



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NO.: 2025-093494

Reportable	YES/N0
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In the matter between:

MAMELLO LETEBA

1st Applicant

SIMPHIWE MDODA

2nd Applicant

BANDILE NGOQI

3rd Applicant

MTHOBELI SIPHAMLA

4th Applicant

and

THE ELUNDINI LOCAL MUNICIPALITY

1st Respondent

**THE MUNICIPAL COUNCIL OF ELUNDINI
LOCAL MUNICIPALITY**

2nd Respondent

THE SPEAKER OF ELUNDINI

LOCAL MUNICIPALITY

3rd Respondent

**THE MUNICIPAL MANAGER OF ELUNDINI
LOCAL MUNICIPALITY**

4th Respondent

NONKONGOZELO RUTH LENG

5th Respondent

KGOTSOFADISE ABEDNEGO MGIJIMA

6th Respondent

NOLWAZI MDITSHANE

7th Respondent

CHRISTOPHER BOOKA

8th Respondent

JUDGMENT

CENGANI-MBAKAZA AJ

Introduction

[1] Before this court is an application for an order in terms of s 160(8) of the Constitution of the Republic of South Africa (the Constitution)¹, concerning the Special meeting held on 16 April 2026 (the Special Council Meeting).

[2] The applicants seek an order declaring that the Special Council Meeting, is in breach of s 47(1)(b) read with s 53 of the Local Government Municipal Structures Act 117 of 1998 (Municipal Structures Act), in that adequate notice was not issued in accordance with the provisions of Rule 8.3 read with Rule 24 of the Council and Committees of the Elundini Local Municipality (the Standing Rules and Orders), and is therefore null and void.

¹ Act, 1996. Section 160(8) of the Constitution provides:

‘Members of the Municipal Council are entitled to participate in its proceedings and those of its committees in a manner that-

(a)...

(b) is consistent with the democracy; and

(c) may be regulated by national legislation’.

[3] The applicants further seek an order declaring that the fourth respondent, in calling and convening the Special Council meeting, did not act in good faith, honestly and transparently and not in the best interest of the municipality.

[4] In addition, the applicants seek an order setting aside the appointment of Nonkongozelo Ruth Lengs (the fifth respondent) as the new mayor of Elundini Local Municipality and declaring such appointment on 16 April 2026 to be null and void, on the grounds that she is not a competent candidate in terms of s 48(5) of the Municipal Structures Act.

[5] The applicants further seek an order setting aside the appointments of Kgotsfaditse Abednego Mgijima (the sixth respondent) and Christopher Booka (the eighth respondent) as new members of the Executive Committee, and declaring their appointments to be null and void.

[6] Furthermore, the applicants seek an order for retrospective reinstatement in that the applicants' attendant benefits and emoluments remain extant and unaffected by the impugned removal of the Special Council Meeting. Moreover, the applicants seek an order declaring that the Special Council Meeting is unlawful and that the resolutions taken thereat are invalid and therefore set aside.

[7] The applicants seek an order interdicting and restraining the first to fifth respondents from removing the applicants without following due process in future. Alternatively, the applicants seek an order granting prayers 1 to 9 as

interim relief, pending a review application to be launched by the applicants within 30 days of the granting of this order.

[8] The applicants further seek an order directing any respondent who opposes this application to pay costs thereof, jointly and severally, the one paying the other to be absolved.

The preliminary issues

[9] As a precursor to the main application, the applicants raised preliminary points of urgency and the third respondent's (the Speaker) authority to act in the proceedings. At a later stage during the argument, it transpired that there is no urgent matter before this court. Despite this, the applicants' counsel persisted in his argument that the issue of the authority to act is dispositive of the main issues before this court and should be dealt with.

[10] Counsel argued that in accordance with s 29 of the Municipal Structures Act, the Speaker of the Municipal Council decides when and where the Council meeting meets, and such Council meetings must be convened with the approval of the majority of councillors.

[11] It was further argued that, in accordance with the Municipal Structures Act, nowhere in the papers is it shown that the Speaker was delegated by the Municipal Council to oppose this application on behalf of the respondents, including herself.

[12] In contrast, counsel for the respondents argued that in the absence of a Rule 7 notice, the applicants have no authority to challenge the Speaker's authority to act in these proceedings. I think without delving much into what was argued on this point, it is apposite to deal with the factual and legal position regarding this aspect:

[13] It is common cause that no notice in terms of Rule 7(1) of the Uniform Rules was delivered by the applicants challenging the authority of the Speaker to act. The legal position in relation to this aspect has not changed. Rule 7(1) of the Uniform Rules of Court, as amended, provides that the power of the attorney to act and the authority of anyone acting on behalf of a party may be challenged on notice. The procedure is peremptory. A party who wishes to dispute such authority must deliver a notice within ten days of becoming aware that the person is so acting, calling upon such person to produce proof of authority.

[14] It is common cause that no such notice was delivered by the applicants in this matter. The applicants, having been served with an answering affidavit deposed to by the Speaker, elected not to avail themselves of the remedy afforded by the Rule.

[15] The consequence of such failure is well settled. In *Eskom v Soweto City Council*² and *Unlawful Occupiers, School Site v City of Johannesburg*,³ the

² 1992 (2) SA 703 (W) at 705C-J.

Supreme Court of Appeal confirmed that absent a Rule 7(1) notice, the question of authority may not be raised. Therefore, on this ground alone the preliminary point must fail.

[16] In any event, as noted by the respondents' counsel, the Speaker is cited as a third respondent in these proceedings in her official capacity, and the relief sought directly impugns her conduct as Speaker convening and presiding over the Special Council Meeting. The requirement of authorisation arises where a person purports to act on behalf of another. It does not arise where a party acts in defence of her own conduct.

[17] A respondent who is sued in her own name does not require a resolution or delegation to oppose the application. To hold otherwise would lead to the untenable proposition that a functionary whose conduct is impugned must seek permission from the very body she presides over in order to be heard. In this instance, there is neither a factual nor a legal basis for such a proposition.

The merits

[18] The material facts are largely common cause. In her capacity as Speaker, the third respondent convened a special council meeting aiming to deal with the removal of the members of the Executive Committee of the first respondent as well as the removal of the Mayor of the first respondent.

³ 2005 (4) SA 199 (SCA) at para 14.

[19] To that end, a purported notice (notice) was issued to all councillors affected, including the applicants. The administrative process was facilitated by Mr Vukile Matyeni (Mr Matyeni), the administrative officer responsible for council support services for the first respondent.

[20] On 13 April 2026, the notice convening the special council meeting, together with the agenda thereof, was placed in the official WhatsApp group of the first respondent's councillors. The WhatsApp message was accompanied by a Portable Document Format (PDF) version of the agenda stating in clear terms that a special council meeting had been called for 16 April 2026 for purposes of removal of members of the Executive Committee of the first respondent municipal council, including the mayor.

[21] It is common cause that the agenda explicitly stated the purpose of the meeting. The agenda in question is marked "VH-1". On its face, it is titled as follows:

"AGENDA OF A SPECIAL MEETING OF THE COUNCIL, DATED 16 APRIL 2026, TO BE HELD AT NQANQARHU TOWN HALL AT 11:00. *The agenda is itemised as follows:*

- 1. Opening and welcome;*
- 2. Application for leave of absence;*
- 3. Adoption of the agenda;*

4. *Declaration of interest and pledge of ethics;*
5. *Introduction and welcoming of Councillor;*
6. *Removal of the Executive Committee membership including mayor; and*
7. *Closure”*

[22] Of relevance is item 6. It is common cause that the business that ultimately formed the subject of the dispute between the parties was contained in item 6 of annexure VH-1. Annexure VH-2 to the papers is a true copy of the screenshot of the WhatsApp message referred to above. The screenshot depicts the message by which the notice and agenda were distributed to the members of the first respondent's council. Annexure VH-2 further contains the read receipt confirming receipt of the said message by members of the council. The authenticity of annexure VH-2 as a record of the distribution was not placed in dispute.

[23] On 14 April 2026, a further notice of the special meeting was delivered by electronic mail. The distribution was effected by TT Mati, another administrative officer in the employ of the first respondent. The notice was in addition to the WhatsApp notice that was placed on the WhatsApp group on 13 April 2026 by Mr Matyi.

[24] The applicants averred that, although the meeting was held, it was not properly convened and, consequently, any outcome flowing therefrom is invalid

and of no force or effect. Furthermore, they stated that, despite their protestations, the majority voted in favour of the wrongful and unlawful adoption of the agenda, and as a consequence, they were removed and consequently dethroned.

The issues

[25] The crisp issue is whether the respondents acted contrary to s 160(8) of the Constitution read with s 47(1)(b) and further read with s 53 of the Municipal Structures Act, and whether any notice to remove the applicants, including the Mayor, was issued in compliance with Rule 8.3 and Rule 24 of the Standing Rules and Order.

The parties' legal submissions

[26] The applicants' counsel raised several interrelated issues, the most salient of which are outlined below: Firstly, relying on s 29 (1) of the Municipal Structures Act, he argued that a special meeting can only take place upon the written request of a majority of councillors. As the meeting of the 16th April 2026 was called *mero motu*, it was improperly convened.

[27] Secondly, that the notices annexed VH-1 and VH-2 were invalid because Mr Matyi and TT Mati, who communicated the notices, were 'merely instructed' and were not holders of a delegated authority in terms of s 59 of the

Municipal Systems Act to perform the function. In the absence of delegation, the notices are a nullity.

[28] Thirdly, he argued that the meeting was not properly called in accordance with the Standing Rules and Orders and the Constitution. Furthermore, the requirements of the 48 hours' notice were not complied with, thereby depriving councillors of adequate time to prepare.

[29] Fourthly, in their papers, the applicants averred that they were not given an opportunity to participate, in that an objection to the agenda was disregarded. They pointed to the 16 versus 15 votes, arguing that such close division shows that the agenda was contentious and should not have been proceeded with.

[30] Fifthly, that except for the notice and agenda, the applicants received no separate notice of motion informing them that they would be removed from office. Essentially, counsel submitted that the removal is a drastic measure requiring specific prior warning, not merely a listing in the agenda.

[31] Sixthly, that Rule 24.1 of the Standing Orders was not complied with. Counsel argued that Rule 24.1 requires a notice of motion signed by a mover and a seconder to be issued before a motion can be moved. No such motion was issued for the removal of the Executive Committee.

[32] Seventhly, that Rule 12.1 was not complied with in that the notice board was not used to place the date of the meeting. Counsel submitted that the public notice as required by the Rules was not given.

[33] Eighthly, that an agenda is not a notice. Counsel argued that VH-1 is an agenda and cannot serve as a notice. A notice must give notice that a meeting will be held, while an agenda only lists items. Therefore, no valid notice was given.

[34] Ninthly, a notice must be clear. Counsel submitted that a valid notice must state who the motion is to be moved against and who the mover of the motion is. VH-1 merely states, 'Removal of Executive Committee Membership including Mayor' without naming the individual members affected or naming the mover and is therefore vague and invalid.

[35] The respondents' counsel, on the other hand, contended, with reference to Rule 12.1 of the Standing Rules and Orders, that notice of a special meeting may be delivered in various ways, including delivery to a physical address and delivery to a postal address.

[36] Counsel argued that in terms of the Electronic Communications and Transactions Act 25 of 2002, the objective is to enable and facilitate electronic communications and transactions in the public interest. To this extent, so it was submitted, the Standing Rules and Orders recognise communication by

electronic means and, therefore, there is no basis for the suggestion that the WhatsApp message did not suffice.

[37] Furthermore, by allowing themselves to be added to the councillor's WhatsApp group, the applicants acquiesced to the use of WhatsApp as a means of communication with them. Additionally, counsel referred to *Natal Joint Municipal Pension Fund v Endumeni Municipality*⁴ and argued that a court, when interpreting a document, must from the outset consider its factual matrix, its purpose, the circumstances leading up to its conclusion, and the knowledge at the time of those who negotiated and produced it.

[38] Therefore, in this instance, so he argued, the original power of the Speaker to convene meetings is sourced from s 29(1) of the Municipal Structures Act, which provides that the Speaker's power to convene a meeting vests in two distinct instances.

The legal framework and the court's analysis

[39] In accordance with s 47(1)(b) of the Municipal Structures Act, a member of an executive committee vacates office during a term if that member is removed from office as a member of the executive committee in terms of s 53. Section 53 of the Municipal Structures Act provides:

'Removal from office of the executive committees

⁴ 2012(4) SA 593 (SCA) at para 18.

53(1) A municipal council may by resolution remove from office one or more or all members of its executive committee. Prior notice of an intention to move a motion for the removal of members must be given...’

[40] The Standing Rules and Orders for meetings of the Council and Committees of Elundini Local Municipality distinguish between two categories of meetings. Rule 7(1) of the Standing Rules and Orders provides that ordinary meetings shall be held once per quarter. In terms of Rule 7(2), the Speaker determines the date, time, and venue of Council meetings, in accordance with the Council calendar as approved by the Municipal Council.

[41] Then there is Rule 8 of the Standing Rules and Orders which governs Special Council Meetings. This rule is the subject of these proceedings. It provides:

‘The Council may hold special meetings as and when required. The Speaker determines the date, time and venue of the special meetings of the Council, and must, upon written request of a majority of the councillors of the Municipality, call a special meeting at the time set out in such request, provided that no such special meeting shall take place unless all councillors are given at least 48 hours notice thereof.’

[42] This Rule mirrors s 29 (1) of the Municipal Structures Act which provides:

‘The speaker of a municipal council decides where and when the council meets, but if a majority of the councillors requests the speaker in writing to convene a council meeting, the speaker must convene a meeting.’

[43] The applicants’ reading inverts the provision. The first clause vests an original discretion in the Speaker to decide where and when Council meets. The second clause is conditional and peremptory. If a majority requests, the Speaker must convene. The majority request is not a jurisdictional prerequisite. It is a democratic safeguard to compel a recalcitrant Speaker.

[44] If the applicants’ interpretation were accepted, the Speaker could never call an urgent special meeting on her own initiative, and the first clause would be rendered nugatory. That cannot have been the intention of the legislature. In this instance, the meeting was convened under the first trigger- by the Speaker’s own initiative. No written request by the majority was required.

[45] In relation to Mr Matyi and TT Mati’s instructions to issue notices, these two administrative officers were merely instructed to issue notices; they were not delegated under s 59 of the Municipal Systems Act. The transmission of a notice of a meeting already called by a Speaker was an implementation of an act, not a decision. Therefore, the argument positing that VH-1 and VH-2 are invalid for want of delegation has no merit.

[46] Regarding the 48 hours’ notice, it is gleaned from the papers filed that VH-2 proves that VH-1 was dispatched on 13 April 2026 at 11:00. That is 72

hours, which is in excess of 48 hours' notice required by Rule 8 of the Standing Rules and Orders. There is nothing to suggest that the Constitutional quorum and majority requirements were not met.

[47] In relation to the objection to the agenda, one must acknowledge that the right to participate encompasses a right to be notified, to attend, to be heard and put to vote. In my view, this should not be conflated with a right to succeed. In the present instance, the objection was raised, heard and put to vote. The agenda was ratified by majority resolution. The Speaker was obliged to proceed with the ratified agenda. The applicants participated, and they lost the vote.

[48] In addition, counsel's argument that there ought to be a separate notice of motion has no legal or factual basis. Section 29A of the Municipal Structures Act and Rule 8 of the Standing Orders require a notice by way of 'notice' and the agenda stating the business with sufficient clarity. No separate charge sheet is required. In my view, item 6 titled *'Removal of Executive Committee Membership, including the Mayor'* met this significant requirement in that it gave adequate warning of the nature of business.

[49] Counsel referred to Rule 12.1 of the Standing Rules and Orders, arguing that the notice ought to have been placed on the notice boards. Rule 12.1 of the Standing Rules and Orders provides,

‘ Whenever a meeting of the Municipal Council is called, the Municipal Manager must give notice of the meeting stipulating the time, date and venue of the meeting by

placing a notice to this effect on a notice board situated at the main newspaper circulating in the Municipality and by placing it on social media platforms and municipal website.’

[50] This Rule is, in my view, not applicable in the circumstances of this case. This Rule is only applicable to the public. As already noted above, notice to councillors is governed by Rule 8. In any event, the purpose was achieved; the applicants are councillors, they received the notice and participated in its proceedings. Therefore, they suffered no prejudice in this regard.

[51] Notwithstanding the submissions that the Rules do not prescribe how a notice should be formulated, the proposition that an agenda cannot constitute a notice is misconceived. A notice is judged by whether it conveys essential information and not by its label. In my view, a document that states where and when Council meets is a notice. Similarly, a document that states what will be discussed is an agenda. VH-1 is titled ‘Notice of a Special Meeting of Council’; it states the date, time and venue, conveying the list of business.

[52] Therefore, as long as there is clarity in relation to the nature of business, that suffices. Section 53 of the Municipal Structures Act contemplates removal of ‘one’ or ‘more’ or ‘all members’. VH-1 conveys collective removal including a Mayor. The applicants, as EXCO members, knew that they fall in this class. The mover in a Rule 8 meeting is Council itself, convened by the

Speaker. No councillor could have been misled. Consequently, the application must fail.

Order

[53] The following order shall issue:

1. The application is dismissed.
2. The applicants shall pay the costs of this application on Scale B, as contemplated under Rule 67A read with Rule 69 of the Uniform Rules of Court, jointly and severally, the one paying the other to be absolved. The costs shall include the costs of two counsel so employed

N CENGANI-MBAKAZA
ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the Applicants	:	<i>Adv B Metu</i>
Instructed by	:	Nompandana & Associates
		C/O Zilwa Attorneys
		Makhanda

Counsel for the Respondents : *Adv AM Bodlani SC with Adv. Z*
Mashiya- Nxazonke

Instructed by : V Funani Attorneys
C/O Ntsuntswana & Sons
Makhanda

Heard on : 14 May 2026

Judgment Delivered on : 27 August 2026