They go further and argue that it is an abuse of court process, brought to frustrate and delay finality of the investigations by the Municipality, and must be struck from the roll.
  
- [6] The impugned decision immediately affected the applicant's ability to perform his functions as a municipal manager and raised questions concerning the legality of a decision that has already been implemented. In those circumstances, I am satisfied that the applicant will not obtain substantial redress at a hearing in due course.

***Point in limine***

- [7] The applicant's attorneys had caused a notice contemplated in Rule 7(1) of the Uniform Rules of Court to be served on the first to fourth respondents' (hereinafter collectively referred to as the respondents) attorneys disputing the authority of Koikanyang Incorporated to act on the respondents' behalf. Before Mr Ramonyai made his submissions on behalf of the respondents, but after Mr Chwaro had completed his arguments on behalf of the applicant without raising the Rule 7(1) notice, Mr Ramonyai sought clarity regarding the Rule 7(1) challenge. Before the Court could hear him further on that aspect, Mr Chwaro submitted that the applicant's instructing attorney has indicated to him that he is withdrawing the challenge. This was a rather unexpected turn of events, but an aspect that need not detain us any further.

***Merits***

- [8] A synopsis of the facts leading to this application is necessary. The applicant, together with two other senior members of the Municipality, was arrested by members of the Directorate for Priority Crime Investigation (colloquially known as the Hawks) on 29 June 2026 at his workplace. The reason for the arrest is described differently by both the applicant and the respondents. According to the applicant, the arrest relates to the outcome of a competency assessment of one of the unsuccessful applicants for a senior managerial post. However, according to the deponent to the respondents' answering affidavit, the Speaker, the arrest followed investigations of corruption, fraud, cyber fraud, cyber forgery, uttering and the contravention of the Local Government: Municipal Finance Management Act 56 of 2003 ("MFMA") resulting from allegations to the effect that the applicant unlawfully interfered with recruitment processes. The criminal case is postponed to 30 August 2026 for transfer to the Commercial Crimes Court, avers the Speaker. The applicant and the two colleagues are each admitted to bail in the amount of R10 000. The Speaker maintains that the applicant deliberately withheld the investigation from the Municipality.

- [9] Following the arrest of the applicant, the Mayor addressed an email dated 01 July 2026 to the applicant, "KKT1", *inter alia*, to this effect:

'Following your arrest and subsequent release on bail in relation to allegations concerning the recruitment of a Senior Manager, I have considered the circumstances and you are hereby requested, as a precautionary measure, to place you on compulsory leave with immediate effect.' (*Sic.*)

- [10] Pursuant to receipt of the email, the applicant engaged his erstwhile attorneys, EB Reetsang Incorporated, to draft a response to the Mayor, contending that placing him on leave would be invalid and unlawful. Reetsang attorneys addressed a four-page letter, "KKT2", to the Mayor who in turn availed that copy to the Municipality's attorneys (Koikanyang Incorporated). On 06 July 2026, Koikanyang attorneys responded to the letter by merely stating that they were taking further instructions.

- [11] Meanwhile, the applicant ignored the Mayor's communication and continued to report for work. On 06 July 2026, the Speaker issued a Notice for a Special Council Meeting. The parties differ on whether the special meeting was convened. According to the applicant, the meeting did not convene on the 6<sup>th</sup>, whereas the Speaker avers that the said meeting was held on the 6<sup>th</sup> but was rolled over to 13 July 2026 for the adoption of the decision to place the applicant on suspension. The Speaker annexed the Council meeting minutes for both the 6<sup>th</sup> and 13<sup>th</sup> July 2026 to the papers.

- [12] The following were recommendations, in relevant part, made on 13 July 2026:

- '1. That Council notes the arrest and charges against JTGDM Municipal Manager: Mr. KK Teise.
2. That Mr. KK Teise be placed on precautionary suspension with immediate effect, with full-pay pending the outcome of a disciplinary hearing and/or finalization of the criminal matter, in terms of Regulation 5 of the Disciplinary Regulations for Senior Managers.

**Reason:** *His continued presence may interfere with investigations, prejudice witnesses, and compromise the integrity of the municipality.*

3. That Mr. KK Teise be afforded an opportunity to make written representations within 7 working days as to why his precautionary suspension should not be effected, in line with fair labour practice.
4. That Council appoints the Acting Municipal Manager with immediate effect until the finalisation of the disciplinary process or appointment of the new Municipal Manager, but not exceeding a period of three (3) months without review on a month-to-month basis.'

- [13] On 14 July 2026, the Mayor issued a notice of precautionary suspension against the applicant, informing him that the decision to suspend him was in terms of Regulation 6 of the Local Government: Disciplinary Regulations for Senior Managers, 2010, and was taken at a Special Council Meeting held on 13 July 2026. In terms of the conditions of suspension, he was further expected to vacate the workplace by close of business day on 14 July 2026, as his continued presence could jeopardise the investigations into his alleged misconduct, be detrimental to the stability of the Municipality, and interfere with potential witnesses. The suspension was precautionary, with immediate effect, pending his representations within seven working days of receipt of the notice. The applicant accordingly stopped reporting for duty on 14 July 2026.
- [14] On 15 July 2026, the applicant's present attorneys addressed a letter to the Municipality taking issue with, *inter alia*, the immediacy of the suspension and alleging non-compliance with Regulation 6 and the employment contract clause 14. Further alleging that the Municipality was acting *ultra vires* because the "interim/temporary" precautionary suspension is not provided for in the Regulations or the employment contract. The letter urged the Municipality to withdraw the 14 July 2026 notice, failing which litigation would be imminent.
- [15] The Municipality's attorneys responded on 16 July 2026 with a letter explaining that the applicant was misunderstanding the 14 July 2026 notice in that, his precautionary suspension would take effect only on 22 July 2026 after

the lapse of the 7-days he is provided to submit representations for Council's consideration. The letter expressed that during the 7-day period, the applicant was placed on compulsory paid leave pending the receipt of his representations. Further, it was expressed that the applicant had already contacted employees, contrary to the "instructions" provided to him on 14 July 2026. Finally, the applicant was urged to submit representations.

- [16] The applicant then launched these proceedings with a Notice of Motion dated 17 July 2026. The Speaker contends in the answering affidavit that, although the applicant's representations were to be received by 21 July 2026, the Municipality had not received them to date. Counsel for the respondents, Mr Ramonyai, submitted that by the time the matter was argued on 24 July 2026, the representations had still not been received. It is this decision by the Council, taken at the Special Council Meeting of 13 July 2026, that forms the subject of this application.
- [17] Counsel for the applicant submitted that the Municipal Council did not adhere to Rule 5 of the South African Local Government Association ("SALGA") Standing Orders and Rules for meetings of Council (which the Municipality adopted on 1 July 2008) in convening the meeting held on 13 July 2026. The argument is that the 48-hour notice period required by the SALGA Rule 5 was not met as the notice was issued on Friday, 10 July 2026, for a meeting to be held on Monday, 13 July 2026. The respondents' response to this challenge was that, first, the fact that the meeting was scheduled for the 6<sup>th</sup> and adjourned to the 13<sup>th</sup> meant that the notice did not strictly have to comply with the 48-hour rule; and, besides, if a matter is urgent, a shorter period of notice is permissible. The respondents added that, in any event, the 48-hour rule applied to councillors only and the applicant was not a councillor but an administrator.
- [18] Section 29 and 29A of the Local Government: Municipal Structures Act 117 of 1998 deals with meetings of municipal councils and provides:

'29 Meetings of municipal councils

- (1) The speaker of a municipal council decides when and where the council meets subject to section 18(2), but if a majority of the councillors requests the speaker in writing to convene a council meeting, the speaker must convene a meeting at a time set out in the request.

#### 29A Public notice of meetings of municipal councils

The municipal manager of a municipality must give notice to the public, in a manner determined by the municipal council, of the time, date and venue of every-

- (a) ordinary and special meeting of the council or a meeting of a committee of a council;
- (b) ordinary or special meeting of the council or a meeting of a committee of a council that was postponed; and
- (c) urgent meeting of the council or meeting of a committee of a council, except when time constraints make this impossible.'

Section 18(2) of the Act directs a municipal council to meet at least quarterly. No standing orders, rules, by-laws or other admissible material were placed before the Court to substantiate the applicant's contention that a mandatory 48-hour notice period applied in the circumstances. In the absence of admissible material establishing the existence and applicability of the alleged 48-hour requirement, the challenge cannot succeed.

- [19] Regulation 6 of the Local Government: Disciplinary Regulations for Senior Managers, 2010 deals with precautionary suspension and stipulates:

- '(1) The municipal council may suspend a senior manager on full pay if it is alleged that the senior manager has committed an act of misconduct, where the municipal council has reason to believe that –
  - (a) the presence of the senior manager at the workplace may –
    - (i) jeopardise any investigation into the alleged misconduct;
    - (ii) endanger the well-being or safety of any person or municipal property; or
    - (iii) be detrimental to stability in the municipality; or
  - (b) the senior manager may –
    - (i) interfere with potential witnesses; or

- (ii) commit further acts of misconduct.
- (2) Before a senior manager may be suspended, he or she must be given an opportunity to make written representations to the municipal council why he or she should not be suspended, within seven (7) days of being notified of the council's decision to suspend him or her.
- (3) The municipal council must consider any representation submitted to it by the senior manager within 7 days.
- (4) After having considered the matters set out in sub-regulation (1), as well as the senior manager's representations contemplated in sub-regulation (2), the municipal council may suspend the senior manager concerned.
- (5) The municipal council must inform –
  - (a) The senior manager in writing of the reasons for his or her suspension on or before the date on which the senior manager is suspended; and
  - (b) The Minister and the MEC responsible for local government in the province where such suspension has taken place, must be notified in writing of such suspension and the reasons for such within a period of seven (7) days after such suspension.
- (6) (a) If a senior manager is suspended, a disciplinary hearing must commence within three months after the date of suspension, failing which the suspension will automatically lapse.
- (b) The period of three months referred to in paragraph (a) may not be extended by council.'

[20] Clause 14 of the employment contract between the applicant and the Municipality, in relevant parts, states:

- '14.1. The Municipality may suspend the Municipal Manager on full pay if he is alleged to have committed a serious offence and the Municipality believes his presence at the workplace might jeopardise any investigations into the alleged misconduct or endanger the wellbeing or safety of any person or municipal property provided that before a Municipal Manager is suspended as a precautionary measure, he must be given an opportunity to make representation on why he should not be suspended.
- 14.2. The Municipal Manager who is to be suspended must be notified, in writing, of the reasons for his suspension. He shall have a right to respond within seven (7) working days.'

- [21] It is clear that clause 14 of the contract of employment is analogous to Regulation 6. The respondents submitted that the contract gives way to Regulations should there be a discord between the interpretation of clause 14 and that of Regulation 6. It is also noted that the respondents' case in their answering affidavit is that the applicant was on a compulsory paid leave rather than an interim precautionary suspension during the 7-day period pending his representations. Of course, such would be incongruous with the 14 July 2026 notice of suspension which makes no mention of a mandatory paid leave and is clear that the terms and conditions of suspension were to take effect immediately. I especially express this to dispel the notion that the applicant misunderstood the notice of suspension. Indeed, throughout these proceedings, the applicant's understanding is that he has been placed on interim precautionary suspension and has couched his case with such an understanding. This is this Court's understanding as well and this matter shall accordingly be decided as such.
- [22] Counsel for the applicant invoked *Biyase v Sisonke District Municipality and Another*<sup>2</sup> ("Biyase"), *Lebu v Maquassi Hills Local Municipality (1)*<sup>3</sup> ("Lebu 1") and *Mathe v Sedibeng District Municipality*<sup>4</sup> ("Mathe"), to support the applicant's contention that his precautionary suspension must have been preceded by an invitation to furnish representations within seven days.
- [23] In *Biyase*, Mr Biyase fell within the definition of senior manager. He was served with a letter under the heading "notice of intention to suspend" on 27 October 2011. Attached to the letter was a complaint sheet which had set out four allegations of gross misconduct by Mr Biyase. He had until the close of business on 31 October 2011 to submit written representations as to why he should not be suspended. His attorneys submitted written representations on his behalf on 01 November 2011, challenging the suspension as unlawful and/or unfair. They took issue with the four-day period, contending that the legislature prescribed a period of seven days as the period within which to file

---

<sup>2</sup> (2012) 33 ILJ 598 (LC).

<sup>3</sup> (J 2035/11) [2011] ZALCJHB 170 (21 October 2011); (2012) 33 ILJ 642 (LC).

<sup>4</sup> (2026/113853) [2026] ZAGPJHC 626 (11 June 2026).

representations. Mr Biyase's attorneys contended that he was therefore not afforded adequate time within which to file such representations. The municipality, however, resolved to suspend him on the same day, 01 November 2011. The municipality had also failed to explain why or whether any of the circumstances/requirements in Regulation 6(2) had arisen/were met.

- [24] In *Lebu*, the municipal manager was suspended following a series of council resolutions and litigation. The municipality had failed to articulate the purpose of the suspension. In this regard, the Court observed that suspension is a measure that must not be resorted to lightly. It observed that there was a tendency in the public sector to adopt suspension as a measure of first resort and almost automatically once a form of misconduct is alleged. The Court explained that the purpose of removing an employee from work, even temporarily and on full pay, must be conveyed to the employee concerned in sufficient detail to enable him/her to make representations meaningfully.
- [25] In *Mathe*, Mr Mathe – the municipal manager of Sedibeng Municipality, was placed on precautionary suspension on suspicion that he may have committed a misconduct relating to the disciplinary enquiry of the municipality's chief financial officer. Whilst the municipality invited representations from Mr Mathe, it did not give him the basis upon which the Regulation 6(1) requirements were met. Notwithstanding, Mr Mathe submitted the representations. The municipal council's resolution, however, stated that Mr Mathe failed to respond to the allegations brought against him, and provided no reasons as to why he should not be placed on precautionary suspension save for placing on record counter allegations. He approached the High Court to set aside his suspension on the basis that he was not heard on the municipality's reasons that the requirements were met.
- [26] The facts in *Biyase*, *Lebu* and *Mathe* are distinguishable from those in the case before this Court. In this matter, the applicant was aware of the Hawks' investigations and, according to the respondents, did not inform the Municipality thereof until his arrest at the workplace. The respondents

regard the criminal charges that he is facing, and the charges he internally faces as the municipality instituted its investigations, as serious. His case will be heard at the Commercial Crimes Court, and he has not disputed those allegations or the fact that he is admitted to bail. Further, as stated above, in both *Biyase* and *Mathe*, the municipality had failed to explain why or whether it believed that any of the circumstances in Regulation 6(2) had arisen. Similarly, in *Lebu*, the municipality had failed to articulate the purpose of the suspension. None of the above deficiencies arises *in casu*. Indeed, the applicant's case is not that the reasons for his suspension were not provided with sufficient detail for him to respond or that the Municipality did not establish why or whether Regulation 6(1) requirements have been met. His case is mainly that he was not afforded seven days to make representations. It is therefore in light of this case's peculiar context that the Municipality's compliance with Regulation 6 must be assessed.

- [27] The critical aspect of the Regulation pertains to Regulation 6(2) that before a senior manager may be suspended, he or she must be given an opportunity to make written representations to the municipal council (within seven (7) days of being notified of the council's decision to suspend him or her), explaining why he or she should not be suspended.
  
- [28] Regulation 6 is not a model of legislative clarity. As observed in *Biyase*,<sup>5</sup> subregulation (2) appears, at first glance, to contain an internal tension. Whilst it provides that a senior manager must be afforded an opportunity to make representations before being suspended, it also refers to those representations being made within seven days of being notified of council's decision to suspend him or her. Subregulation (4), in turn, provides that the municipal council may suspend the senior manager only after considering those representations.
  
- [29] Regulation 6 is unfortunately inelegantly drafted. Subregulation (2) stipulates that, before a senior manager may be suspended, he or she must be afforded

---

<sup>5</sup> *Biyase* paras 13-14.

an opportunity to make written representations within seven days of being notified of the council's decision to suspend him or her. Read literally and in isolation, subregulation (2) appears to contemplate both a decision to suspend and a prior opportunity to make representations. Subregulation (4), however, provides that the municipal council may suspend the senior manager only after considering the representations contemplated in subregulation (2). It is therefore necessary to construe the regulation as a coherent whole and in a manner that gives effect to each subregulation.<sup>6</sup>

- [30] In my view, the "decision to suspend" referred to in subregulation (2) is not necessarily synonymous with the final act of suspension contemplated in subregulation (4). The more sensible interpretation is that it refers to a preliminary council determination that circumstances contemplated in Regulation 6(1) exist and that precautionary suspension is under consideration.<sup>7</sup> Such a construction gives meaning to the requirement that the employee be notified of council's decision while preserving the obligation in subregulation (4) that representations be considered before the suspension process is finally determined.
- [31] The decisions in *Biyase*, *Lebu 1* and *Mathe* do not compel a different conclusion. Those cases emphasise the importance of affording a senior manager a genuine opportunity to make representations before a final decision on precautionary suspension is taken. They do not, however, establish an inflexible rule that a municipal council is, in every circumstance, prohibited from taking immediate protective measures where the jurisdictional facts contemplated in Regulation 6(1) are objectively present. The enquiry remains whether, viewed in context and having regard to the purpose of Regulation 6, the procedure adopted by council was lawful and rational.
- [32] In the present matter, the Council was confronted with the arrest of its Municipal Manager by the Hawks, allegations involving corruption, fraud,

---

<sup>6</sup> *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) para 18.

<sup>7</sup> See *Lebu v Maquassie Hills Local Municipality and Others* (2) (J 2695/11) [2011] ZALCJHB 248 (7 December 2011); (2012) 33 ILJ 653 (LC) para 14.

cyber fraud, cyber forgery, uttering and contraventions of the MFMA, an ongoing criminal investigation and the likelihood that municipal employees would be required to serve as witnesses. Unlike *Biyase* and *Mathe*, the concerns relied upon by council were neither speculative nor abstract. They arose from events that had already culminated in the applicant's arrest, release on bail and pending prosecution before the Commercial Crimes Court.

- [33] This interpretation is also consistent with the practical realities which Regulation 6 seeks to address. Where council has reason to believe that the continued presence of a senior manager may jeopardise investigations, interfere with potential witnesses or be detrimental to stability within the municipality, the protective purpose of Regulation 6(1) may justify interim measures designed to preserve the integrity of the investigation pending receipt and consideration of representations. Such measures are precautionary and protective in nature and do not constitute a final determination of the senior manager's suspension status or guilt on the charges.
- [34] Importantly, the notice issued to the applicant on 14 July 2026 drew an express distinction between what it termed a "temporary precautionary suspension" and the Council's subsequent determination whether that suspension should be made final after receipt of representations. Whether that terminology is entirely consistent with the wording of Regulation 6 need not be finally determined. What is significant is that the applicant was afforded exactly the opportunity contemplated in subregulation (2), namely an opportunity to place facts and submissions before Council within seven days for consideration before Council finally determined its position.
- [35] It is, however, unnecessary in this matter to pronounce definitively on the outer limits of council's powers under Regulation 6. Even if it is assumed in favour of the applicant that the procedure adopted by council was not perfectly aligned with the wording of Regulation 6, that does not conclude the enquiry. The applicant was expressly afforded the opportunity contemplated in Regulation 6(2) to place representations before Council within seven working

days. Council remained obliged by Regulation 6(3) to consider any such representations and thereafter determine whether the precautionary suspension should remain operative, thus, being final.

[36] The applicant elected not to avail himself of that opportunity. Unlike the applicants in *Biyase* and *Mathe*, who submitted representations and complained that those representations were either not properly accommodated or not meaningfully considered, the present applicant furnished no representations at all. It is appreciated that the abovementioned cases were not the sort where suspension was effected immediately. Nonetheless, the applicant's total absence of an effort to submit representations cannot be ignored. From 14 July 2026 until the expiry of the period afforded to him on 21 July 2026, he did not engage the process contemplated by Regulation 6. Instead, he approached this Court before Council had the opportunity to consider his position and complete the process envisaged by the Regulation.

[37] This is what was pronounced by Wilson J in *Mathe*<sup>8</sup>

'In my view, Mr Mathe is plainly correct. The regulations afford Mr Mathe a right to remain in post pending disciplinary proceedings taken against him *unless the regulation 6(1) requirements are met and he has been given a reasonable opportunity to respond to the facts upon which a municipal council believes that they have been met.*' (My emphasis.)

[38] The applicant was afforded an opportunity to furnish representations directed at the Council's concerns that his continued presence in office could prejudice investigations, interfere with witnesses and negatively affect the administration of the Municipality. In the circumstances of this case, that constituted a reasonable opportunity to address the factual basis upon which Council relied in invoking Regulation 6(1).

---

<sup>8</sup> *Supra* fn 4 para 7.

- [39] It is the respondents' contention that the applicant, occupying the position of Municipal Manager, wields power and may interfere with witnesses or even exert pressure on them as his subordinates during the investigations. According to the respondents, the matter first came to light when Ms Tshabaemang sought intervention from the Court, albeit not prosecuting the matter to finality, and subsequently reported it to the Hawks. The Municipality avers that it could not conduct internal investigations as there was not enough detail from Ms Tshabaemang's letter at the time. This Court cannot also ignore the arguments presented on behalf of the respondents, particularly relating to the act of dishonesty, as that impacts on his position as the accounting officer. There is no reason why the respondents cannot be afforded the opportunity to investigate the allegations while the applicant is placed on a precautionary suspension with full pay.
- [40] Nor can it be overlooked that the applicant occupies the most senior administrative office within the Municipality and serves as its accounting officer. The allegations under investigation concern dishonesty and irregularities relating to recruitment processes. Having regard to the nature of the office occupied by the applicant, the seriousness of the allegations and the existence of ongoing criminal proceedings, the concerns articulated by Council regarding interference with witnesses and prejudice to investigations cannot be dismissed as fanciful or irrational.
- [41] Furthermore, the applicant's interpretation would lead to anomalous results. A municipal manager occupies the most senior administrative position within a municipality and exercises extensive powers over personnel, records, procurement processes and municipal administration. Where allegations involve dishonesty, fraud, corruption or interference with recruitment processes, the very mischief contemplated by Regulation 6(1) may materialise during the seven-day period. It is improbable that the legislature intended to deprive a municipal council of the ability to take immediate protective measures where it reasonably believes that the risks enumerated in Regulation 6(1) are present.

- [42] In any event, it is not in all circumstances that the lack of strict compliance with Regulation 6 shall render a precautionary suspension unlawful. Mhlantla J for the majority of the Constitutional Court in *Liebenberg NO and Others v Bergrivier Municipality*<sup>9</sup> (“*Liebenberg*”) elucidated:

‘In *Unlawful Occupiers, School Site v City of Johannesburg*, the Supreme Court of Appeal stated:

“(I)t is clear from the authorities that even where the formalities required by statute are peremptory it is not every deviation from the literal prescription that is fatal. Even in that event, the question remains whether, in spite of the defects, the object of the statutory provision had been achieved.”

This was amplified by the Supreme Court of Appeal in *Nokeng Tsa Taemane Local Municipality v Dinokeng Property Owners Association and Others* where it was stated:

“It is important to mention that the mere failure to comply with one or other administrative provision does not mean that the whole procedure is necessarily void. It depends in the first instance on whether the Act contemplated that the relevant failure should be visited with nullity and in the second instance on its materiality. . . . To nullify the revenue stream of a local authority merely because of an administrative hiccup appears to me to be so drastic a result that it is unlikely that the Legislature could have intended it.”

In *African Christian Democratic Party v Electoral Commission and Others*, this court, in the context of assessing a local authority’s compliance with municipal electoral legislation, held that “(a) narrowly textual and legalistic approach is to be avoided”. Rather, the question is whether the steps taken by the local authority are effective when measured against the object of the legislature, which is ascertained from the language, scope and purpose of the enactment as a whole and the statutory requirement in particular.

Therefore, a failure by a municipality to comply with relevant statutory provisions does not necessarily lead to the actions under scrutiny being rendered invalid. The question is whether there has been substantial compliance, taking into account the relevant statutory provisions in particular and the legislative scheme as a whole.’

---

<sup>9</sup> 2013 (5) SA 246 (CC) paras 23-26.

- [43] Relying on *Liebenberg*, amongst other authorities, the Labour Court in *Mojaki v Ngaka Modiri Molema District Municipality and Others*<sup>10</sup> (“*Mojaki*”) found a 48-hours’ notice to make representations not fatal to the decision to suspend a municipal manager under “volatile” circumstances.
- [44] Further, the importance of engaging the merits of the notice to suspend, regardless of procedural shortcomings, was also underscored in *Vermaak v Greater Taung Local Municipality and Others*.<sup>11</sup> In that case, a chief financial officer complained about the unlawfulness of the processes and did not engage the grounds of suspension in his representations. The Court insisted that “because, . . . the nature of the allegations are considered to be serious . . . it is not sufficient for the employee or his or her attorney to simply criticise the process and refuse to make the submissions as requested”.<sup>12</sup>
- [45] In so far as the reliance to contractual terms is concerned, I hold the same sentiments as Molahlehi J in *Mojaki* that the circumstances *in casu* are different.<sup>13</sup> Contractual rights, like all rights, are not absolute and a contractual term cannot circumvent legislative objectives. Further, as already stated, the applicant was afforded seven days within which to make representations before a “final” decision on his precautionary suspension was to be made and he chose not to.
- [46] Having regard to the applicant’s position as a municipal manager, the nature of the allegations, the fact that the municipal employees are potential witnesses in the internal investigation and the pending criminal case, I am satisfied that the Council had a rational basis to believe that the applicant’s continued presence at the workplace, even for seven days, could interfere with witnesses and jeopardise ongoing investigations as contemplated in Regulation 6(1)(a)(i) and 6(1)(b)(i).

---

<sup>10</sup> (2015) 36 ILJ 1331 (LC).

<sup>11</sup> (J490/17) [2018] ZALCJHB 442 (13 June 2018).

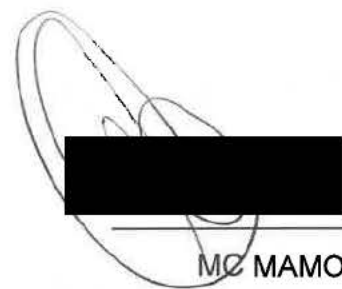
<sup>12</sup> *Ibid* para 59.

<sup>13</sup> *Mojaki* para 35.

[47] On the question of costs. Although the application raised an arguable issue concerning the interpretation of Regulation 6, the applicant has been unsuccessful. There is accordingly no basis to depart from the ordinary principle that costs follow the result.

[48] As a result, the following order is made:

1. The forms, service and time periods provided for in the Uniform Rules of Court are dispensed with, and the applicant's non-compliance therewith is condoned, and the matter is heard as one of urgency in terms of Rule 6(12).
2. The application is dismissed with costs.



MC MAMOSEBO  
JUDGE OF THE HIGH COURT  
NORTHERN CAPE DIVISION

#### Appearances

For the Applicant:

Instructed by:

Adv. OK Chwaro

Modiboa Attorneys Inc

c/o Motlhamme Pino Attorneys

For the 1<sup>st</sup> - 4<sup>th</sup> Respondents:

Instructed by:

Adv. E Ramonyai

Koikanyang Inc

c/o Haarhoffs Inc

For the 5<sup>th</sup> Respondent:

Office of the State Attorney

Kimberley