



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: 2026-208317

In the matter between:

MEC FOR COGTA

FIRST APPLICANT

NHLAKANIPHO SYDNEY FREEDOM ZULU

SECOND APPLICANT

and

UMDONI LOCAL MUNICIPALITY

FIRST RESPONDENT

UMDONI MUNICIPAL COUNCIL

SECOND RESPONDENT

THE PURPOTED MUNICIPAL

THIRD RESPONDENT

COUNCIL WHO MET ON 20TH AUGUST 2026

DHANPALAN DEVARAJ NAIDOO

FOURTH RESPONDENT

POONSAMY NAIDOO

FIFTH RESPONDENT

SIWAPHIWE ALEX ZOKO

SIXTH RESPONDENT

SITHANDIWE ZULU

SEVENTH RESPONDENT

MTHOKOZISI REGINALD MADLALA

EIGHT RESPONDENT

MPHIWE ANDREAS MBANJWA

NINTH RESPONDENT

GIDEON MANDLENKOSI PHUNGULA

TENTH RESPONDENT

LUNGISA REGGIE DLAMINI	ELEVENTH RESPONDENT
WELCOME SITHEMBISO MTHWANE	TWELVE RESPONDENT
SIPHELELE EWART HORATIO MNGOMA	THIRTEEN RESPONDENT
PRINCESS NONHLANHLA NOMBIKA	FOURTEEN RESPONDENT
BHEKANI ANTHONY CELE	FIFTEENTH RESPONDENT
NONHLANHLA LADYPEACE NKOMO	SIXTEENTH RESPONDENT
SOLLY VINCENT KHANYILE	SEVENTEETH RESPONDENT
RIVANAND SAMLALL MAHARAJ	EIGHTEENTH RESPONDENT
MUHAMMAD ASGHAR KHAN	NINENTEETH RESPONDENT
ROYITH BALOO BHOOLA	TWENTIETH RESPONDENT
ALLAN T CUTTEN	TWENTY-FIRST RESPONDENT
SHAMILLA SOOKHRAJ	TWENTY-SECOND RESPONDENT
DANA DANIELS	TWENTY-THIRD RESPONDENT
SALEEM MAHOMED	TWENTY-FOURTH RESPONDENT
ZAMA FORTUNATE MIYA	TWENTY-FIFTH RESPONDENT
SIBUSISO DAVID MDLULI	TWENTY-SIXTH RESPONDENT
ZANELE MOLEFE	TWENTY-SEVENTH RESPONDENT
NONHLANHLA MNGOMEZULU	TWENTY-EIGHTH RESPONDENT

ORDER

The following order is made:

1. The application is struck off the roll.
2. The applicants are to pay the costs of this application, including the costs of two counsel where so employed on scale B.

JUDGMENT

Sipunzi J

Introduction

[1] This is an urgent application in terms of which the applicants seek relief as set out in the first order prayed. They seek to rescind the decision of the Umdoni Municipal Council and the respondents in appointing, Ms Mngomezulu, the 28th respondent as the acting municipal manager. They further seek that the decision of the respondents to reinstate the appointment of the fourth respondent, Mr Dhanpalan Devaraj Naidoo as the acting municipal manager be declared unlawful and set aside. As set out in the notice of motion:

- “1. That the matter is heard as urgent;
 2. That pending the final determination of the second order prayed:
 - 2.1. that the third respondent’s decision taken on 20 August 2026 to:
 - 2.1.1. rescind the second respondent’s decision to terminate the position of fourth respondent as acting municipal manager; and to
 - 2.1.2. reinstate the fourth respondent as the acting municipal manager with effect from 21 August 2026;
- be and are hereby suspended forthwith.
3. that the first to third respondent are interdicted and restrained from appointing anyone into such acting position in the future until the secondment to the second applicant in such position is terminated by the first applicant or upon appointment of the municipal manager.
 4. that the costs of this application are reserved for the court hearing the second order prayed.”

[2] The application is opposed by the first and second respondents (the respondents) on the basis that it lacks urgency; and an abuse of process. The

respondents also raised points in limine; which they believed were dispositive of the application. The remaining respondents did not participate in the proceedings.

Background

[3] On 5 August 2026, the Umdoni Municipal Council held a meeting, with a set agenda. At the time, the fourth respondent was acting municipal manager. His tenure was due to expire on 12 August 2026. During the meeting, there was a proposal to discuss the termination of the fourth respondent's appointment as acting municipal manager. This proposal was rejected for the reason that it was not an item on the agenda.

[4] Although there was a rejection of the proposed agenda item, the Speaker allowed the discussion to proceed. In protest, some councillors walked out of the meeting as their expression of disapproval of the Speaker's conduct. The remaining councillors resolved to terminate the fourth respondent's contract with immediate effect. On the written request of the mayor, on 6 August 2026 the first applicant (the MEC) dispatched the second applicant to commence duties as acting municipal manager.

[5] On 19 August 2026, the Speaker called a special meeting, scheduled for 20 August 2026. There was no agenda circulated for this meeting. Nonetheless, the meeting did quorate as it was attended by 21 councillors. Shortly before the meeting was due to commence, the Speaker cancelled the meeting by sending out a WhatsApp text to the councillors. In protest, the councillors who had attended the meeting resolved to continue in the absence of the Speaker and the second applicant.

[6] The attendees resolved to designate the 28th respondent to preside over the meeting. The meeting resolved to rescind the council's decision that was taken on 5 August 2025 to terminate the acting appointment of the fourth respondent. The fourth respondent was then reinstated to resume duties from 21 August 2026.

Points in limine

The founding affidavit

[7] The MEC deposed to the founding affidavit on 26 August 2026. It was commissioned by a legal representative, Mr Mpumelelo Zikalala, an attorney of the High Court of South Africa, at the 7th floor Durban Club Chambers, Durban. The contention of the respondents was that Mr Zikalala was disqualified from commissioning the affidavit of his client. The respondents argued that as the legal representative of the deponent, Mr Zikalala had an interest in the matter. On the other hand, the applicants submitted that, Mr Zikalala was a mere correspondent attorney and by implication had no interest in the matter.

[8] Regulation 7(1) of the Regulations Governing the Administering of an Oath or Affirmation¹ promulgated in terms of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963 provides that a commissioner of oaths *shall* not administer an oath or affirmation relating to a matter in which he has an interest.

[9] It is common cause that Mr Zikalala was the correspondent attorney when he administered the oath and commissioned the affidavit of the MEC. The question that arises, is whether he had an interest in the matter and therefore disqualified from commissioning the affidavit. In *Kouwenhoven v Minister of Police and Others*,² the Supreme Court of Appeal (the SCA) settled the question of what constituted ‘interest’ within the context of reg 7(1). The SCA determined this by reflecting on the reasoning of the courts in *The Master v Benjamin NO*³ and *R v Brummer*,⁴ which was subsequently overruled in *R v Rajah*.⁵ Ultimately, the SCA emphasised that the ‘interest’ must be sufficiently substantial to render the affidavit inadmissible. It held that:⁶

¹ GN 1258, GG 3619, 21 July 1972.

² *Kouwenhoven v Minister of Police and Others* [2021] ZASCA 119 (*Kouwenhoven*).

³ *The Master v Benjamin NO* 1955 (4) SA 14 (T).

⁴ *R v Brummer* 1952 (4) SA 437 (T).

⁵ *R v Rajah* 1955 (3) SA 276 (A).

⁶ *Kouwenhoven* para 30.

'The usual instances in which the commissioner has been held to have an interest are cases where an affidavit has been attested before an attorney acting in the litigation or proceedings for which the affidavit is tendered, or before that attorney's partner or agent. These cases overlap with a rule of evidence derived from English law that an affidavit deposed to before such an attorney is inadmissible. In *Papenfus* the court extended the exclusionary rule of evidence to an in-house legal adviser for a board in regard to affidavits deposed to by staff of the board in litigation to which the board was party.' (Footnotes omitted.)

[10] The situation at hand is materially distinguishable from *Kouwenhoven* where the deponent and the commissioner were both police officers. Mr Zikalala who commissioned the affidavit was involved in the litigation process for which the affidavit was tendered. He was in clear terms an agent of the deponent. In my view, Mr Zikalala was rendering a professional service in the litigation. In *Kouwenhoven* the deponent and the Commissioner of Oaths were only connected to each other by employment, as police officers. Mr Zikalala clearly had a financial interest in the process and possible outcome of the litigation. The applicants' argument that Mr Zikalala was a mere correspondent attorney, assumed a rather simplistic approach. It failed to appreciate the professional role of a correspondent attorney in the entire value chain and as a conduit of efficient and effective co-ordination of the litigation process.

[11] Uniform rule 6(5)(b) rules requires an applicant in motion proceedings to appoint a physical address within a specific distance of the registrar's office and electronic contact details to ensure fair, transparent, and efficient service of documents.

[12] Various courts have expressed their observations on the value of correspondent attorneys. Most recently, in *Bandara Investments CC and Another v Palmer and Others*, the SCA observed that:⁷

'Even where instructions are conveyed electronically, the attorney must still read and understand them, identify the nature of the relief sought, appreciate the procedural posture of the matter, and take the necessary steps to advance the client's case. In that sense, the work for which the fee is allowed is professional in character and not merely clerical.'

⁷ *Bandara Investments CC and Another v Palmer and Others* [2026] ZASCA 85 para 27.

In this regard the SCA was evaluating the permissible fees charged by correspondent attorneys, in view of the significance of their role.

[13] In *Van der Burgh v Guardian National Insurance Co Ltd* the court stated:⁸

‘...the attorney of record generally performs an extremely valuable function in litigation which goes far beyond him merely operating as a “postbox” and indexing and paginating the papers and, if he is unable to deal with the problems of the nature of those which arose *in casu* due to the terms of the mandate extended to him by his correspondent from another centre and the matter is therefore postponed, the litigant, who engaged the correspondent should, as a general rule, bear the costs occasioned thereby.’

[14] In view of the fact that Mr Zikalala was a legal practitioner makes it also imperative to reflect on the sentiments of the SCA in *Kouwenhoven* and its discussion of the judgment of *Papenfus v Transvaal Board for the Development of Peri-Urban Areas*.⁹ The court in *Papenfus* had concluded that reg 7(1) did not preclude the legal adviser from acting as commissioner of oaths because she did not have an interest in the matter.¹⁰ However, the circumstances of this case are vastly different to *Papenfus*, firstly because Mr Zikalala, as an attorney played a clearly defined professional role as set out in rule 6(5)(b); secondly, he had a direct financial interest in how the matter was litigated and ultimately presented in court.

[15] Accordingly, the highlighted characteristics above render the applicants’ reliance on the lack of interest difficult, if not impossible to sustain. The applicants’ inclination to downplay the significance of the correspondent attorney in its litigation fails to pass scrutiny. Therefore, the commissioning of the founding affidavit by Mr Zikalala who clearly had an interest within the meaning of reg 7(1) rendered it inadmissible as evidence in support of the relief sought by the applicants in their notice of motion. The affidavit ought to be declared *pro non scripto* and disregarded.

⁸ *Van der Burgh v Guardian National Insurance Co Ltd* 1997 (2) SA 187 (E) at 191C-D.

⁹ *Papenfus v Transvaal Board for the Development of Peri-Urban Areas* 1969 (2) SA 66 (T).

¹⁰ *Kouwenhoven* para 31.

Alibi lis pendens

[16] Although the finding above may be dispositive of the matter, it is still necessary to consider the other points *in limine* raised.

[17] On 26 February 2026, and under Case No: 2026-041716, at the instance of the applicants; where the same respondents appeared, an urgent application served before the Pietermaritzburg High Court. That application concerned questions which related to the secondment of the second applicant and appointment of the fourth respondent as the acting municipal managers at Umdoni Municipality. The application was referred to the opposed roll by consent, without a consideration of the question urgency. The matter is still pending.

[18] On 2 June 2026, another urgent application under Case No: 2026-125395, was launched by MEC against the same respondents at the Pietermaritzburg High Court. On 11 June 2026, it served before the court but was struck off the roll for lack of urgency.

[19] The respondents asserted that the current application was an unwarranted attempt by the applicants to revisits the question which arose in the initial urgent applications. The applicants were dismissive of this submission and insisted that the two earlier applications were irrelevant for the purposes of this application.

[20] The defence of *alibi lis pendens* succeeds if it is established that:¹¹

- (a) there is litigation pending;
- (b) between the same parties; and
- (c) based on the same cause of action.

[21] In *Nestlé (South Africa) (Pty) Ltd v Mars Inc*,¹² the SCA held that:

¹¹ Herbstein and Van Winsen *The Civil Practice of the High Courts and Supreme Court of Appeal of South Africa* 5 ed (2009) at 311.

¹² *Nestlé (South Africa) (Pty) Ltd v Mars Inc* 2001 (4) SA 542 (SCA) para 17.

‘There is room for the application of that principle only where the same dispute, between the same parties, is sought to be placed before the same tribunal (or two tribunals with equal competence to end the dispute authoritatively). In the absence of any of those elements there is no potential for a duplication of actions....’

[22] *In casu*, it is uncontested that the parties, namely the applicants being the MEC and Mr Nhlakanipho Zulu, and the respondents being the Umdoni Local Municipality and its Municipal Council, including the fourth respondent are the same parties in the pending litigation under Case No: 2026-041716 which last served before the Pietermaritzburg High Court. In addition, Case No: 2026-125395 which also served before court on 21 June 2026, involving the same parties was heard and struck off the roll for lack of urgency.

[23] It has also been demonstrated without any contestation that the cause of action and/or the subject matter of these cases concerned the apparent acrimony that is unfolding between the MEC and the respondents over the post of the acting municipal manager. The questions arising from these three applications revolve around the suitability or lack thereof of the second applicant and/or the fourth respondent.

[24] Linked to the above, is the question of whether the matter is urgent, which I propose to address here below.

Urgency

[25] On 19 August 2026, the Speaker called a special meeting, without a specified agenda, which was scheduled for 20 August 2026. Shortly before the meeting commenced, the Speaker sent out a notice of the cancelation of the meeting. In protest the councillors who had already arrived held the meeting, anyway. The representative of the MEC was also in attendance. The meeting resolved to rescind the resolution of 5 August 2026, where the acting appointment of the fourth respondent was terminated. Effectively, they reinstated him to commence duty on 21 August 2026. The MEC considered that the manner in which this meeting was held and its resolution were unlawful.

[26] On 26 August 2026, the MEC launched the present application on an urgent basis, approximately six days after the meeting in question. The certificate of urgency was signed on 27 August 2026, and the applicants' counsel enrolled the matter for hearing on 3 September 2026, a further six days thereafter. The MEC contended that urgent intervention was warranted because the decision taken on 20 August 2026 had allegedly precipitated a state of uncertainty, disorder, and lawlessness within the Umdoni Municipality. He further asserted that, in terms of his constitutional obligations, he bears responsibility for monitoring, supervising, and reviewing the conduct and functioning of local government institutions.

[27] According to the respondents, the applicants' failure to act expeditiously upon becoming aware of the incident which triggered this application is fatal to their case for urgency. The respondents also asserted that the applicants have failed to provide any meaningful explanation for the delay in launching this application.¹³

[28] Rule 6(12) empowers the court to hear urgent applications. It reads: 'Where an application is not brought within the periods prescribed by these rules, the registrar or a judge may, on application, enrol it as one of urgency.' Rule 6(12)(b) requires an applicant to explicitly set forth the circumstances which render the matter urgent, and why substantial redress cannot be obtained at a hearing in due course. As stated in *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*:¹⁴ '...The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.'

[29] The applicants elected not to disclose what in their opinion or the circumstances which rendered the matter urgent. The MEC only stated that his urgent intervention

¹³ See paras 25-28 of the answering affidavit.

¹⁴ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196 para 6.

became necessary upon the decision taken on 20 August 2026 which created a chaotic situation and lawlessness at the Umdoni Municipality. He did not explain what factors occasioned his alleged urgency or in what respect the decision of the respondents implicated rule 6(12).

[30] If the applicants considered their intervention to be necessary, they were also required to set out why, in their view, substantial redress could not be obtained at a hearing in due course. They made no attempt to address this requirement. This omission is particularly significant given the unexplained lapse of approximately two weeks between the impugned decision and the applicants' decision to approach the court. If the relief sought was indeed so urgent as to warrant immediate intervention, the applicants were required to explain why substantial redress would not be obtainable in the ordinary course. None was forthcoming; they furnished no such explanation.

[31] In this regard, I am in agreement with the respondents' contention that the applicants' failure to act with the requisite expedition upon becoming aware of the events giving rise to this application is fatal to their claim of urgency. In the circumstances, the applicants have failed to establish facts warranting a departure from the ordinary procedures prescribed by the rules of court and have not demonstrated that the requirements of rule 6(12) have been satisfied.

Conclusion

[32] Accordingly, the applicants' defective founding affidavit had the consequence that the evidence of the MEC was inadmissible, leaving the notice of motion bereft of any factual basis upon which relief sought could properly be grounded. In these circumstances, the application is unsustainable. Equally, the respondents' *alibi lis pendens* defence does not avail the applicants. In addition, the applicants have failed to demonstrate facts justifying a departure from the ordinary procedures of this court or warranting the exercise of its urgent intervention.

Order

[33] Therefore, the following order is made:

1. The application is struck off the roll.

2. The applicants are to pay the costs of this application, including the costs of two counsel where so employed on scale B.

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Sipunzi J

CASE INFORMATION

FOR APPLICANT(S):	MR DICKSON SC INSTRUCTED BY SANDILE DLOMO INC
FOR RESPONENT(S):	MR RALL MR CHRISTISON INSTRUCTED BY SEETHAL ATTORNEYS
DATE HEARD:	03 SEPTEMBER 2026
DATE DELIVERED:	09 SEPTEMBER 2026