

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 2026-050531

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED</u>
DATE: 16/09/2026 SIGNATURE: <i>[Signature]</i>	

In the matter between:

LEPELLE-NKUMPI LOCAL MUNICIPALITY

FIRST APPELLANT

THE MUNICIPAL COUNCIL OF LEPELLE-NKUMBI

LOCAL MUNICIPALITY

SECOND APPELLANT

COUNCILLOR MERIAM M MOLALA N.O (MAYOR)

THIRD APPELLANT

COUNCILLOR JOYCE NKOBELA N.O (THE SPEAKER)

FOURTH APPELLANT

DR ML CHAUKE N.O (ACTING MUNICIPAL MANAGER)

FIFTH APPELLANT

And

DOROTHY SEKGOLOLO DIALE

RESPONDENT

ORDER

On appeal from: Single Judge of this Division (Masilo AJ sitting as court of second instance):

1. The appeal is upheld with costs on party and party scale B, including the costs of two counsel.

2. The order of the court of second instance is set aside and substituted with the following:

'The application to enforce the order of 8th June 2026 is dismissed with costs on party and party scale B'.

JUDGMENT

KGANYAGO J

[1] The respondent Dorothy Sekgololo Diale (Dorothy) is the Chief Financial Officer (CFO) of the first respondent Lepelle-Nkumpi Municipality (municipality). On 25th November 2025 she was placed on precautionary suspension with full pay. In terms of Regulation 6(6)(a) of the Local Government: Disciplinary Regulations for Senior Managers, 2010 (the regulations), the suspension will automatically lapse if a disciplinary hearing does not commence within 3 months after the date of suspension. The 3 months period in Dorothy's case was lapsing on 24th February 2026.

[2] Dorothy was invited by the municipality to attend to certain interviews in relation to the pending disciplinary hearing on 12th and 18th December 2025. According to municipality Dorothy did not attend those interviews. On 30th January 2026 Dorothy was served with a notice and charge sheet to attend the disciplinary hearing. However, the investigative report or a bundle of the documents which the municipality intended to use during the disciplinary hearing did not

accompany the charge sheet. The hearing was scheduled to be held on 9th February 2026. According to the charge sheet Dorothy was facing 20 counts which included dishonesty, fraud, MFM violations, dereliction of duty and political interference.

- [3] On 9th February 2026 the municipality served Dorothy with its bundle of documents which it intends using during the disciplinary hearing. According to Dorothy the bundle was more than 800 pages. Dorothy was accompanied by Mr Mphahlele who was neither a legal practitioner, fellow employee or a trade union representative. Dorothy made an application to be represented by Mr Mphahlele before the chairperson of the disciplinary hearing. The chairperson of the disciplinary hearing requested the parties to submit written submissions in relation to Dorothy's application by the 12th and 18th February 2026 respectively. The chairperson postponed the hearing to the 23rd February 2026 for the ruling on Dorothy's application.
- [4] On 10th February 2026 the municipality notified Dorothy through an email that the venue for the disciplinary hearing will be moved from the municipality to SALGA's offices in Polokwane. On 23rd February 2026 Dorothy raised a point in limine that SALGA's offices in Polokwane did not fall within the jurisdiction of the municipality. The chairperson upheld the point in limine, and the proceedings were postponed to the 27th February 2026.
- [5] On 25th February 2026 Dorothy reported for duty at the municipality wherein she handed in a letter stating that her suspension had automatically lapsed on 24th February 2026. The fifth respondent Dr ML Chauke (Chauke) who is the acting municipal manager, responded to Dorothy letter the same date. In her response Chauke notified Dorothy that she remained on suspension.

- [6] That led to Dorothy launching an urgent application in the court of first instance seeking a declaratory order that her precautionary suspension had automatically lapsed in terms of regulation 6(6)(a) of the Disciplinary Regulations for Senior Managers. The municipality opposed the application. In opposing the application, the municipality in its answering affidavit submitted that on 9th February 2026 it was fully prepared and ready to proceed with the disciplinary hearing. The evidence leader was ready to read the charges to Dorothy. Dorothy launched an application to be represented by a person who was neither an attorney, fellow employee nor a trade union representative. Her application required determination before the matter could proceed. The conduct of Dorothy directly caused the postponement of the reading of the charges, and the delay cannot be attributed to the municipality.
- [7] The municipality denied that Dorothy's suspension automatically lapsed on 24th February 2026. The municipality further submitted that Dorothy was notified of the change of venue from the municipality to SALGA's office in Polokwane by email and she never objected to that. She only raised the point in limine on the 23rd February 2026 and the hearing had to be postponed to the 27th February 2026. The municipality's position is that the regulation must be read purposively so as to prevent its abuse, and that the hearing is properly regarded as having commenced when the presiding officer was seized with the matter and assumed captainship of the proceedings, thereby navigating the disciplinary process. The reading of charges could not have happened in the face of Dorothy's application for representation and jurisdictional point. Dorothy should not be allowed to benefit from a postponement that was engineered by her.

- [8] There remain several outstanding witnesses who are yet to testify, and permitting Dorothy to access the workplace while she faces serious charges creates a substantial and credible risk of interference with those witnesses. Further that given the nature of the financial misconduct charges levelled against Dorothy, there exists a real likelihood that her return to the workplace would compromise proper financial governance and undermine the integrity of ongoing internal controls.
- [9] On 17th March 2026 the matter came before Pillay J who removed the matter from the roll for lack of urgency. Dorothy subsequently applied for a preferential date and the matter was allocated the date of 28th May 2026. The matter came Mashilo AJ (court of first instance) who on 8th June 2026 granted Dorothy the following orders:
- "1. The court finds that the application is urgent.
 2. It is declared that the Applicant's suspension lapsed automatically on 24th February 2026 in terms of Regulation 6(6) of the Local Government Disciplinary Regulations for Senior Managers.
 3. The decision taken by the 1st and 5th Respondents on 25th February 2026 for the continuation and extension of the Applicant's precautionary suspension is declared unlawful, irregular and *void ab initio*.
 4. The 1st and 5th Respondents are interdicted from blocking, interfering or in any other manner interfere with the Applicant's return to his employment with the Lepelle-Nkumpi Local Municipality.
 5. The 1st and 5th Respondents are ordered to pay the costs of this application on party and party scale B, including the costs of counsel".

- [10] On 10th June 2026 Dorothy reported for duty at the municipality but found that her office was locked. She again tried to report for duty on 11th June 2026 but was denied access to the municipality. On 11th June 2026 the municipality filed an application for leave to appeal and at the same requested reasons for the order of the 8th June 2026. That led to Dorothy launching an urgent application in terms of s 18(1) read with s 18(3) of the *Superior Court Act*¹ (Act) seeking an order for the operation and execution of the judgment and order of Masilo AJ not be suspended pending the finalisation of any application for leave to appeal.
- [11] Dorothy in her s 18 application has stated that the order by Masilo AJ that the matter was urgent is not technically correct, as the application was at that stage on the preferential roll and not urgent roll. The grounds of Dorothy's s 18 application are that if she continues to be on suspension, she will lose her right to a performance bonus or at least the opportunity to be fairly evaluated for the purpose of such a performance bonus, which is determined by an evaluation of the standard of her actual work or output. In her absence as a result of the suspension, neither her work performance nor her performance bonus could be quantified and the prejudice she will suffer in this regard is incalculable, substantial and irreparable. It will be impossible to quantify a claim for damages in relation to a performance bonus as the right to qualify for same is dependent on her physical presence at the workplace. Any possible claim for damages will be rendered hollow. The municipality will not suffer any prejudice in that she will return to work and continue with her duties diligently and to the benefit of the municipality and to the benefit of the public and public interest.

¹ 10 of 2013

- [12] The municipality opposed Dorothy's s 18 application. In its answering affidavit the municipality has submitted that Dorothy has failed to establish any ground that could properly be characterized as exceptional circumstances. Her reliance upon the speculative prospect of a performance bonus is neither immediate nor irreparable harm, but a contingent pecuniary expectation. Dorothy had adequate remedies such as vindication through the disciplinary enquiry, followed by recourse to compensation or unfair labour practice proceedings under section 186(2)(b) of the Labour Relations Act. Dorothy is facing serious allegations of misconduct, and from the findings of the investigative report it had become evident that Dorothy must remain suspended whilst proceedings are underway, to protect the municipality from further prejudice.
- [13] The municipality further submitted that Dorothy seeks to anchor exceptional circumstances upon tenuous allegation that she may forfeit a performance bonus. Clause 6 of the employment contract does not confer upon Dorothy an automatic entitlement to a performance bonus. The provision merely contemplates an assessment, the outcome of which remains subject to the employer's discretion. There remain several outstanding witnesses who are yet to testify, and permitting Dorothy to access the workplace while she faces serious charges creates a substantial and credible risk of interference with those witnesses. The disciplinary hearing is nearing its conclusion.
- [14] The section 18 application came before Masilo AJ (court of second instance) who found exceptional circumstances to exist and that Dorothy will suffer severe irreparable harm. He found in favour of Dorothy and ordered that the operation and execution of the judgment and order of the 8th June 2026 shall not be suspended pending a decision on the municipality's application for leave

to appeal and, in the event the leave to appeal is granted, the outcome of the appeal. The basis for that finding were that in his view, the surrounding circumstances relating to each postponement was not attributable to Dorothy. It was the municipality's insistence that the interpretation of Clause 10(4)(a) of the use of the word 'representative' exclusively meant a legal representative, thereby necessitating the directive from the chairperson to file a formal application. Further that Dorothy was provided with 800 pages bundle to be used during the disciplinary hearing on 9th February 2026.

- [15] The court of second instance found further exceptional circumstances are Dorothy's right to return to work and not be exposed to an unfair labour practice as protected in section of the Constitution; she is not able to return to work so as to compete for a performance bonus after she had lost at least 4 months in a financial year; her performance agreement is up for renewal on 1st July 2026 and will not be renewed in her absence; she will not be able to claim damages under Aquilian action for the loss of a performance bonus which will not be quantifiable.
- [16] The municipality is dissatisfied with the judgment and order of the court of second instance regarding Dorothy's s 18 application, and they are appealing the whole of that judgment and order. The grounds of their appeal are that the urgency issue had already been finally determined by Pillay J, rendering the application *res judicata* or at least to the principle against re-litigation of settled issues. Dorothy has failed to establish exceptional circumstances as required by s 18(1). Dorothy has failed to prove irreparable harm on balance of probabilities as required by s 18(3). The municipality has demonstrated that they will suffer irreparable harm if the order was executed, given the serious

nature of the misconduct charges and the risk of interference with witnesses and evidence. The court of second instance fundamentally misattributed the cause of the delay in commencing the disciplinary hearing, ignoring Dorothy's own procedural conduct.

[17] Before this court counsel for the municipality relying on the case of *Memani v Mketsu N.O and Others*² argued that the judgment of the court of second instance is wrong in fact and in law. It misattributes the cause of delay in commencing the disciplinary hearing, whilst ignoring the controlling authority of *Memani* case, fails to apply the stringent test under section 18(3), grants enforcement in circumstances where no exceptional circumstances or irreparable harm has been established. Dorothy engineered the delays that caused the three-month period to expire. She cannot now be permitted to benefit from her own procedural strategy. The law does not permit a litigant to blow hot and cold.

[18] Counsel for Dorothy in making his submissions relied on the cases of *Tshabalala v Moqhaka Local Municipality*³ and the judgment of the full court of this division of *Fetakgomo Local Municipality and 5 Others v Makgata*⁴. He submitted that this court should only adjudicate the merits of the s 18(3) application, and subsequently s 18(4) appeal, and not entertain the merits of the pending leave to appeal against the suspension application. The municipality are arguing the merits of the application for leave to appeal on the suspension application rather than the merits of the s 18(3) application. The facts of Dorothy's case are almost identical to the *Tshabalala* case in so far as the requirements of s 18(3) and (4)

² [2026] ZALCCT 51

³ [2024] ZALAC 60

⁴ [2025] ZALMPPHC 246

are concerned. Tshabalala's case deals extensively with exceptional circumstances pertaining to performance bonus and had found that the entitlement to work towards a performance bonus is in fact exceptional circumstances as required by s 18(3). The full court of this division in Makgata's case arrived at the same conclusion. They are not saying that Dorothy should get a performance bonus, but that she works towards qualifying for it. For that to happen she should be physically present at work.

[19] This court is called upon to determine whether the court of second instance was correct in granting an order for the operation and execution of the order of 8th June 2026 despite the pending application for leave to appeal by the municipality. Section 18(1) and (3) of the Act provides as follows:

"(1) Subject to subsection (2) and (3) and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

(2)...

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders".

[20] There are three requirements that must be met by an applicant who seeks the operation and execution of an order despite the pending application for leave to appeal or an appeal. The applicant must establish the exceptional circumstances; that he or she will suffer irreparable harm if the court does not so order; and that the other party will not suffer irreparable harm if the court so

orders. Further the prospects of success of the appeal are to be considered. The test for the granting of a suspension of an order under s 18 is stringent.

[21] In *University of the Free State v Afriforum and Another*⁵ the court said:

"It is further apparent that the requirements introduced by ss 18(1) and (3) are more onerous than those of the common law. Apart from the requirement of 'exceptional circumstances' in s 18(1), s 18(3) requires the applicant 'in addition to prove on a balance of probabilities that he or she 'will suffer irreparable harm if the order is not made, and that the other party 'will not' suffer irreparable harm if the order is made. The application of rule 49(11) required a weighing-up of the potentiality of the irreparable harm or prejudice being sustained by the respective parties and where there was a potentiality of harm or prejudice to both of the parties, a weighing-up of the balance of hardship or convenience, as the case may be, was required. Section 18(3), however, has introduced a higher threshold, namely proof on a balance of probabilities that the applicant will suffer irreparable harm if the order is not granted and conversely that the respondent will not, if the order is granted".

[22] The appeal before us is to be decided based on the requirements of s 18(3), which places a heavy onus on the applicant who must establish the three requirements I have already mentioned above. Several case laws have defined exceptional circumstances as something extraordinary and must also be truly to justify the deviation. Dorothy's application for deviation is centred around her performance bonus. It will be prudent to deal with the circumstances that led to Dorothy instituting her urgent application as it will give a better perspective to determine whether the requirements of s 18 have been met.

[23] Dorothy was placed on precautionary suspension 25th November 2025. Paragraph 6.1.6 of the resolution taken by the council of the municipality in placing her on precautionary suspension reads as follows:

⁵ [2016] ZASCA 165 at para 10

"That the suspension is with full pay and shall continue until the finalisation of the investigation and any possible disciplinary hearing. Council however reserves the right to recall the Chief Financial Officer to report for duty prior to the expiry of the disciplinary action should the circumstances require that she be called".

- [24] The court of second instance in its judgment has held that the municipality has filed an application for leave to appeal against the order that it had granted on 8th June 2026 which in effect means the municipality who has by all accounts, having acted unlawfully and disregarded the rule of law must benefit from such conduct (which conduct it had pronounced on its unlawfulness) cannot and should not be countenanced. The wording of the resolution placing Dorothy on precautionary suspension, extend the suspension beyond the investigation. This is distinguishable from the Tshabalala matter which the precautionary suspension was limited to the finalisation of the investigations. Therefore, on merits the municipality is having an arguable case whether the suspension automatically lapsed on 24th February 2026, or as per the resolution the suspension was extended beyond the 24th February 2026. That resolution has not been challenged or set aside. It therefore remains valid and enforceable. Whether the resolution is in conflict with the regulations, is not for this court to determine but may be properly ventilated during the main appeal.
- [25] The court of second instance in its judgment has found that the failure of the disciplinary hearing to commence within 3 months was that in each instance the disciplinary hearing did not commence was not attributable to Dorothy. Further that it was at the municipality's evidence leader's insistence that the interpretation of clause 10(4)(a) of the use of the word 'representative' exclusively meant a legal representative, thereby necessitating the directive to

file a formal application. What the court of second instance had overlooked is regulation 8(2)(e) which provides as follows:

"the right to appoint a representative of his or her choice, who may be a fellow staff member, shop steward, union official or any other suitably qualified person".

- [26] The word 'representative' in regulation 10(4)(a) has therefore been derived and explained in regulation 8(2)(e) as to who is a representative. Except for any other suitably qualified person, the people who might represent an affected employee is not contentious. It has not been explained as who will be regarded as suitably qualified person, and it might result in many interpretations. The municipality was within its right to give it the interpretation it had given, and it will be unfair to blame them for that. The chairperson of the disciplinary hearing could also not be blamed for having requested the parties to submit formal submissions and thereafter postponed the matter to a specific date which was still within the 3 months period.
- [27] The postponement was caused by Dorothy for bringing a representative whose credentials was subject to a challenge. She was served with a notice to attend the disciplinary hearing on 30th January 2026, and she knew that she wanted to be represented by someone who was neither fellow staff member, shop steward or union official. As a senior employee of the municipality, she should have foreseen that since Mr Mphahlele was not a legal representative, his suitability to represent her might be challenged. The least she could have done was to have notified the municipality in advance to enable them to decide what to do.
- [28] The court of second instance had also found that the evidence leader had handed Dorothy a bundle of documents on the day of the hearing which

contained about 800 pages which was the cause of the postponement of the hearing of the 9th February 2026. He further blamed the municipality that it was the cause of the postponement on 23rd February 2026 for having changed the venue without consulting or agreeing with Dorothy. However, what he overlooked is that on the 10th February 2026 after receipt of the notification to change the venue, Dorothy did not object to that but waited until the date of the hearing on 23rd February 2026 when she for the first time objected.

- [29] This makes her case distinguishable from the Makgata's case. In Makagata's case, he had objected to the hearing been held at SALGA's offices per a letter through his attorneys immediately on receipt of the notice. It was his employer who insisted on the hearing proceeding at the SALGA's offices in Polokwane also warning him that should he not attend, the hearing might proceed in his absence. His employer was not taken by surprise like what Dorothy did to the municipality. Dorothy by bringing Mr Mphahlele without first notifying the municipality and not objecting in advance of the change of venue despite been notified well in advance, was a well calculated move to drag the hearing beyond the 3 months period. She cannot complain about been furnished with an 800 pages of bundle of documents on the date of hearing, whilst she at the same time, despite been notified of the change of venue well in advance keeps quiet and waited to raise it on the date of the hearing. On these grounds, her case is not distinguishable from the Memani case. It will not be correct to allow her to benefit from the conduct which she had engineered. The municipality is therefore having a fairly good chance of prospects of success in the main appeal.

- [30] From the findings of the judgment of the court of second instance, it is evident that the issues of exceptional circumstances and irreparable harm are intertwined as they are all based on Dorothy's performance bonus. Counsel for Dorothy has submitted that the Tshabalala and Makgata cases are the only authority that can be relied upon by this court, as it directly deals with the very specific exceptional circumstances raised by Dorothy in her s 18(3) application. It is correct that both cases referred by counsel for Dorothy deals with the issue performance bonus which both have found it to amount to exceptional circumstances. However, both cases are distinguishable from Dorothy's matter.
- [31] Despite what I have stated as a distinguishable feature in paragraph 24 regarding Tshabalala's case, there are further distinguishable features. Tshabalala was suspended on 3rd March 2024 which was with effect from 1st March 2024. He was served with a notice to attend the disciplinary hearing on 31st May 2024 which was a day on which the 3 months suspension period was expiring. Dorothy was served with the notice to attend the disciplinary well in advance before the expiry of the suspension period. Tshabalala first appearance date was on 13th June 2024 which fell outside the 3 months suspension period. Dorothy's two appearance dates were still within the 3 months suspension period. Even on 13th June 2024 Tshabalala matter could not proceed as it was not yet ripe for hearing and was postponed to 1st and 2nd August 2024. The delay was in no way associated to Tshabalala.
- [32] In Dorothy's matter the municipality was ready to read the charges to Dorothy on their first appearance on 9th February 2024 and second appearance on 23rd February 2024. However, on both dates the hearing could not proceed due to the actions of Dorothy who brought Mr Mphahlele to represent her without prior

notification to the municipality well knowing that he was neither fellow staff member, shop steward, union official or legal representative. It was therefore not given that Mr Mphahlele will be automatically allowed to represent her as his suitability might be questioned. It was therefore upon Dorothy to have notified the municipality in advance to enable it to decide what to do well in advance. Even the postponement of the 23rd February 2026 was a result of the last-minute objection by Dorothy without forewarning the municipality of what she intended to do. All these in my view, were calculated moves by Dorothy to delay the municipality in reading charges to her well knowing that it was to her benefit and advantage as the 3 months period will lapse without the municipality having read the charges to her.

[33] In *Memani* case at para 43 and 44 the Court said:

"[43] This brings into sharp focus the question whether an employee can still rely on the failure to have that charges read on the date a disciplinary enquiry that was scheduled to commence, when the enquiry is postponed at the request of the employee, to argue that the enquiry could no longer proceed on the postponed date. The time limits in the regulation are, at least to the benefit of the employee to prevent the employer dragging out disciplinary proceedings as Mgengo and Tshabalala held. In this instance the applicant effectively asked that the hearing should not commence within the three month-month period. In fact the parties agreed to a set of dates in February 2026, well outside the period.

[44] In my view it would be an absurd reading of the regulations that when an employee, for whose benefit a time limit exists for an employer to act, requests a postponement which would have the effect that the time limit would be exceeded, could argue that despite asking for the commencement of the enquiry to be delayed, they can turn around and argue that having obtained that concession, the employer cannot proceed on the date they had agreed to. This effectively amounts to a party blowing hot and cold".

- [34] The municipality was ready to read the charges on 9th February 2026, however Dorothy brought Mr Mphahlele and also complained of the 800 pages bundle of documents. However, when she saw that the municipality was violating regulations in the change of venue to Polokwane, instead of alerting it in advance, she kept quiet until the last hour as it was to her benefit and advantage. She cannot complain of been given the bundle of documents late, whilst she at the same time does not timeously object to the change of venue to prevent the delay of the charges been read to her.
- [35] In the same way that the time limits in the regulations are meant to benefit the employee to prevent the employer dragging out the proceedings, must also protect the employer from the employee from applying tactics that prevent charges been read to her/him within the 3 months period. For one to qualify for performance bonus must be assessed on the actual work done. This will therefore entail an employee been physically present at the workplace or physically doing the work. The entitlement to performance bonus under certain circumstances might amount to exceptional circumstances. However, in my view, it will be for employees who did not intentionally engineer the situation to benefit them.
- [36] Dorothy is the one who had engineered the proceedings to drag beyond the 3 months period without the charges been read to her and should therefore not be permitted to benefit from her own strategy. Dorothy is therefore in my view blowing hot and cold, and taking into consideration that the municipality had a fairly good chance of prospects of success in the main appeal, Dorothy has not demonstrated exceptional circumstances warranting an order that the execution and operation of the order of 8th June 2026 not to be suspended

the municipality's application for leave to appeal or appeal. It follows that the appeal stands to be upheld. There are no reasons why costs which are inclusive of the employment of 2 counsel should be awarded to the appellants.

[37] In the result the following order is made:

1. The appeal is upheld with costs on party and party scale B, including the costs of two counsel.

2. The order of the court of second instance is set aside and substituted with the following:

'The application to enforce the order of 8th June 2026 is dismissed with costs on party and party scale B'.



KGANYAGO J

JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION,
POLOKWANE

I AGREE



NAUDE-ONDENDAAL J

JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION,
POLOKWANE

I AGREE


BURNETT AJ

ACTING JUDGE OF THE HIGH COURT OF
SOUTH AFRICA, LIMPOPO DIVISION,
POLOKWANE

APPEARANCES:

Counsel for the appellants	: Adv E Seima SC & Adv L Nkoana
Instructed by	: NJ Morero Inc Attorneys
Counsel for the respondent	: Adv F Marx
Instructed by	: CH Zeelie Attorneys
Date heard	: 9 th September 2026
Electronically circulated on	: 16 th September 2026