IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

Reportable
Case no: 3919/2025

In the matter between:

BATSI GOTSILEKGOSI	Applicant
And	
MAMUSA LOCAL MUNICIPALITY	First Respondent
RANTSHO REUBEN GINCANE	Second Respondent
MEC FOR THE DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, NORTH WEST PROVINCE	Third Respondent
MITTAH CHELECHELE	Fourth Respondent
TSHEPO KHWENENYANE	Fifth Respondent
DANIEL MOTLAPELE	Sixth Respondent
THAPELO SEDISHO	Seventh Respondent
NOMATHEMBA MVALA	Eighth Respondent
GRACE MASILO	Ninth Respondent
KELEBOGILE MOTHUPI	Tenth Respondent
ESME VENTER	Eleventh Respondent
SAREL STRYDOM	Twelfth Respondent
OLEBENG MOGOROSI	Thirteenth Respondent
TUMISO TLHOLE	Fourteenth Respondent
ISAAC KOCK	Fifteenth Respondent
KGOMOTSO MASILO	Sixteenth Respondent
NTHABISENG MODISE	Seventeenth Respondent
EPHRAIM CHUBISI	Eighteenth Respondent

CORAM: Petersen J

DATE HEARD: 21 September 2026

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, uploaded to CaseLines and released to SAFLII for publication. The date and time for hand-down is deemed to be 3 November 2026 at 10h00.

Summary: *Administrative law - review under Uniform Rule 53 of municipal council resolutions purporting to reinstate a municipal manager to office – material non-compliance with mandatory procedures – March 2025 resolution considered on the respondents' account that the meeting reconvened - no finding of fabrication - restoration to office fell outside the business specified for the special meeting, and compliance with the procedure for urgent business was not established – April 2025 meeting unlawfully convened - purported ratification did not cure the earlier defects - rescission of the termination resolution required an Executive Mayor's recommendation under rule 69 of the Council's Rules - Rule 68 of the Council's Rules with three-month restriction and exception did not dispense with that independent requirement - No recommendation established - reinstatement distinguished from a fresh appointment - review did not require determination of the validity of the original appointment, the substantive validity of the termination, or independently enforceable contractual or labour rights - challenged resolutions reviewed and set aside - question of restoration to office remitted to the Council for lawful reconsideration within 60 days - any fresh appointment or acting appointment to comply with the applicable statutory requirements - existing Pretoria court order unaffected - five-year ineligibility declaration refused - ordinary party-and-party costs awarded against the first and second respondents, with counsel's fees on Scale B - no punitive or personal costs order.*

JUDGMENT

PETERSEN J:

Introduction

[1] This is an opposed review application brought in terms of Rule 53 of the Uniform Rules of Court. The applicant, a councillor of the first respondent and its former Speaker, approaches this court to review and set aside three resolutions of the Municipal Council (the Council) of the first respondent (the Municipality). All three resolutions are essentially directed at the reinstatement of the second respondent as the Municipality's Municipal Manager, notwithstanding his

employment having earlier been terminated by the Council itself for want of the qualifications prescribed for that office.

[2] The three impugned resolutions include those of 18 March 2025, 22 April 2025 and 18 August 2025. In addition, the applicant seeks an order declaring the second respondent ineligible for appointment as a municipal manager for five years, and a costs order on a punitive scale against the first and second respondents together with the fourth to twelfth respondents in their personal capacities.

[3] The application was originally also directed at the applicant's own removal as Speaker of the Council, effected at the meeting of 22 April 2025. That relief is no longer pursued. The fifth respondent has since been permanently elected Speaker, a decision the applicant has not challenged, and he accepted in reply that this part of the relief had become moot.

[4] The application is opposed by the first, second and fourth to eighteenth respondents. The first respondent and the fourth to eighteenth respondents filed a joint answering affidavit deposed to by the fifth respondent. The second respondent filed a separate answering affidavit out of time and seeks condonation. The third respondent has not opposed the application and abides the decision of this court. Oral argument commenced on 21 September 2026 but could not be completed. With the agreement of counsel, the respondents were permitted to complete their submissions in writing, and the applicant was afforded an opportunity to reply. I have considered the oral argument advanced at the hearing of 21 September 2026, together with the respondents' written oral submissions subsequently filed and the applicant's written reply.

The parties

[5] The applicant is an adult councillor of the Municipality, elected in the 2021 local government elections. He was elected Speaker of the Council on 21 February 2024 and held that office until his purported removal on 22 April 2025. The first respondent is Mamusa Local Municipality, a category B municipality established under Chapter 7 of the Constitution read with the Local Government: Municipal Structures Act 117 of 1998 (the Structures Act). The second respondent, Mr Rantsho Reuben Gincane, was first appointed Municipal Manager of the Municipality with effect from 1 November 2022. His employment was terminated by Council resolution on 16 August 2024. It is his purported reinstatement to that office that lies at the heart of this application. The fourth respondent is the Executive Mayor. The fifth respondent is the current Speaker. The sixth to twelfth respondents are councillors who, on the applicant's case, participated in the impugned decisions and are sought to be mulcted with costs in their personal capacities. The thirteenth to eighteenth respondents are councillors cited for their interest in the proceedings. No costs are sought against them unless

they oppose the application, which they have not done separately from the joint answering affidavit.

The factual background

[6] The second respondent's initial appointment in 2022 followed a recruitment process in terms of which candidates were required to hold, or to obtain, a certificate in municipal finance management referred to in the papers as the CPMD. It is common cause that, notwithstanding repeated requests by the Municipality, the second respondent has never produced a CPMD certificate. What he has produced, and continues to rely on, are a letter from the University of the Witwatersrand referring to him as a 'learner' on certain modules, and a statement of results issued by the relevant Sector Education and Training Authority (SETA). Neither document states, in terms, that he completed the programme or was awarded the certificate.

[7] On 16 August 2024, the Council resolved to terminate the second respondent's employment with immediate effect, on the basis that his appointment was null and void under s 54A of the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act) for want of the prescribed qualifications, and that he had misrepresented his qualifications to secure the post. That resolution was never taken on review by the second respondent, or set aside by any court. Following his departure, two senior officials acted in the position, the third respondent seconded an official, Mr Mabokela, to act as Municipal Manager, and by April 2025 the post had been advertised nationally, with a closing date of 11 April 2025, and a number of applications, including from officials of the Municipality, had been received.

[8] It is against this background that the Municipality found itself, in the first quarter of 2025, in acute financial distress. The National Treasury addressed a letter to the Municipality recording substantial arrears owed to the South African Revenue Service and to the Municipal Employees Pension Fund, a failure to adopt a funded budget, and an intention to withhold the Municipality's equitable share pending remedial steps, including a repayment plan. It is this crisis that occasioned the special council meeting of 18 March 2025.

The meeting of 18 March 2025

[9] The applicant, then Speaker, convened the special meeting for the sole purpose recorded in the agenda and the notice. That sole purpose identified as being the Municipality's failure to pay staff salaries for February 2025, and the National Treasury's intervention. It is common cause that, during the meeting, certain councillors sought to introduce an item concerning s 54A(3) of the Systems Act, relating to the skills, expertise, competencies and qualifications of

the Municipal Manager, Mr Gincane, and to his reinstatement. That item was not on the notice or the agenda for the meeting.

[10] What happened thereafter is disputed. On the applicant's version, the meeting was adjourned sine die and never reconvened. He and the other councillors left the venue; no resolution of any kind was taken; and he, in his capacity as Speaker, in due course signed minutes recording that outcome. In corroboration, the applicant relies on: (a) the transcript of the meeting forming part of the Uniform Rule 53 record, in which he is recorded as saying, 'this sitting, honourable councillors, is stand adjourned until further notice'; (b) a video recording of the meeting, which was open to the public and broadcast live, showing the same; and (c) confirmatory affidavits of four councillors who attended the meeting.

[11] On the respondents' version, deposed to by the fifth respondent (who was not then the Speaker and was not, on his own account, chairing the meeting), the meeting was only temporarily adjourned, was thereafter reconvened, the reinstatement proposal was debated and put to a vote, and a majority of councillors resolved in favour of the second respondent's reinstatement with immediate effect. The respondents concede, however, that this reconvened portion of the meeting was, for reasons unexplained, not recorded, and does not appear anywhere in the Uniform Rule 53 record. They further concede that when the resulting minutes were sent to the applicant for signature as Speaker, he refused to sign them, and that the Executive Mayor then signed it in his stead.

The meeting of 22 April 2025

[12] On 14 April 2025, a majority of councillors requested the applicant, in terms of s 29(1) of the Structures Act, to convene a special council meeting to debate a motion of no confidence in him as Speaker. The applicant responded in writing on 16 April 2025, stating that he was bound to convene the meeting but that this required adequate notice, a suitable venue with public access, and compliance with the standing orders, none of which could be achieved on the truncated timetable proposed. No further request was made to him.

[13] On 22 April 2025, the second respondent, purporting to act as Municipal Manager under s 29(1A) of the Structures Act, convened the meeting himself, on the premise that the applicant had refused to convene it. At that meeting, a motion of no confidence in the applicant was carried, he was removed as Speaker, the sixth respondent was elected in his stead, and the Council further resolved to ratify the resolution said to have been taken on 18 March 2025.

The meeting of 18 August 2025 and subsequent litigation

[14] The papers disclose that, in the interim, the Municipality's bank, First National Bank, declined to recognise the second respondent's authority over the Municipality's accounts. This precipitated an urgent application by the second respondent, purportedly on behalf of the Municipality, against the bank and the applicant in this Division, in which declaratory relief was also sought regarding the validity of the 18 March and 22 April 2025 resolutions. That application was struck from the roll for want of urgency. The second respondent thereafter approached the Gauteng Division, Pretoria, without citing the applicant, and obtained an order granting him access to the Municipality's bank account. He thereafter withdrew his North West application. The applicant had lodged a counter-application in those proceedings to review the same resolutions and instituted the present proceedings on 10 September 2025. Withdrawal of a main application does not, of itself, dispose of a counter-application. I do not treat the second respondent's withdrawal as having had that effect. The objection of abuse of process advanced in these proceedings is addressed below.

[15] On 18 August 2025, and notwithstanding a directive from the third respondent to rescind the reinstatement, the Council resolved to rescind its own resolution of 16 August 2024, which had terminated the second respondent's employment in the first place. It is this resolution, together with those of 18 March and 22 April 2025, that the applicant applies to this court this court to review and set aside.

The relief sought and the issues for determination

[16] Further to the relief set out above, and as narrowed in argument, the applicant seeks: (a) the review and setting aside of the resolutions of 18 March 2025 and 22 April 2025, insofar as they purport to reinstate and ratify the reinstatement of the second respondent as Municipal Manager; (b) the review and setting aside of the resolution of 18 August 2025, rescinding the resolution of 16 August 2024; (c) in the alternative, a declaration that the second respondent's appointment is null and void; (d) a declaration that the second respondent is ineligible for appointment as a municipal manager for five years; and (e) costs.

[17] The respondents oppose the application on several grounds. Some of those grounds, if upheld, would dispose of the application without having to entertain the merits of the resolutions. These grounds include, (a) that the application is an abuse of process; (b) that there is a dispute of fact that cannot be resolved on the papers, and no referral to oral evidence has been sought; (c) that on the applicant's own version there is no decision to review, so that the court lacks jurisdiction and the matter is moot; and (d) that an order setting aside the resolutions would achieve nothing. The other grounds speak to the merits, and to the relief. Those grounds require determination of the following questions: (a) whether the second

respondent's application for condonation of the late filing of his answering affidavit should be granted; (b) whether the application is an abuse of process; (c) whether, on the papers, a resolution was adopted by the Council on 18 March 2025, and whether the absence of a request for referral to oral evidence is fatal; (d) whether, on either version, there is a decision for the court to review, and whether the matter is moot; (e) whether the order sought would have any practical effect; (f) if a resolution was adopted, whether it was lawfully adopted at a special meeting, and whether the reinstatement it purported to effect was lawful having regard to s 54A of the Systems Act; (g) whether the meeting of 22 April 2025 was lawfully convened and whether its purported ratification of the 18 March 2025 resolution could cure any invalidity; (h) whether the rescission of the August 2024 resolution on 18 August 2025 was lawful; (i) whether the application was brought without unreasonable delay; (j) what remedy is just and equitable if unlawfulness is established; and (k) whether the declaratory and costs relief sought is competent.

Condonation

[18] The second respondent delivered his separate answering affidavit on 17 July 2026 and applies for condonation of its late delivery. The answering affidavit timetable in a Rule 53 review is governed by Rule 53(5)(b), read with Rule 53(4), rather than a period of ten (10) days after notice of opposition. It is unnecessary to fix the precise extent of the delay for purposes of the decision below. The second respondent accepts that condonation is required and explains that he was advised by unidentified persons, first, not to participate separately because the Municipality would carry the defence, and, later, to file an affidavit confined to the relief sought against him personally.

[19] The explanation is wholly inadequate. It does not identify who gave the advice, when it was given, when the decision to participate separately was taken, or why the affidavit was not delivered promptly thereafter. The affidavit adds little to the Municipality's answer apart from the second respondent's personal history and curriculum vitae. These deficiencies weigh against condonation, but do not, without more, establish that the delay was deliberately calculated to protract the litigation.

[20] Even so, condonation is not a matter of indulgence to be refused as a mark of judicial displeasure. The test is the interests of justice. In *Grootboom v National Prosecuting Authority and Another*[1] the Constitutional Court stated that:

> '[T]he concept "interests of justice" is so elastic that it is not capable of precise definition. As the two cases demonstrate, it includes: the nature of the relief sought; the extent and cause of the delay; the effect of the delay on the

[1] *Grootboom v National Prosecuting Authority and Another* [2013] ZACC 37; 2014 (2) SA 68 (CC).

> administration of justice and other litigants; the reasonableness of the explanation for the delay; the importance of the issue to be raised in the intended appeal; and the prospects of success.'

[21] The relief sought bears directly on who holds the most senior administrative office in the Municipality, and its consequences are considerable. In oral argument, the applicant maintained his objection to the inadequate explanation but left condonation to the court. The application was ultimately argued on the full set of papers, since the applicant was afforded, and took, a full opportunity to reply to it. In those circumstances, condonation is granted, with no separate order as to the costs of the condonation application. Admission of the affidavit does not approve the delay. It permits the far-reaching relief sought against the second respondent to be considered on the complete affidavit record.

Is the application an abuse of process?

[22] The respondents' first contention is that the application is an abuse of process and should be dismissed with costs on that ground alone. They rely on the description of the concept by the Supreme Court of Appeal in *Beinash v Wixley*[2] that:

> 'What constitutes an abuse of the process of the court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept of "abuse of process". It can be said in general terms, however, that an abuse of process takes place where the procedures permitted by the rules of the court to facilitate the pursuit of the truth are used for a purpose extraneous to that objective.'

[23] They add the following from *Maughan*[3] that:

> 'Our courts have not attempted to have an all-encompassing definition of what is meant by an abuse of process. Over the years there have been a number of instances in which the courts have deemed it appropriate to intervene and arrest an abuse of process which include those instances where proceedings have been instituted for an ulterior and/or improper purpose and for an improper and/or ulterior motive.'

[24] The submission is that the applicant seeks 'through the backdoor' to have the court confirm the Council's decision of 16 August 2024, since the premise of the relief sought is the same as the basis for that decision: that the second respondent misrepresented his qualifications and does not hold those required for the post. The Council, so it is said, did not approach a court to have the appointment set aside, or put the second respondent through a disciplinary

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[2] *Beinash v Wixley* [1997] ZASCA 32; 1997 (3) SA 721 (SCA).

[3] *Maughan v Zuma and Others* [2023] ZAKZPHC 59; 2023 (5) SA 467 (KZP) para 70.

process, and the review is not there to confirm the decision of a decision-maker that failed to do so.

[25] I am not persuaded by the argument. The circumstances must establish a misuse or abuse of the court's process. The alleged ulterior or improper purpose has not been established. The applicant is a councillor, and until 22 April 2025 he was the Speaker of the Council. He challenges three resolutions of the Council on grounds of legality, and he does so in a forum that has the power to decide those grounds. The relief that he seeks is directed at the resolutions of 2025. It is not directed at confirming the resolution of 16 August 2024. That resolution is not before the court for review at the instance of either side, and, as I explain below, I do not decide whether it was valid.

[26] That the same subject matter is common to the 2024 and the 2025 decisions does not make the use of the court's process improper. Whether a person who was appointed without the qualifications the law requires may lawfully be put back in office is a question of the lawfulness of the later decisions, and it arises whatever view is taken of the earlier one. The respondents say that the Council's decision to terminate was premised on an incorrect assumption. If so, that is a matter for the second respondent to raise in the appropriate proceedings. It is not a reason for the court to decline to examine the lawfulness of the later resolutions. The complaint that the Council in 2024 failed to approach a court is a complaint about the Council, which was the decision-maker, and it goes to the status of that decision, a matter dealt with below. It does not show that the applicant is using the court's process for a purpose extraneous to the pursuit of the truth.

[27] The contention that the application is an abuse of process is therefore rejected. The applicant's further complaint about the respondents' late filing of their written oral submissions is considered under costs. It neither converts this review into an abuse of process nor supplies evidence of an ulterior purpose on the applicant's part.

Was a resolution validly adopted on 18 March 2025?

[28] This is a review application seeking a final order. Where, as here, a dispute of fact arises on the papers, the approach in *Plascon-Evans*[4] applies where the Appellate Division stated:

> '[W]here in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the court to give such final relief

[4] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] ZASCA 51; 1984 (3) SA 623 (A) at 634E-635C.

> on the papers before it is, however, not confined to such a situation. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact. … If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under Rule 6(5)(g) of the Uniform Rules of Court … and the court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof …. Moreover, there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers ….' (Citations omitted.)

[29] The respondents contend that the applicant's version and their version cannot be reconciled, that the dispute was foreseeable, and that the application should be dismissed on that ground alone. That contention misstates the effect of the rule. A dispute of fact that is not real, genuine and bona fide does not stand in the way of final relief. The question is whether the respondents have raised one. In *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*[5] the Supreme Court of Appeal made it plain that:

> 'A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say "generally" because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter.'

[30] In my view the respondents' version, that the meeting was briefly adjourned and thereafter reconvened to adopt the reinstatement resolution, does

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[5] *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* [2008] ZASCA 6; [2008] 2 All SA 512 (SCA); 2008 (3) SA 371 (SCA) para 13.

not withstand scrutiny and falls to be rejected as far-fetched. The official Rule 53 record ends with the Speaker adjourning the meeting 'until further notice' and contains no recorded reconvened proceedings. The applicant emphasised, both orally and in written reply, an inconsistency in the respondents' account. The principal answering affidavit describes an adjournment followed by reconvening, whereas the confirmatory affidavits are said to describe an unsuccessful attempt by the Speaker to adjourn. Those are materially different accounts of how the Council continued its business. The applicant's confirmatory affidavits support his account that the meeting ended and councillors dispersed. The respondents offer no satisfactory explanation for the absence of a record of the alleged continuation of a publicly broadcast meeting. The absence of a recording would not, by itself, establish that no meeting occurred. It must, however, be assessed with the conflicting accounts and the minutes signed by the Executive Mayor rather than the Speaker. The Speaker's refusal to sign also cannot confer a veto over a resolution actually adopted. The question is whether the asserted proceedings occurred, not whether a signature alone brought a resolution into existence. Taken together, these features do not supply a coherent account capable of displacing the recorded adjournment.

[31] Assessed cumulatively, the unexplained absence of any record of reconvened proceedings, the materially inconsistent descriptions of how the meeting continued, and the contemporaneous record of an adjournment until further notice render the respondents' version clearly untenable on these papers. This conclusion does not rest merely on preferring the applicant's account, or on the number of confirmatory affidavits filed on either side. Applying *Plascon-Evans* and *Wightman*, I reject the asserted reconvening. It is further inexplicable why a resolution taken at a disputed reconvened meeting would require adoption and confirmation of the reinstatement resolution on 18 March 2025. The independent grounds considered below would, in any event, require the same outcome even if the respondents' factual account were accepted.

The absence of a request for referral to oral evidence

[32] The respondents contend that the application must nonetheless fail because the applicant did not ask for the disputed facts to be referred for oral evidence. They rely on the following passage in *Law Society of the Northern Provinces v Mogami and Others*[6] that:

> 'An application for the hearing of oral evidence must, as a rule, be made *in limine* and not once it becomes clear that the applicant is failing to convince the court on the papers or on appeal. The circumstances must be exceptional before

[6] *Law Society of the Northern Provinces v Mogami and Others* [2009] ZASCA 107; 2010 (1) SA 186 (SCA) para 23.

> a court will permit an applicant to apply in the alternative for the matter to be referred to evidence should the main argument fail ….' (Citation omitted.)

[33] The decision in *Mogami* concerns a request for oral evidence made after an applicant's case on the papers has failed. It does not preclude final relief where the opposing version may properly be rejected under *Plascon-Evans*. The court's power under Rule 6(5)(g) does not depend exclusively on a request by a party. Equally, the respondents' failure to request cross examination does not, by itself, entitle the applicant to final relief. The decisive question is whether a genuine factual dispute prevents determination on the papers. For the reasons given, it does not. Moreover, the independent defects in the special-meeting procedure and the statutory appointment process can be determined on the respondents' own account. A referral would therefore serve no necessary purpose in deciding the relief sought. Neither *Mogami* nor *Santino* requires dismissal in those circumstances.[7]

Is there a decision to review, and is the matter moot?

[34] The next arrow in the bow of the respondents is that, even if the court accepts the applicant's version, there was no resolution of the Council reinstating the second respondent, so that there is no decision for the court to review and the court has no jurisdiction. They add that any order the court makes would be an advisory order or would pre-empt the Council's decision. They rely on *Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs*[8] where the Supreme Court of Appeal said:

> '[W]hen a court of first instance has determined that the subject matter of litigation has ceased to exist before judgment, it has no jurisdiction to entertain the merits of the matter. Only an appeal court has a discretion to hear an appeal notwithstanding mootness. …'

[35] The submission has no bearing on the particular facts of the present matter. First, *Solidariteit* concerns a cause of action that has ceased to exist before judgment. Here the dispute is live. The second respondent occupies the office of Municipal Manager on the strength of the resolutions under attack. The Council has acted on them. The minutes of 18 March 2025 were signed by the Executive Mayor, the Council ratified the resolution on 22 April 2025, and the second respondent has relied on them to obtain access to the Municipality's bank account and in litigation before this court and the Gauteng Division. The authorities that counsel relies on for mootness, as counsel describes them, concern decisions that were abandoned, or tenders that lapsed, before judgment. Nothing of that kind has happened here. The applicant's reply rightly distinguishes the abandonment

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[7] *Santino Publishers CC v Waylite Marketing CC* [2009] ZAGPJHC 26; 2010 (2) SA 53 (GSJ) (12 June 2009).
[8] *Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs* [2023] ZASCA 35 para 18.

of the Speaker relief from the continuing challenge to the reinstatement. The second respondent remains in office under the resolutions attacked.

[36] Second, the argument confuses the validity of a decision with its existence. The finding that no resolution was adopted does not eliminate the subsequent official conduct challenged in this application. The Municipality has presented and implemented an instrument as a Council resolution and has adopted later resolutions to confirm or give effect to it. Rule 53 is directed at the decision or proceedings of the body concerned. Both the proceedings of that meeting, with its purported outcome, and the later resolutions that gave effect to it, are before this court. On the principle in *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others*[9] which the respondents themselves invoke, an act that is invalid but exists in fact has legal consequences until a court sets it aside:

> 'Until the Administrator's approval (and thus also the consequences of the approval) is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked. The proper functioning of a modern state would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognized that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside.' (Footnote omitted.)

[37] The facts in *Oudekraal* concern an administrative act that exists in fact despite its invalidity. It is unnecessary to extend that principle to hold that a Council resolution was adopted when the evidence establishes otherwise. Here there is an asserted resolution recorded and implemented as official authority, together with later Council decisions expressly confirming it. This court may declare that no resolution was adopted and set aside the purported instrument and the consequential decisions challenged before it. The absence of a validly adopted March resolution does not immunise that official conduct from judicial scrutiny or deprive the court of jurisdiction over this live dispute.

[38] Third, the contention that an order would pre-empt a decision of the Council has no substance. The Council has not taken a lawful decision that the order could pre-empt. An order setting aside the purported resolutions leaves the Council free to act lawfully, within the limits of s 54A of the Systems Act. I find that this court has jurisdiction, that there is a decision to review, and that the matter is not moot.

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[9] *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* [2004] ZASCA 48; 2004 (6) SA 222 (SCA) para 26.

Would the order have any practical effect?

[39] The respondents' second threshold contention is that an order setting aside the resolutions of 2025 would achieve nothing. The principle reasoning is this. In August 2024 the Council took it upon itself to declare the second respondent's appointment unlawful and did not approach a court. A public body may not do that. The decision to appoint him therefore remained in place, any later decision to undermine it was invalid, and the second respondent remains entitled to render services as Municipal Manager whatever this court does with the resolutions of 2025. They rely on *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd t/a Eye & Laser Institute Kirland*[10], *Oudekraal*, *Mbashe Municipality v Dumezweni and Others*[11] and *Steenkamp and Others v Edcon Limited*[12].

[40] I accept the principle on which the respondents rely. The Constitutional Court put it as follows in *Kirland*[13]:

> 'The fundamental notion – that official conduct that is vulnerable to challenge may have legal consequences and may not be ignored until properly set aside – springs deeply from the rule of law. The courts alone, and not public officials, are the arbiters of legality. As Khampepe J stated in *Welkom*, "[t]he rule of law does not permit an organ of state to reach what may turn out to be a correct outcome by any means. On the contrary, the rule of law obliges an organ of state to use the correct legal process." For a public official to ignore irregular administrative action on the basis that it is a nullity amounts to self-help.
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> The approval communicated to Kirland was therefore, despite its vulnerability to challenge, a decision taken by the incumbent of the office empowered to take it, and remained effectual until properly set aside. It could not be ignored or withdrawn by internal administrative fiat. This approach does not insulate unconstitutional administrative action from scrutiny. It merely requires government to set about undoing it in the proper way.'
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> [H]aving failed to counter-apply during these proceedings, the Department must bring a review application to challenge the approval granted to Kirland, which remains valid until set aside.' (Footnotes omitted.)

[41] The applicant answers that the termination resolution was itself an exercise of public power which the second respondent did not challenge. He submits that the respondents cannot invoke *Kirland* and *Oudekraal* to protect the initial appointment while disregarding the later termination. That submission identifies the difficulty in the respondents' position. The legality of the 2024 resolution is not before me on a review or counter-application. *Mbashe Municipality v*

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[10] *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd t/a Eye & Laser Institute* [2014] ZACC 6; 2014 (3) SA 481 (CC).

[11] *Mbashe Municipality v Dumezweni and Others* [2015] ZALAC 18.

[12] *Steenkamp and Others v Edcon Limited* [2016] ZACC 1; 2016 (3) SA 251 (CC).

[13] *Kirland* (fn 10 above) paras 103, 105 and 106.

Dumezweni and Others[14] does not establish a general licence to disregard it. The applicant is, however, incorrect insofar as he reads *Mbashe* as concerned only with jurisdiction and as imposing no limit on a municipality's treatment of an appointment as conclusively void. Paragraph 23 expressly imposes that limit. Paragraph 25 explains the Labour Court's incidental jurisdiction to determine contractual validity. The relevant passages are these:

> 'I do not understand subsection (3) to mean that the appointment of a Municipal Manager may be treated conclusively by a municipality, or anybody else, as null and void without the intervention of a court. The principle of legality does not permit this. Contracts are binding but may be void or voidable.
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> When the legislature conferred jurisdiction on the Labour Court to enforce a contract of employment it can only have meant a valid contract of employment and that the Labour Court would decide whether the contract of employment in issue was a valid contract according to whatever law was applicable.'

[42] The Council's decision of 18 August 2025 to rescind the termination is consistent with its having treated the 2024 resolution as operative. That conduct does not establish the resolution's legal validity, nor does an attempt to rescind it preclude a litigant from disputing its validity in appropriate proceedings. It does, however, underscore that the 2025 resolutions were intended to alter the existing position and were not merely inconsequential statements about the second respondent's status.

[43] The question that arises, in the words of *Oudekraal*[15], is not whether the 2024 resolution was valid, but whether its substantive validity was a necessary precondition for the validity of what followed:

> 'Thus the proper enquiry in each case – at least at first – is not whether the initial act was valid but rather whether its substantive validity was a necessary precondition for the validity of consequent acts. If the validity of consequent acts is dependent on no more than the factual existence of the initial act then the consequent act will have legal effect for so long as the initial act is not set aside by a competent court.' (Footnote omitted.)

[44] The termination resolution was acted upon. The second respondent left office, acting appointments followed and the post was advertised. The applicant points to these consequences as demonstrating that the resolution was treated as operative. The respondents' contention that every consequence may be ignored merely because they consider the termination invalid is not sustainable. Whether a decision concerning municipal employment constitutes administrative action must be determined by its nature and statutory setting. It does not follow simply from the identity of the employer. The impugned 2025 decisions, by contrast, concern the exercise of statutory authority to fill the office of municipal manager

[14] *Mbashe* (fn 11 above) paras 23 and 25.
[15] *Oudekraal* (fn 9 above) para 31.

and compliance with prescribed Council procedures. In that setting, they are administrative action reviewable under PAJA. That conclusion does not determine the classification or validity of the earlier employment termination, or the validity of the 2022 contract. The respondents have sought no order declaring the 2024 termination invalid or enforcing that contract. Their attack on the termination cannot excuse the independent defects in the Council's later decisions. I decide the lawfulness of those decisions and leave any properly instituted challenge to the termination, and any contractual claim, for determination in the appropriate proceedings.

[45] The applicant also answers the respondents' reliance on *Edcon*[16]. He correctly identifies the majority's conclusion that dismissals in breach of the relevant procedural requirements of s 189A of the Labour Relations Act 66 of 1995 were not, on that account, invalid. The respondents rely on the following passage concerning the consequences of a dismissal that is invalid:

> 'An invalid dismissal is a nullity. In the eyes of the law an employee whose dismissal is invalid has never been dismissed. If, in the eyes of the law, that employee has never been dismissed, that means the employee remains in his or her position in the employ of the employer.'

[46] That passage explains the consequences once invalidity is established. It does not establish that the termination in this case was invalid. The majority's rejection of automatic invalidity in the statutory retrenchment setting also means that *Edcon* cannot be cited as authority that every procedurally or substantively unlawful termination is a nullity which an employee may ignore. Equally, the applicant's reliance on the majority's conclusion does not itself establish the validity of this termination. The statutory and contractual basis of each dispute must be examined. Here neither side has placed the validity of the 2024 termination before me for determination through appropriate relief.

[47] The applicant's reply states that setting aside the reinstatement has a practical consequence because the second respondent is occupying the office and receiving its benefits under the impugned resolutions. I agree that the dispute is live and the order has practical effect. It removes those resolutions as a basis for his return to office and restores the position before they were adopted. The reply also invokes *Ditsobotla Local Municipality and Others v Bojosinyane and Others*[17]. That decision concerned interim relief against parallel municipal structures, and a reinstatement order whose operation was suspended pending appeal. It illustrates the importance of lawful authority to exercise municipal functions but does not decide the validity of the termination in this matter. I do

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[16] *Edcon (fn 12 above) paras 99, 182 and 189.*

[17] *Ditsobotla Local Municipality and Others v Bojosinyane and Others* (1229/25) [2025] ZANWHC 60.

not adopt the applicant's invitation to declare the Labour Court's reasoning in *Bojosinyane* wrong. That is unnecessary to decide this review.

Was the resolution lawfully adopted, if it was adopted?

[48] Even if I am wrong in my finding on the facts, I turn to whether the resolution of 18 March 2025 would have been lawful if the meeting had in fact reconvened and a vote had been taken. In my view it would not, for two independent reasons, which are dealt with in turn.

Rule 11.2 of the Council's rules

[49] The applicant says that the reinstatement proposal was not on the notice or agenda of a special meeting. The respondents answer by reference to rule 11.2 of the Council's rules, which they quote as follows:

> '11.2 The business to be conducted at the special council meetings shall be limited to what is specified in the notice or agenda – no addendums or tabling of any further matter will be allowed.'

[50] The respondents submit that the rule is silent on the kinds of resolutions that may be taken after an item on the agenda has been debated, that a proposal for a resolution is not the introduction of a new item, and that the Council was therefore entitled to resolve on any matter once it had debated the item on the agenda. They add that the applicant has identified no provision of the Constitution, any Act, regulation or by-law with which the resolution is inconsistent, so that there is no 'hook' on which to declare it invalid.

[51] I do not agree with the submission. The rule limits the business of a special meeting to 'what is specified in the notice or agenda' and it says that no 'further matter' may be tabled. Its terms are clear and peremptory. The business specified here was the Municipality's failure to pay salaries for February 2025 and the National Treasury's intervention. A resolution on that business would deal with salaries and the intervention. A proposal that the second respondent be reinstated as Municipal Manager, after the Council had terminated his employment and while a recruitment process for the post was under way, is a different matter. It does not become part of the business on the notice because it was moved after the salary issue was debated. On the respondents' reading, any resolution on any subject could be adopted at a special meeting, provided that the stated item was first debated. That would make the rule meaningless. The point of a rule of this kind, read with the duty to give public notice of special meetings in s 29A of the Structures Act, is that councillors and the public know in advance what business the Council will conduct. The applicant's oral submission and paragraph 30 of his written reply make the same distinction. A power to formulate resolutions on notified business is not a power to add unrelated business.

[52] There is also no want of a 'hook'. Rule 11.2 is the provision. A municipal council makes rules and orders for its business and proceedings under s 160(6) of the Constitution, and it is bound by them. A resolution adopted in breach of a peremptory rule on the business of a special meeting is unlawful, and the applicant pleaded precisely that the proposal was not on the agenda. The respondents understood the complaint and answered it. In the circumstances the resolution, if adopted, was unlawful for this reason too.[18]

Section 54A of the Systems Act

[53] The second reason is s 54A of the Systems Act. Section 54A(3) provides that a decision to appoint a person as municipal manager, and any contract concluded in consequence, is null and void if the person appointed does not have the prescribed skills, expertise, competencies or qualifications, or if the appointment was otherwise made in contravention of the Act. The Constitutional Court explained the purpose of the section in *Notyawa v Makana Municipality and Others*[19] as follows:

> 'The section lays emphasis on the appointment of suitably qualified municipal managers owing to the position they hold in the administration of a municipality. The role played by the managers is crucial to the delivery of services to local communities and the proper functioning of municipalities whose main function is to provide services to local communities. The section envisages that candidates who are best qualified for the job must be recruited. It obliges municipalities to "advertise the post nationally to attract a pool of candidates nationwide" and select from that pool a manager who meets the prescribed requirements for the post.
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> The entire scheme of section 54A is predicated on having suitably qualified persons appointed as municipal managers.'

[54] Section 54A(4) provides that when the post of municipal manager becomes vacant, the council must advertise it nationally to attract a pool of candidates nationwide and select from that pool a suitable person who complies with the prescribed requirements. Section 54A(5) requires re-advertisement if there is no suitable candidate. On the footing I have explained, the post was vacant in March 2025. A decision to put the second respondent back into it is, in substance, a decision to appoint him. On the respondents' own version, the proposal was moved from the floor at a meeting called to deal with unpaid salaries, and it was carried by a vote. Although the post had been advertised nationally and applications had been received, the reinstatement did not result from consideration and selection of candidates in that process. Instead, that process was abandoned in favour of restoring the second respondent by resolution. I do not hold that every reinstatement following a labour dispute necessarily amounts

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[18] Constitution of the Republic of South Africa, 1996, s 160(6); Structures Act, s 28(1)*(a)*.

[19] *Notyawa v Makana Municipality and Others* [2019] ZACC 43; 2020 (2) BCLR 136 (CC) paras 4 and 11.

to a fresh appointment requiring advertisement. There is no reinstatement award or court order before this court restoring the second respondent to office. In the circumstances of this case, the Council could not bypass the prescribed recruitment process merely by describing its decision to fill the post as reinstatement. A decision to appoint taken in that manner is an appointment 'otherwise made in contravention of this Act', and it is null and void under s 54A(3)(b).

[55] The applicant submits that regulation 2(2)*(b)* of the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers requires those regulations to be read with the Municipal Regulations on Minimum Competency Levels, 2007, including regulation 7. That is correct. The financial competency regime cannot be disregarded merely because it originates under the Municipal Finance Management Act. The applicant relies on the advertisement, the absence of a certificate and documents describing the second respondent as a learner. He also contends that the alleged misrepresentation was not adequately answered. The respondents say that the course was completed and that the remaining difficulty concerned the recording of results. Minimum competencies, completion of the required unit standards and possession of a particular certificate are related but distinct questions. The absence of a certificate does not, without examining the supporting academic records, conclusively prove non-completion. Counsel's assertion that an allegation was unanswered also does not substitute for examining the affidavit. The applicable competency regulations also provide for attainment within 18 months in the circumstances specified in regulation 15(2), as amended in 2018. The existence of that period does not dispense with compliance, but its application cannot be decided from an acronym alone. I therefore make no finding of non-completion or fraudulent misrepresentation. The reinstatement is unlawful under s 54A(3)*(b)* for failure to follow the appointment process, independently of the dispute about qualifications.

The meeting of 22 April 2025 and the purported ratification

[56] The applicant's first challenge to the meeting of 22 April 2025 is that it was not lawfully convened. Section 29(1A) of the Structures Act provides that if the Speaker or acting Speaker refuses to call a meeting of the council as requested in terms of s 29(1), the Municipal Manager, or in the absence or refusal by the Municipal Manager a person designated by the MEC, may call and chair the meeting. The applicant did not refuse a valid request. He responded within two days that he would convene the meeting but explained why the proposed timetable could not accommodate the binding notice and public-access requirements. No revised request was made before the second respondent purported to call the meeting. A request under s 29(1) cannot oblige a Speaker to convene a meeting on terms that would contravene the law and the Council's standing orders. In *Makume and Another v Northern Free State District*

Municipality and Others[20] which was decided under the earlier statutory framework, the court said:

> 'It follows from the above section that the statutory power to convene a meeting of a municipal council is ordinarily the statutory prerogative of a council speaker. The majority of the councillors can, in special circumstances, request the council speaker to call a meeting. But they cannot compel her to break the law in the process by disregarding statutory time limits. In the instant case, the special council meeting of 13 December 2002 was convened by the municipal manager and not the speaker. Section 29(1) does not empower the municipal manager to do so. Musi, J had found that the council speaker's refusal to convene a special council meeting at a short notice in contravention of the statutory provision to discuss non-urgent issues was justified. The unilateral decision of the municipal manager which was apparently dictated by the majority party and beefed up by the majority of the councillors was tantamount to usurpation of the functions and the powers of the council speaker (vide section 37 Act No.117/1998). The municipal manager can only convene a meeting of the council provided the council speaker unreasonably refuses to do so and provided that the law is not violated. I concur with the finding by Musi, J that in the particular circumstances of this case and the case before him the council speaker's refusal to convene the required special council meeting was neither unreasonable nor unlawful.'

[57] The applicant also challenges the second respondent's authority to convene the April meeting because his return depended on the impugned March decision. That contention must be approached consistently with *Oudekraal*. Invalidity of an earlier administrative act does not, without further enquiry, invalidate every subsequent act performed in reliance on it. It is unnecessary to determine whether the second respondent's asserted status supplied authority to convene the April meeting, or whether an acting official was then entitled to exercise that power. The absence of the requisite refusal by the Speaker, the notice defect addressed below, and the inability of the April resolution to cure non-compliance with s 54A supply independent grounds for the limited relief concerning that resolution.

[58] The respondents seek to overcome this difficulty by invoking ratification. Their submission is that the 22 April 2025 resolution ratified, and thereby cured, whatever defect attended the 18 March 2025 resolution. That submission cannot succeed. It is well established that there can be no ratification of an act that is void *ab initio*. In *Firm-O-Seal CC v Wynand Prinsloo & Van Eeden Inc and Another*[21] the High Court with reference to the Appellate Division in *Neugarten* stated as follows:

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[20] *Makume and Another v Northern Free State District Municipality and Others* [2003] ZAFSHC 36 para 15.

[21] *Firm-O-Seal CC v Wynand Prinsloo & Van Eeden Inc and Another* [2021] ZAMPMHC 35; 2022 (4) SA 205 (ML) para 8, quoting *Neugarten and Others v Standard Bank of South Africa Ltd* 1989 (1) SA 797 (A).

> 'It is well-settled law that there can be no ratification of an agreement which a statutory prohibition has rendered *ab initio* void in the sense that it is to be regarded as never having been concluded ….' (Citations omitted.)

[59] The relevant distinction is between curing an irregularity that the law permits to be cured and dispensing with statutory requirements that remain unfulfilled. A subsequent vote of approval cannot supply the advertisement and competitive selection required by s 54A. Nor can it establish retrospectively that a resolution was adopted at a meeting at which none was adopted. Even accepting the respondents' version of the March proceedings, the April resolution did not constitute a selection through the prescribed appointment process. Its purported ratification therefore did not cure the statutory defect, and the April resolution, insofar as it confirms the second respondent's reinstatement, falls to be set aside. This conclusion is consistent with the need for judicial relief to undo the impugned decisions. Statutory invalidity is not a licence to ignore official conduct without the appropriate legal process.

[60] I add, for the sake of completeness, that even taken at its highest the respondents' case does not establish compliance with the 48-hour notice period prescribed by the Standing Orders. The notice was circulated on 21 April 2025 for a meeting held at approximately 11h00 the following day. Section 29A of the Structures Act separately requires public notice of the time, date and venue in a manner determined by the Council. Nothing turns on this given the findings already made, but it reinforces the conclusion that the meeting was not convened in accordance with the governing rules.

The rescission of 18 August 2025

[61] The third resolution purports to rescind the Council's termination resolution of August 2024. The applicant clarified in oral argument, and repeated in paragraph 33 of his written reply, that his reliance on rule 69 concerns rescission after three months, which he says requires the Executive Mayor's recommendation. His complaint is not that the Council acted within a prohibited three-month period. It is that more than three months had elapsed and no recommendation was provided. The respondents invoke rule 68(1), which they say permits a councillor to move the rescission of an invalid or questionable resolution without that requirement. The dispute concerns which procedure applied to this rescission.

[62] I do not resolve that interpretive dispute without the full text and context of the rules. The applicant's contention is that no Executive Mayor's recommendation appears in the record, and a resolution cannot stand in for a prior recommendation if the governing rule requires one. More fundamentally, neither of the competing readings authorises the Council to disregard the statutory appointment procedure. Even if a motion to rescind could properly be introduced

under rule 68(1), that does not answer whether the decision's purpose and effect were to restore the second respondent to office without compliance with s 54A.

[63] The objection that is decisive here is the substantive effect of the August rescission. The Council used it to restore the second respondent to office after his departure under the termination resolution and the commencement of recruitment for the post. This is not a case in which a competent tribunal or court had set aside the termination and ordered reinstatement. Nor does the Council's description of the earlier resolution as a nullity establish that the original employment relationship continued in law. On the case presented, the rescission was the further mechanism chosen to achieve the same return to office without compliance with s 54A. Its form does not cure that substantive defect. This finding concerns the August 2025 decision. It does not establish that the August 2024 termination was lawful.

[64] The resolution of 18 August 2025 was accordingly unlawful and falls to be reviewed and set aside. The third respondent's directive is consistent with that outcome, but it is unnecessary to determine its independent legal effect. The effect of setting the rescission aside is that the 2024 resolution stands as it did before, with whatever legal consequences it has in law, until a competent court decides otherwise.

Delay

[65] Section 7(1) of PAJA requires proceedings to be instituted without unreasonable delay and within its prescribed 180-day period. A common-law legality review is likewise subject to the requirement of reasonable expedition. The respondents did not contend that there was any. The applicant first challenged the resolutions of 18 March and 22 April 2025 by counter-application in the proceedings launched by the second respondent in this Division, proceedings that were only ended by the second respondent's own withdrawal in July 2025. The present application followed within weeks, on 10 September 2025. Measured from 18 March 2025, the earliest of the impugned decisions, the application was instituted 176 days later, so that even measured from the date of the earliest decision, the application falls within 180 days. Compliance with that outer limit does not, by itself, answer whether a delay was unreasonable. The chronology of the earlier challenge and the prompt institution of these proceedings must also be considered. I am satisfied that the application was launched without unreasonable delay.[22]

[22] Promotion of Administrative Justice Act 3 of 2000, ss 6 and 7(1).

The just and equitable remedy

[66] Once a ground of review is established, s 172(1)(a) of the Constitution obliges this court to declare the impugned conduct unlawful. There is no discretion to look away from an established illegality. The discretion that does arise concerns only the consequences of that declaration, to be crafted under s 172(1)*(b)* so as to be just and equitable, a discretion that PAJA gives detailed content to in section 8.[23] In *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others*[24] the Constitutional Court said:

> 'Once a ground of review under PAJA has been established there is no room for shying away from it. Section 172(1)(a) of the Constitution requires the decision to be declared unlawful. The consequences of the declaration of unlawfulness must then be dealt with in a just and equitable order under section 172(1)(b). Section 8 of PAJA gives detailed legislative content to the Constitution's "just and equitable" remedy.' (Footnotes omitted.)

[67] The respondents ask that the resolutions not be set aside, invoking the court's discretion to protect public services, innocent parties and the public purse. The applicant replies that *AllPay* requires setting aside once unlawfulness is established. That puts the proposition too broadly. A declaration of established unlawfulness is obligatory. The consequences require a separate assessment of what is just and equitable. The passage quoted above distinguishes those enquiries. Here the asserted benefits of retaining the second respondent must be weighed against the statutory recruitment requirements and the availability of a lawful acting appointment. There is no demonstrated third-party entitlement that requires preservation of these reinstatement resolutions. That conclusion does not invalidate every administrative act performed during the second respondent's tenure, nor does this application call for a general order undoing municipal transactions. The appropriate remedy addresses the impugned reinstatement and provides a lawful route to fill the office.

[68] The respondents rely on asserted financial stabilisation under the second respondent's renewed stewardship. In reply, the applicant produced internal memoranda from September 2025 to May 2026 concerning continued late payment of salaries and an Eskom notice of March 2026 threatening a reduction or termination of supply. The absence of a further affidavit does not automatically render new material in reply common cause. It is unnecessary to make a definitive comparative finding about the Municipality's financial performance. Even accepting that the second respondent made beneficial contributions, the respondents have not demonstrated why continuity of lawful administration

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[23] Constitution of the Republic of South Africa, 1996, s 172(1).

[24] *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* [2013] ZACC 42; 2014 (1) SA 604 (CC) para 25.

requires preservation of these reinstatement resolutions rather than a compliant acting appointment pending recruitment.

[69] More fundamentally, an unlawful appointment is not rendered fit for preservation merely because the incumbent is thought, on a disputed record, to be administratively capable. Section 54A exists precisely to ensure that the office of municipal manager, on which the proper administration and service delivery of a municipality depends, is held by persons who meet minimum, objectively verifiable, statutory requirements. In *Bloom v Kagisano Molopo Local Municipality and Others; Kagisano Molopo Local Municipality v Gaborone and Others*[25] this Division dealt with a municipal manager's appointment in similar terms:

> 'The Constitutional Court in *AllPay* emphasised that public procurement processes, and by analogy, recruitment processes governed by statute, must be conducted with scrupulous fairness, transparency, and adherence to legal prescripts. Where the process is fundamentally flawed, the proper remedy is not to salvage it but to set it aside and require that it be re-run in accordance with the law. "Deviation from the requirements of a fair process strikes at the very root of the constitutional values of accountability and transparency."
>
> Re-advertising the post is therefore the only remedy that will restore transparency, fairness, and compliance with the legislative scheme. … It will also promote the constitutional values of openness and accountability under section 195 of the Constitution.' (Footnote omitted.)

[70] That approach is apposite here. At the time the second respondent was reinstated, a lawful recruitment process to fill the very same post, advertised nationally and already attracting applicants, was under way. It was abandoned without notice or consultation to accommodate his return. A decision of this kind, taken by an administrative body performing an administrative function, must be rational both in its process and its outcome. In *Mambafula v Alfred Nzo District Municipality* [26] a case about an appointment under s 56 of the Systems Act, the court said:

> 'What needs to be emphasised, in my view, is that when a municipal council executes the functions that it is mandated to perform in terms of section 56, in particular those that relate to the appointment of a manager directly accountable to the municipal manager, it did not perform the functions as a legislative body. Clearly that cannot be so because its role was to implement what had already been prescribed in the legislation, namely in section 56 of the Systems Act. It is an established principle of our law that both the process by which the decision was made and the decision itself must be rational.' (Footnote omitted.)

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[25] *Bloom v Kagisano Molopo Local Municipality and Others; Kagisano Molopo Local Municipality v Gaborone and Others* [2025] ZANWHC 201 paras 26 and 27.

[26] *Mambafula v Alfred Nzo District Municipality* [2025] ZAECMHC 45; [2025] 4 All SA 179 (ECM) para 54.

[71] I therefore consider it just and equitable to declare the second respondent's reinstatement null and void and to set it aside. The alternative relief, a declaration that his appointment is null and void, then falls away, and I do not decide whether his appointment in 2022 was valid, which is a question that is not before me. The relief that follows is, in substance, a remittal to the Council in terms of s 8(1)*(c)*(i) of PAJA, with directions. The first respondent must, within sixty days, resume the recruitment process that was under way before it was abandoned if that process remains lawfully capable of completion. Otherwise, it must within that period commence a fresh, nationally advertised process and thereafter proceed expeditiously in accordance with s54A and the applicable regulations. Pending a permanent appointment, the Council must ensure that any acting appointment complies with s 54A(1)*(b)*, the prescribed competencies and qualifications, and the duration and extension requirements in s 54A(2A). It may, if necessary, request the third respondent to second a suitable person under s 54A(6)*(a)*. If the third respondent does not do so within sixty (60) days, the Council may request the Minister to make the secondment under s 54A(6)*(b)*. In *Notyawa*[27] the Constitutional Court described the scheme as follows:

> 'Where this is not possible, the section affords two options to municipalities. The first is to solicit a secondment of a suitably qualified official from the MEC. If the latter fails to do so within 60 days, the municipality concerned is allowed to approach the relevant Minister who is required to second a suitable official to the municipality without delay. …'

[72] Paragraphs 35 and 36 of the applicant's written reply expressly state that he seeks no substitution terminating the second respondent's contract. The transcript records an earlier reference by his counsel to a substitution order. Read with the later, specific clarification, that reference does not justify treating a fresh termination order as relief still pursued. I make no such order. The validity of the 2024 termination is not determined. The directions accompanying remittal regulate the filling of the office under s 54A. They do not appoint a candidate or substitute a disciplinary decision. A remittal simply inviting the Council to reconsider the same reinstatement would not sufficiently address the defects established in this review.

The declaratory relief: five-year ineligibility

[73] The applicant also seeks a declaration that the second respondent is ineligible for appointment as a municipal manager, in any municipality, for five years. The respondents submit that the applicant does not satisfy the two-stage approach in *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd.*[28] The court must first be satisfied that the applicant is an interested person in

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[27] *Notyawa* (fn 19 above) para 10.

[28] *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* 2005 (6) SA 205 (SCA).

an existing, future or contingent right or obligation, and it then has a discretion whether to grant the order. That is the approach under s 21(1)*(c)* of the Superior Courts Act 10 of 2013.[29]

[74] Section 57A(1) of the Systems Act provides that a staff member dismissed for misconduct may only be re-employed in any municipality after the expiry of a prescribed period. Section 57A(3) provides that a staff member dismissed for financial misconduct, corruption or fraud may not be re-employed in any municipality for ten years.[30] The Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers prescribe the periods for other categories of misconduct, among them five years for dishonesty or negligence.[31]

[75] The applicant maintained in oral argument that the termination was for dishonesty because the second respondent represented that he held the qualification but failed to produce the certificate. When asked whether a disciplinary enquiry had been held, counsel accepted that none had been completed and submitted that any defect concerned procedural fairness only. I have considered that submission. A completed enquiry is not a phrase inserted into s 57A as an additional statutory requirement. The material requirement is a dismissal for misconduct of the relevant category. On this record, however, the resolution relied upon treated the appointment as null and void under s 54A, and no concluded finding establishing dishonesty or fraud has been demonstrated. Non-production of a certificate does not itself supply that finding. The continued existence of the termination resolution and the establishment of the statutory facts necessary for a five-year bar are different questions.

[76] The applicant further submits that the second respondent's failure to challenge the termination permits the court to confirm its reasons and declare the prescribed bar. That does not cure the evidential difficulty. This court cannot, in reviewing the 2025 resolutions, make for the first time the disputed finding of dishonesty necessary to support the declaration. Schedule 2 distinguishes misconduct involving dishonesty or negligence, attracting five years, from financial misconduct, corruption or fraud, attracting ten years. I do not determine that the allegations fall into either category. Regulation 18 also addresses the position of a manager who has lodged a dispute under applicable legislation. It is unnecessary to decide that exception here because the underlying misconduct dismissal has not been established. I therefore decline the declaration, without prejudice to appropriate disciplinary or other lawful proceedings.

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[29] Superior Courts Act 10 of 2013, s 21(1)(c).

[30] Systems Act, s 57A(1) and (3).

[31] Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers, GN 21 in GG 37245 of 17 January 2014, reg 18 and Schedule 2.

Costs

[77] The applicant has succeeded substantially. The first and second respondents actively opposed the relief on which he succeeds and should bear the costs. The complexity justified the employment of two counsel for the application. The applicant expressly excluded the costs of a second counsel for the hearing on 21 September 2026, when only one counsel appeared for him. That limitation is reflected in the order of this court.

[78] I expressed a preliminary view that personal costs against the councillors were not justified on the papers. That was not a finding that the applicant had abandoned his request, and I have considered it on its merits. I remain unpersuaded that a personal costs order against the fourth to twelfth respondents is warranted, still less on a punitive scale. In *Public Protector v South African Reserve Bank*[32] the Constitutional Court said:

> 'It does not follow that a punitive costs order will always be justified in circumstances where a personal costs order is warranted. An order for personal costs against a person acting in a representative capacity is in itself inherently punitive. The imposition of costs on an attorney and client scale is an additional punitive measure. … While the test for awarding a personal costs order or costs on a punitive scale may overlap, an independent, separate enquiry should be carried out by a court in respect of each order. Both personal and punitive costs orders are extraordinary in nature and should not be awarded "willy-nilly", but rather only in exceptional circumstances.
>
> This Court has endorsed the principle that a personal costs order may also be granted on a punitive scale. The punitive costs mechanism exists to counteract reprehensible behaviour on the part of a litigant.' (Footnotes omitted.)

[79] The applicant relies on these respondents' participation in the Council decisions. My finding that no reinstatement resolution was adopted on 18 March 2025 must be distinguished from their participation in the later resolutions that the Council did adopt. It does not, without more, establish reprehensible conduct on the part of any of them as individuals, as distinct from the Council. Neither does it demonstrate the personal bad faith, gross negligence or improper personal motive that would be needed before councillors who vote collectively, in what they believe to be the discharge of their duties, are made personally liable for costs. The same applies to the punitive scale as against them.

[80] The applicant's written reply also complains that the respondents' written oral submissions, due on 25 September 2026, were filed only on 1 October 2026, leaving him a day to respond before the agreed deadline. He invokes the earlier late affidavits and other delays as supporting punitive costs regardless of the outcome. I have considered the reply and the respondents' legal submissions so

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[32] *Public Protector v South African Reserve Bank* [2019] ZACC 29; 2019 (6) SA 253 (CC) paras 220 and 221.

that the matter is decided after both sides have been heard. The late filing is not, without more, proof of a deliberate intention to frustrate the applicant or prolong the case until his term ends, and I make no such finding. Neither are costs predetermined regardless of the outcome. The first and second respondents' conduct must be assessed separately from the individual councillors' liability. The Municipality gave effect to the asserted March reinstatement, confirmed it through subsequent resolutions and defended it without supplying a coherent account of the meeting said to have authorised it. The second respondent personally relied on that asserted authority to resume the office, convene the April meeting and obtain access to the Municipality's bank account. Considered cumulatively, the implementation and defence of that unsupported asserted authority warrant the court's disapproval beyond an ordinary costs order. The punitive order does not rest on their failure on arguable legal points, the mere fact of statutory invalidity, or an unproved finding of fraud. I consider an attorney-and-client costs order against the first and second respondents appropriate, including two counsel except at the hearing on 21 September 2026.

[81] No order is made as to the costs of the third respondent, who did not oppose the application, or as to the costs of the thirteenth to eighteenth respondents, against whom no separate case for costs was pursued.

Order

[82] In the result, the following order is made:

1. The second respondent's application for condonation for the late filing of his answering affidavit is granted, with no order as to the costs of that application.
2. The purported resolution said to have been adopted by the Municipal Council of the first respondent on 18 March 2025, purporting to reinstate the second respondent as Municipal Manager of the first respondent, is reviewed and set aside.
3. The resolution of the Municipal Council of the first respondent taken on 22 April 2025, insofar as it purports to ratify and confirm the purported resolution referred to in paragraph 2 above, is reviewed and set aside.
4. The resolution of the Municipal Council of the first respondent taken on 18 August 2025, rescinding its resolution of 16 August 2024 which terminated the second respondent's employment as Municipal Manager, is reviewed and set aside.
5. The reinstatement of the second respondent as Municipal Manager of the first respondent, however arising from the resolutions referred to in paragraphs 2 to 4 above, was made in contravention of s 54A of the

Local Government: Municipal Systems Act 32 of 2000, is declared null and void in terms of s 54A(3)*(b)* of that Act, and is set aside.

6. Within sixty (60) days of this order, the first respondent must resume the recruitment process for the position of Municipal Manager that was under way before March 2025 if that process remains lawfully capable of completion. If it does not, the first respondent must within that period commence a fresh, nationally advertised recruitment process. In either event the process must thereafter be pursued expeditiously and in accordance with s 54A of the Local Government: Municipal Systems Act 32 of 2000 and the applicable regulations.

7. Pending a permanent appointment, the Municipal Council of the first respondent must ensure that any acting appointment complies with s 54A(1)(b), (2) and (2A) of the Local Government: Municipal Systems Act 32 of 2000. The Council may, if necessary, request the third respondent to second a suitable person under s 54A(6)(a), and may invoke s 54A(6)(b) if the third respondent does not make the secondment within sixty (60) days of such request.

8. The declaratory relief sought in paragraph 4.1 of the notice of motion, that the second respondent be declared ineligible for appointment as a municipal manager for five years, is refused.

9. The first and second respondents must pay the costs of this application jointly and severally, the one paying the other to be absolved, on the scale as between attorney and client, including the costs consequent upon the employment of two counsel, save that the costs of the hearing on 21 September 2026 are limited to one counsel.

10. No personal costs order is made against the fourth to twelfth respondents, and there is no order as to costs as between the applicant and the third and thirteenth to eighteenth respondents.



A H PETERSEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

Appearances

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Instructed by:	Kgaugelo Baloyi Incorporated, Pretoria c/o Mekgwe N and Partners Inc, Mmabatho
Counsel for the First, Second and Fourth to Eighteenth Respondents:	V D Mtshweni (with C Sefahamela)
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