



IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NUMBER: 2026-190428

In the matter between:

SIYABONGA ROBSON NTULI

APPLICANT

and

**UMKHANYAKUDE DISTRICT MUNICIPALITY
RESPONDENT**

FIRST

**THE MAYOR: UMKHANYAKUDE DISTRICT
MUNICIPALITY**

SECOND RESPONDENT

**THE SPEAKER: UMKHANYAKUDE DISTRICT
MUNICIPALITY
RESPONDENT**

THIRD

**SCELO MKLHIZE N.O.
RESPONDENT**

FOURTH

**NXUMALO AND PARTNERS
RESPONDENT**

FIFTH

SIPHO NDABANDABA

SIXTH RESPONDENT

**DR NHLANHLA JOSHUA SIBEKO
RESPONDENT**

SEVENTH

JUDGMENT

P C BEZUIDENHOUT J:

[1] On 12 August 2026 Applicant brought an urgent application against Respondents seeking the relief set out in part A of the notice of motion being interim relief pending the review application in terms of part B. The relief sought was that a disciplinary hearing instituted against him and scheduled for 12 and 13 August 2026 be interdicted or restrained that it should not proceed and that the costs of the application be paid by Respondents.

[2] On the said day when the matter came before Harrison J. in this court it was opposed and stood down until 2 p.m.

[3] There appears to be contradictory views as to what transpired on 12 August 2026. What is clear is that when the matter was called at 9:30 a.m. Mr. Potgieter SC appeared on behalf of all Respondents and Applicant was represented by Mr. Hlongwane.

[4] It is contended by Mr. Hlongwane that the presiding Judge was then informed that the disciplinary hearing would not commence and would stand down until this application had been finalised. However it transpired that this did not happen and that while the matter was standing down the disciplinary hearing proceeded in the absence of Applicant. An order was then made at the disciplinary hearing that Applicant be dismissed. Applicant did not attend this disciplinary hearing.

[5] It was submitted by Mr. Potgieter SC that when the matter was called on 12 August 2026 he appeared on behalf of all Respondents. When the matter was before Court on 24 August 2026 Mr. Potgieter SC informed the Court that he was appearing only for First, Second, Third and Seventh Respondents. There was no appearance for

the other Respondents. Mr. Potgieter SC submitted that he gave no assurance that the disciplinary hearing would not commence while the proceedings on 12 August would progress until they were finalised. This is not an issue which I need to deal with at this stage. This can be dealt with *inter alia* in review proceedings.

[6] Due to the fact that Applicant was dismissed at the disciplinary hearing on 12 August 2026 Applicant filed an amended notice of motion in terms of which he sought relief on 24 August 2026. In the amended notice of motion Applicant sought that the ruling by Fourth Respondent that he be dismissed be suspended, that First, Sixth and Seventh Respondents do not implement the recommendations made at the disciplinary hearing and in the event that they had been made that they be suspended and that it could also not be reconvened. Further that disciplinary proceedings against him be interdicted unless there is compliance with the provisions of the Local Government Disciplinary Regulations for senior managers.

[7] It was submitted on behalf of Applicant that the Labour Relations Act 66 of 1995 does not prevent an employee to rely on common law recourse. Accordingly Applicant made a choice to approach this Court for relief. It was submitted that this Court has jurisdiction to entertain the application.

[8] First Respondent's council appointed Seventh Respondent as its municipal manager during a council meeting on 2 April and 13 April 2026. It also appointed Sixth Respondent to act in the position of municipal manager in terms of section 54A of the Local Government Systems Act. These appointments were challenged by Applicant on the grounds that First Respondent's decisions were unlawful and invalid. This however does not form part of the relief claimed in part A and B of the notice of motion. On 8 May 2026 Sixth and Seventh Respondents suspended Applicant. On 5 August 2026 an order was granted by this court that reviewed and set aside Sixth and Seventh Respondents appointments as municipal manager and acting municipal manager

respectively. Fourth and Fifth Respondents refused to stay the disciplinary hearing against Applicant despite this order and are of the view that it does not prevent the proceedings against Applicant.

[9] It was submitted that Sixth and Seventh Respondents were conflicted to make the decision to take disciplinary action against Applicant because of the conflict of interest flowing from Applicant's challenge to the decision to appoint them that was taken by First Respondent and the judgment of Marion AJ.

[10] It was submitted that the requirements for interim relief were satisfied in that Applicant had a *prima facie* right, will suffer irreparable harm and the balance of convenience favours Applicant. Further that there is no other satisfactory remedy.

[11] It was submitted that the Labour Court does not have jurisdiction to hear this matter and I was referred to the decision of *Cibane and Another v Premier of KwaZulu-Natal* (2025) 46 ILJ 2587 (LAC) (15 July 2025).

[12] The MEC of Cogta had not consented to the appointment of Seventh Respondent and accordingly the appointment was unlawful. It was further submitted that there was no resolution by First Respondent's council to oppose this application.

[13] This Court has jurisdiction and I was referred to paragraph 23 in the *Cibane* judgment and also to the judgment in *Steenkamp v Edcon* 2016 (3) SA 251 (CC) at paragraph 11. This Court can make an order as the relief in paragraph (A) is merely to preserve the status quo. Applicant cannot go to the Bargaining Council to dispute his dismissal. In terms of section 193 of the Labour Relations Act the dismissal cannot be challenged in the Labour Court as it was unlawful.

[14] It was submitted on behalf of First, Second, Third and Seventh Respondents that Applicant must convince the Court that he would have been successful with the relief sought on 12 August 2026. I was referred to paragraph 16 of Applicant's supplementary affidavit wherein it is set out that Applicant was informed of the undertaking and that accordingly he did not attend the disciplinary hearing as he was awaiting the outcome of the urgent application. It was submitted that Applicant had to convince the Court that he would be successful. The application for leave to appeal against the order of Marion AJ which found the appointment of Seventh Respondent invalid suspended the order.

[15] The relief which was sought on 12 August 2026 is no longer applicable due to the dismissal of Applicant. The facts are now different. I therefore do not agree that Applicant must prove what he would have had to prove on 12 August 2026. That is no longer in issue. I was also referred by Respondents to a passage from the Cibane judgment where it was held:

“There can thus be no general rule to the effect that the Labour Court has jurisdiction to intervene and *medius reis* to restrain any alleged irregularities, illegalities or unfairness in incomplete disciplinary proceedings.”

It was submitted that this Court does not have jurisdiction and that the matter had to be instituted in the Labour Court. It was submitted that Applicant has to go to the Bargaining Council which is the right forum to deal with it. There is an alternative remedy available and accordingly interim relief should not be granted. Further it was submitted that nowhere in the papers does he deny that he was guilty of any of the offences with which he was charged in the disciplinary hearing. No costs order was sought against Applicant.

[16] Applicant reiterated that the decision to discipline him was unlawful, Seventh Respondent's appointment was unlawful, that this was not disputed and that the Labour Appeal Court cannot review unlawful conduct for employer as found in

paragraph 24 of the Cibane judgment. The Bargaining Council cannot deal with matters of this nature.

[17] A copy of the South African Local Government Bargaining Council disciplinary procedure was attached to the answering affidavit of Respondents. In paragraph 2 under the heading “Exclusion from Collective Agreement” it sets out as follows:

“Municipal Managers and employees appointed as Senior Managers who are directly accountable to Municipal Managers in terms of section 54A and 56 of the Municipal Systems Act 32 of 2000, as amended, shall be excluded from all the terms of this agreement.”

It is not in dispute that Applicant was appointed as a Senior Manager of Operations. In his contract of employment it states under paragraph 11 that the Council falls in the jurisdiction of the South African Local Government Bargaining Council and agreements reached at the SALGBC shall apply. It would therefore appear that although the Municipality is subject to the South African Local Government Bargaining Council it does not apply to Senior Managers.

[18] It appears that Senior Managers fall under the Local Government Disciplinary Regulations for Senior Managers 2010. In paragraph 13 thereof it states:

“A Senior Manager has the right to refer a dispute against any disciplinary finding and or sanction imposed on him or her at a disciplinary hearing to the Bargaining Council, Commission for Conciliation Mediation and Arbitration or an accredited agency in terms of section 133 of the Labour Relations Act 66 of 1955.”

[19] Bargaining Council is defined as Bargaining council for Municipalities in terms of the Labour Relations Act. Although Senior Managers are excluded from the Local Government Bargaining Council it appears that they can appeal thereto against a sanction at a disciplinary hearing.

[20] The present position is therefore that Applicant has been dismissed. The issue whether the proceedings were not to proceed while the matter was proceeding in the High Court is an issue which can be addressed either on appeal, or review proceedings etc. The further issue whether there is an alternative remedy is set out in the Regulations in respect of Senior Managers which is quoted above in terms of which Applicant has recourse to the Bargaining Council in that regard. There also does not appear to be any irreparable harm to be suffered by Applicant. There is thus alternative remedies available to him at this stage and therefore it would appear to me that the requirements for the relief in part A of the notice of motion has not been satisfied.

[21] The question which remains is whether the matter must proceed in the Labour Court as contended by Respondents or whether this court has concurrent jurisdiction and that Applicant was entitled to proceed in this forum. Both parties relied on the decision of Cibane which I have referred to above in support of their contentions.

[22] In paragraph 24 states as follows:

“It is clear from this passage that outside of the scope of any statutory provision that specifically confers to jurisdiction on the court, the Labour Court has no jurisdiction, in any general sense, to make any determination of the unlawfulness of employer conduct.”

A consideration of the relief set out in part A and B of the notice of motion does not appear to me to exclude the jurisdiction of the Labour Court. However it also does not appear that it is of such a nature that it excludes the jurisdiction of this Court to hear the matter. The issue of whether there was any unlawful conduct by the employer as alleged by Applicant can be dealt with on review.

[22] The relief which is claimed in part A as I have already dealt with above does not fulfil the requirements for interim relief in the sense that besides the fact that there is an alternative remedy available to Applicant in terms of the Regulations for Senior Managers there is also no irreparable harm which he would suffer.

[23] Respondents indicated that they are not seeking a costs order against Applicant.

Accordingly the following order is made.

The application for the relief in terms of part A of the notice of motion is dismissed.

P C BEZUIDENHOUT J.

JUDGMENT RESERVED: 24 AUGUST 2026

JUDGMENT HANDED DOWN ELECTRONICALLY: 4 SEPTEMBER 2026

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