**FORM A**

**FILING SHEET FOR EASTERN CAPE JUDGMENT**

**Motion Court Opposed Judgment**

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| **MANGALISO JAFTA AND 20 OTHERS** | **Applicants** |
| And | |
| **THE CHAIRPERSON: THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL OF THE AFRICAN NATIONAL CONGRESS** | **1ST Respondent** |
| **THE AFRICAN NATIONAL CONGRESS** | **2nd Respondent** |
| **THE INDEPENDENT ELECTORAL COMMISSION** | **3rd Respondent** |
| **THE CHIEF ELECTORAL OFFICER** | **4th Respondent** |
| **MBHASHE LOCAL MUNICIPALITY** | **5th Respondent** |
| **THE MUNICIPAL MANAGER: MBHASHE LOCAL MUNICIPALITY** | **6th Respondent** |
| **MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS FOR THE PROVINCE OF THE EASTERN CAPE** | **7th Respondent** |

And in the matter between

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| **THE MEMBER OF THE EXECUTIVE COUNCIL FOR THE LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS OF THE GOVERNMENT OF THE PROVINCE OF THE EASTERN CAPE** | **Applicant** |
| And | |
| **THE PERSONS WHOSE NAMES APPEAR ON ANNEXURE "A" HERETO** | **First to twenty first Respondents** |
| **THE NATIONAL WORKING COMMITTEE OF THE AFRICAN NATIONAL CONGRESS** | **22nd Respondent** |
| **THE PROVINCIAL WORKING COMMITTEE OF THE AFRICAN NATIONAL CONGRESS** | **23rd Respondent** |
| **THE MBHASHE LOCAL MUNICIPALITY** | **24th Respondent** |
| **THE MUNICIPAL MANAGER: MBHASHE LOCAL MUNICIPALITY** | **25th Respondent** |
| **THE INDEPENDENT ELECTORAL COMMISSION** | **26th Respondent** |

**CASE NUMBER**: **2765/2009 and 2793/2009**

**DATE ARGUED:** 29 October 2009

**DATE DELIVERED**: 5 November 2009

**JUDGE(S)**: Pickering J

**LEGAL REPRESENTATIVES**:

**Appearances*:***

for the State/Applicant(s)/Appellant(s): Adv. Quinn and Adv. Schuring

for the Accused/Respondent(s): Adv. Hobbs

**(and vica versa in the other matter)**

**Instructing attorneys***:*
Applicant(s)/Appellant(s): Dullabh: Mr. Wolmarans
Respondent(s): Wheeldon Rushmere and Cole: Mr. vd Veen
**CASE INFORMATION**:

- *Nature of proceedings* :
- *Topic*:
- Keywords:

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

**CASE NO: 2765/2009**

In the matter between

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| **MANGALISO JAFTA AND 20 OTHERS** | **Applicants** |
| **And** | |
| **THE CHAIRPERSON: THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL OF THE AFRICAN NATIONAL CONGRESS** | **1ST Respondent** |
| **THE AFRICAN NATIONAL CONGRESS** | **2nd Respondent** |
| **THE INDEPENDENT ELECTORAL COMMISSION** | **3rd Respondent** |
| **THE CHIEF ELECTORAL OFFICER** | **4th Respondent** |
| **MBHASHE LOCAL MUNICIPALITY** | **5th Respondent** |
| **THE MUNICIPAL MANAGER: MBHASHE LOCAL MUNICIPALITY** | **6th Respondent** |
| **MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS FOR THE PROVINCE OF THE EASTERN CAPE** | **7th Respondent** |

**And in the matter between**

**CASE NO: 2793/2009**

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| **THE MEMBER OF THE EXECUTIVE COUNCIL FOR THE LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS OF THE GOVERNMENT OF THE PROVINCE OF THE EASTERN CAPE** | **Applicant** |
| **And** | |
| **THE PERSONS WHOSE NAMES APPEAR ON ANNEXURE "A" HERETO** | **First to twenty first Respondents** |
| **THE NATIONAL WORKING COMMITTEE OF THE AFRICAN NATIONAL CONGRESS** | **22nd Respondent** |

**THE PROVINCIAL WORKING COMMITTEE OF THE AFRICAN NATIONAL CONGRESS** **23rd Respondent**

**THE MBHASHE LOCAL MUNICIPALITY** **24th Respondent**

**THE MUNICIPAL MANAGER: MBHASHE LOCAL MUNICIPALITY** **25th Respondent**

**THE INDEPENDENT ELECTORAL COMMISSION** **26th Respondent**

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**JUDGMENT**

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**PICKERING J**:

The 21 applicants in case no 2765/09 were all duly elected councillors of the Mbhashe Local Municipality. First to eleventh applicants were elected as councillors under the provisions of section 22(1)(b) of the Local Government: Municipal Structures Act 117 of 1998. Twelfth to twenty first applicants were elected as councillors under the provisions of section 22(1)(a) of that Act. All 21 applicants were, at the time of their election as councillors, members of the African National Congress (2nd Respondent) a political party duly registered as such in terms of section 15 of the Electoral Commissions Act 51 of 1996.

The applicants were expelled from membership of the African National Congress ("the ANC") with effect from 16 April 2009 by decision of the Eastern Cape Provincial Disciplinary Committee of the ANC. This decision was upheld by the National Disciplinary Committee of Appeal of the ANC on 20 June 2009.

Applicants now seek an order, inter alia, in the following terms:

> "*1. That the decision of the National Disciplinary Committee of Appeal of the African National Congress taken on 20 June 2009, upholding the decisions of the Eastern Cape Provincial Disciplinary Committee and confirming the expulsion of the applicants from the African National Congress, be reviewed and set aside.*

2. *That the applicants be reinstated as councillors of the 5th respondent (Mbhashe Local Municipality) with all emoluments due to them by virtue of their councillorship.*"

Applicants further seek in what they term a "second application" an order that "*pending the finalisation of the first application contemplated herein, the expulsion of the applicants from the African National Congress be set aside and they be reinstated as councillors of the 5th respondent with all emoluments due to them by virtue of their councillorship.*"

On 14 July 2009 the Member of the Executive Council for Local Government and Traditional Affairs of the Government of the Province of the Eastern Cape ("the MEC") filed an application under case no 2793/09 seeking certain relief against the twenty one councillors who were the applicants in case no 2765/09. It is common cause that at the time this application was filed service of the applications under case no 2765/09 had not yet been effected on the MEC. This had led to an unfortunate but unavoidable duplication of certain of the issues in the two applications.

On 14 July 2009 a Rule Nisi operating as an interim interdict was issued by this Court, *inter alia*, in the following terms against those twenty one applicants, citing them as the first to twenty first respondents, namely:

"*1.1 That it be declared that with effect from 20 June 2009 the first to twenty first respondents ceased to be councillors of the twenty fourth respondent (the Mbhashe Local Municipality).*

*1.2 That the first to twenty first respondents be interdicted and restrained from participating in Local Government in respect of the twenty fourth respondent as councillors.*

*1.3 That the twenty fifth respondent (the Municipal Manager: Mbhashe Local Municipality) notify the twenty sixth respondent (the Independent Electoral Commission) that the first to twenty first respondents are not councillors of the twenty fourth respondent and that accordingly vacancies exist in respect of*

*which by-elections and proportional representation list appointments are required.*

*1.4 That the first to twenty first respondents be directed to vacate the premises of the twenty fourth respondent which they occupy as former councillors of the twenty fourth respondent.*

*1.5 …*"

On 16 July 2009 an order was made by agreement between the parties postponing both of these applications for simultaneous hearing on 6 August 2009. The matters were thereafter further postponed by agreement to 3 September 2009 and costs were reserved. On 3 September 2009, when the matter came before Court, the MEC, the applicant in case no 2793/2009, applied for a postponement of both matters in order to enable him to file replying affidavits. After hearing argument Roberson AJ ordered the postponement of both matters and ordered the MEC, in accordance with a tender made by him, to pay the wasted costs occasioned as a result of postponements.

It will be convenient to deal firstly with the allegations made by Mr. Jafta, the first applicant in case no 2765/09. It will also be convenient to refer to this application as the "*Jafta application*" and to application no 2793/09 as the "*MEC application*".

In the *Jafta* application the applicants aver that during April certain of them received a written document from the Acting Provincial Secretary of the ANC in the Eastern Cape, Ms. Pemmy Majodina, giving them notice of a disciplinary hearing to be held on 16 April 2009, and embodying certain charges against them as encapsulated in the charge sheet annexed thereto. Applicants aver that although reference is made in the charge sheet to a "*summary of facts*" annexed to the charge sheet such summary was in fact not attached thereto. The gravamen of the charges against them was that they had conspired to join a rival political organisation known as the Congress of the People (COPE) thereby intending "*to destroy the ANC and create*

*COPE from within the ANC within the Mbhashe subregion by,* inter alia*, exploiting their position as being councillors.*"

It is common cause that on 16 April 2009 a disciplinary enquiry was held by the Provincial Disciplinary Committee of the ANC with all the applicants being represented by a certain Mr. Tyali. Applicants aver that they were only able to obtain his services on 14 April inasmuch as the Easter weekend had intervened between the service of the charge sheet on them on 9 April and the date of the hearing on the 16 April. According to the report of the Disciplinary Committee, Mr. Tyali applied for the dismissal of all the charges on a number of grounds. The Committee was of the view, however, that Mr. Tyali had "*conflated the issue of dismissal of charges with an entitlement of postponement.*" Having considered his submissions the application for dismissal of charges was refused. Mr. Tyali then informed the Committee that he was not prepared to proceed with the matter and withdrew as applicants' representative. On behalf of the applicants the twentieth applicant then sought a postponement of the enquiry. This was opposed by the Evidence Leader but, according to the report, before the Committee could pronounce on this issue the applicants walked out of the enquiry. It accordingly proceeded without them.

The version of applicants as to what transpired at the hearing is somewhat different. They allege that Mr. Tyali advised the Committee, *inter alia*, that he could not continue to represent them unless he was given the "*summary of facts*" which applicants aver was never attached to the charge sheet served upon them. According to applicants the Committee refused him this information and refused a postponement in order for Mr. Tyali and the applicants properly to prepare their cases. Mr. Tyali thereupon withdrew as applicants' representative. Applicants aver that they then applied for a postponement in order to obtain the services of another representative but that this application was "*summarily refused*". They then left the hearing.

Thereafter the applicants received a letter dated 29 May 2009 from Ms. Majodina advising them that they had been found guilty on all charges and

that they were accordingly expelled from the ANC with immediate effect. The letter states further that in terms of Rule 25.9(b) "*this outcome has been referred to the National Disciplinary Committee of Appeal because of the automatic right of appeal to the NDCA that you enjoy.*"

According to applicants they each then, on 18 June 2009, dispatched a letter to the East Cape Provincial Secretary of the ANC advising her of their intention to appeal as well as lodging an appeal with the ANC on the same date. They allege that thereafter first, second and thirteenth applicants received telephone calls from one Thozama Mananga on behalf of the ANC. She requested a telefax number to which she could send notices to the applicants informing them of the appeal hearings. The three applicants each supplied her with a fax number but, so they aver, they never received any notices in response thereto. Instead, on 30 June 2009, each applicant received a letter (Exhibit F) from the Chairperson of the National Disciplinary Committee of Appeal (first respondent) advising them that the Committee had met in East London on 20 June 2009 to consider their appeal. The letter then states as follows:

> "*The NDCA observed that you did not attend the hearing, neither were you represented by a fellow member of the ANC and no apology had been tendered for your absence. Read in conjunction with the fact that you had also not been present at the Disciplinary hearing of first instance, the NDCA took a dim view of the lack of respect this displays towards properly constituted structures of the ANC, which you solemnly undertook to honour and respect when you became a member of the organisation.*
>
> *Under these circumstances and having satisfied itself that you had been given due and proper notice of the appeal hearing the NDCA decided that your non-appearance, lack of representation and absence of an apology constituted a deliberate and intentional refusal, on your part, to exercise the automatic right of appeal guaranteed under Rule 25.9(b) of the ANC Constitution.*

*The NDCA has therefore decided to uphold the decision of the Eastern Cape Provincial Disciplinary Committee reached at its hearing on April 14, 2009 that:*

> *"You be expelled from the ANC with effect from the date of hearing of first instance and that you be barred from applying for membership or becoming a member of the ANC for a period of 7 (seven) years commencing on June 1 2009 and expiring on May 31, 2016.*"

An affidavit was filed by Ms. Thozama Mananga. She states therein that on or about 17 June 2009 she contacted all the applicants and informed them of the "*contemplated appeal hearing*." What exactly she told the applicants as to the time and venue of the hearing she does not state. She states that she advised those applicants who had telefax facilities per telefax and also advised the remaining applicants telephonically. She does not, however, annex any documentary evidence such as notices or transmission reports in support of her allegation concerning the sending of the telefaxes and, in reply, the applicants persist in their denial that they had ever been advised of the date of the appeal hearing.

In support of the averment that the applicants were indeed advised of the date of hearing and the venue of the appeal the Eastern Cape Provincial Secretary, Ms. Majodina states as follows:

> "*In the course of facilitating the hearing of the appeal I liaised with Abrahamse [The Chief National Presenter of the ANC] who pointed out that he had notified each of the applicants of the venue for the hearing of the appeal. He explained that he informed the applicants that the appeal would be heard in the ANC caucus room within the Provincial Legislature at Bhisho and that each of the applicants were required to indicate whether or not they intended to be in attendance by no later than 16 June 2009. He advised me that none of the applicants had indicated that they wish to attend the appeal.*"

With regard to the above it is common cause, however, that the venue of the appeal hearing was changed to East London. Applicants deny having received any notification in that regard.

Majodina's averments concerning Abrahamse are entirely at odds with the averment that applicants were notified by Mananga and, in his affidavit, Abrahamse makes it clear that it was in fact Mananga who had allegedly notified the applicants of the "*contemplated appeal hearing*". According to Abrahamse the appeal commenced at 14h00. He reported to the Committee that applicants had been notified of the date of the appeal and "*knew of the change of venue*". He does not state, however, on what basis the allegation that the applicants knew of the change of venue is made. Nowhere in the affidavits filed on behalf of the MEC in either the *MEC* application or the *Jafta* application is there any indication that applicants were ever advised of the change in venue.

It is also noteworthy that according to Majodina the applicants had to advise Abrahamse by 16 June whether they intended to attend the appeal hearing whereas according to Mananga she only advised them thereof on 17 June.

In her affidavit Majodina states that "*against the event*" that any of the applicants wished to attend the appeal hearing she arranged that the police guard contingent under the command of Captain Sofuthe at the Legislature Complex be posted at the gate thereto in order to direct these applicants to the Holiday Inn, East London. She states further that she waited in the conference room in the Legislature building from 09h00 in order also to direct any of them to the Holiday Inn in East London but nobody arrived.

It is against this background that the applications fall to be considered.

In terms of the Constitution of the ANC, as amended and adopted at the 52nd National Conference, held at Polokwane in 2007, any person faced with any disciplinary proceedings shall receive due written notice of any hearing and of

the basic allegations and charges against him or her and shall be afforded a reasonable opportunity to make his or her defence.

In Klein v Dainfern College and Another 2006 (3) SA 73 (T) the following was stated by Claassen J at 79J – 80A:

> "*Where one deals with a domestic tribunal created by contract, the elementary principles of natural justice may still be applicable despite the advent of the Constitutional era. It has been stated as far back as 1942 in Jockey Club of South Africa and Others v Feldman 1942 AD 340 at 351 that Courts can interfere in the decision of a domestic tribunal which has disregarded its own rules or the fundamental principles of fairness*."

See too Marlin v Durban Turf Club and Others 1942 AD 112 at 125 – 6; Turner v Jockey Club of South Africa 1974 (3) SA 63 (A).

Counsel for all parties were agreed that the disciplinary code set out in the Constitution of the ANC incorporated the principles of natural justice including, especially, those relating to procedural and substantive fairness. In these circumstances it is not disputed that the applicants are entitled to have the decision of the National Disciplinary Committee of Appeal judicially reviewed.

Although I had mooted with Mr. Quinn, who with Mr. Schuring, appeared for the applicants in the *MEC* application and the respondents in the *Jafta* application, and Mr. Hobbs who appeared for the applicants in the *Jafta* application and the respondents in the *MEC* application, the desirability of finally determining all the issues which might in due course form the subject matter of the contemplated review proceedings in the *Jafta* application, counsel were eventually *ad idem* that I deal only with the interim relief sought by those applicants in that so-called "*second application*". I will accordingly determine the *Jafta* application on this basis.

This being an application for an interim interdict applicants must satisfy me that their rights are prima facie established even if open to some doubt and that:

(i) there is a well-grounded apprehension of irreparable harm to the applicants if the interim relief is not granted and applicants ultimately succeed in establishing their rights;

(ii) the balance of convenience favours them; and

(iii) they have no other satisfactory remedy.

A number of grounds relating to the alleged procedural unfairness of the entire disciplinary proceedings against them were raised by the *Jafta* applicants.

In the view which I take of the matter it is necessary to deal with only one of these grounds, that relating to the alleged failure to notify applicants of the time, date and place of the contemplated appeal hearings. There is, in this regard, a dispute of fact as to whether or not applicants were furnished with particulars of the appeal hearing by Mananga. Although, in their papers, respondents sought to rely in this regard on averments made by Abrahamse, Majodina as well as Mananga, an analysis thereof reveals that in fact respondents' case rests squarely on the averments made by Mananga. As stated above, the allegations by Majodina to the effect that it was Abrahamse who had notified applicants are not supported by Abrahamse who in turn makes it clear that this was done by Mananga. Mananga's allegations in this regard are entirely lacking in the type of detail which, in the face of these specific denials by applicants, would have been expected to be present. The relevant details thereof read as follows in their entirety:

> "*On or about 17 June 2009 I contacted all of the applicants. I did so and informed them of the contemplated appeal hearing. I advised the applicants who had fax facilities per telefax and the rest of the applicants were advised telephonically of the appeal hearing, the contact details of the applicants, which I received from the records at the Provincial Head Office of the ANC.*"

If in fact Mananga had sent telefaxes to any of the applicants it would have been a simple matter for her to have produced proof of her transmission thereof. Mananga does not state to whom she sent the telefaxes and to whom she spoke by telephone. Mr. Quinn, however, referred to certain allegations made by the applicants in the matter of Ntongana and Others v the Chairperson of the National Disciplinary Committee of Appeal of the ANC and Others case no 2743/2009, which was argued before me on the same day. In that matter a similar issue as to whether the applicants had been properly notified of their appeal hearing also arose. Again, Mananga was involved. Mr. Quinn pointed to the fact that it was admitted therein that certain of the applicants had been telephoned by Mananga to obtain their telefax numbers and that she had thereafter telefaxed appeal notices to them. It was therefore probable, he submitted, that she had acted in a similar manner in the instant case.

As was pointed out by Mr. Hobbs, however, whatever the merits of this attempt by reference to the facts in the *Ntongana* application to establish a course of conduct on the part of Mananga may be, the applicants in the *Ntongana* case alleged further that Mananga had in fact only contacted three out of the fifteen applicants. If anything, therefore, the probabilities favoured the allegations made by the present applicants.

Be that as it may, the averments made by Mananga amount, in the circumstances of this case, to no more than a bare denial of applicants' averments and, in my view, do not create a genuine dispute of fact. Applicants' averments that they never received any such notification must therefore be accepted.

There is, however, a greater hurdle confronting respondents. Even if applicants had been informed of the Bhisho hearing, respondents have put forward nothing whatsoever in substantiation of the allegation that applicants knew of the change of venue of the appeal to East London. Mananga could not have informed them thereof because this change of venue occurred after she had contacted first applicant on 17 June requesting his telefax number.

Respondents' attempt to rely upon the averments of Majodina in this regard are, in my view, entirely without merit. According to Majodina she "*positioned*" herself in the caucus room at the Bhisho Legislature Complex "*against the event*" that the applicants might appear so that she could "*redirect*" them.

As submitted by Mr. Hobbs, if the applicants had indeed been advised of the change of venue it would have been an entirely unnecessary exercise for Majodina to have taken the action she did and her actions in the circumstances made no sense whatsoever.

Abrahamse stated that the applicants "*knew of the change of venue*". There appears to be no basis whatsoever for his averment in this regard. He states that he informed the National Disciplinary Committee of Appeal that applicants not only knew of the change of venue but that they had been afforded an adequate opportunity to travel to East London. On the facts before me his submission in this regard to the National Disciplinary Committee of Appeal was not only misleading but false. It had the effect, as appears from the letter (Exhibit F) written by the first respondent, of causing the Committee to conclude that applicants had deliberately and intentionally refused to exercise their automatic right of appeal. On the face of that letter, despite Mr. Abrahamse's allegations that he addressed the Committee on the merits, it appears that the merits of the matter were in fact never considered.

It is clear, in my view, on these papers that the convenience of the members of the National Disciplinary Committee of Appeal took precedence over the rights of the applicants and that as a result their right to attend the appeal was flouted.

If applicants are able to establish in the review proceedings that they received no notice of the appeal hearing in East London then it follows, in my view, that they must have reasonable prospects of succeeding in those proceedings.

Mr. Quinn submitted, however, that in the event of my not being persuaded on the papers that applicants had indeed been advised of the particulars of the

appeal hearing I should, because of the importance of the matter, involving as it did the public interest in the proper administration of local government, refer this particular issue for the hearing of oral evidence.

This submission overlooks the nature of the relief sought at this stage, namely an interdict *pendente lite*.

As was stated by Malan J in Van Woudenberg N.O. v Roos 1946 TPD 110 at 114 it would, in the vast majority of cases where a right was *prima facie* established although open to some doubt, be difficult to determine on application where the probabilities lie without resorting to *viva voce* evidence which, the learned Judge stated, "*would be co-extensive with the evidence which would be led in the main action. Such hearing may involve protracted proceedings. The granting of interdicts on applications will be virtually restricted to cases where the facts are not in dispute which obviously appears to me to be undesirable.*"

Mr. Quinn submitted further that even if the applicants had not been notified of the hearing they had suffered no prejudice because, firstly, they had "*boycotted*" the Provincial Disciplinary Committee hearing and could therefore not be heard to complain of the consequences thereof on appeal (as to which see Maphopa v Fawu [1994] 11 BLLR 48 (IC)) and, secondly, there was in any event an overwhelming case against them.

As to the first point, there is a dispute on the papers which cannot be resolved as to what exactly occurred at the Provincial Disciplinary Committee. It seems clear to me that it would still have been open to the applicants to argue on appeal, for instance, that the Provincial Disciplinary Committee erred in not granting them a postponement in order to enable them properly to prepare their cases in the light of the precipitate withdrawal of Mr. Tyali and that therefore the proceedings before the Provincial Disciplinary Committee were unfair.

In the event of such an argument succeeding then the merits of the case against the applicants, regardless of the strength thereof, would be irrelevant because the matter would have to be referred back to the Provincial Disciplinary Committee for a proper hearing.

In any event, Mr. Quinn's submissions fly in the face of the principle that the procedure and the merits be kept strictly apart lest the merits be unfairly prejudged. See for instance: Administrator, Transvaal and Others v Zenzile and Others 1991 (1) SA 21 (A) at 37C-F and the well known dictum of Megarry J in John v Rees [1970] 1 Ch 345 at 402, namely:

> "*As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change*."

Mr. Quinn submitted further that the balance of convenience favoured the respondents given the public interest component of the matter and what he termed as being the overwhelming probability of the applicants again being expelled should they be afforded an opportunity to appeal. These submissions cannot be upheld. It certainly cannot be said, in my view, that any appeal by the applicants based on the alleged unfairness of the proceedings before the Provincial Disciplinary Committee is without any prospect of success. It would be invidious, however, for me to say more. In my view, where the applicants have established that they were expelled from the ANC with all the drastic consequences to them attendant upon such expulsion, the balance of convenience is clearly in their favour.

In my view therefore the applicants have established all the requisites for an interim interdict.

Counsel were agreed that, in such event, the application by the MEC fell to be dismissed, premised as it was upon the expulsion of the applicants from the ANC. Counsel were further agreed, however, that the costs of such application should be reserved for decision at the hearing of the review application. The outcome of that application may have a bearing on the issue of the costs in the *MEC* application. The costs of the hearing before me on 29 October 2009 rest on a different footing, however. The MEC made common cause with the opposition to the interim relief. There is, in my view, no reason why he should not have to pay the costs occasioned by his opposition to the granting of interim relief jointly and severally with those respondents in the *Jafta* application who also opposed the granting of that relief.

Rule 25.9(b) of the ANC Constitution provides that where a disciplinary committee arrives at its decision to suspend or expel a local government councillor such decision shall be suspended pending the outcome of the automatic appeal to the National Disciplinary Committee of Appeal. Such being the case counsel were further agreed that in the event of applicants establishing that they were entitled to interim relief their expulsion from the ANC would be suspended until such time as the appeal had finally been determined and that they would accordingly be entitled to be reinstated as councillors of the fifth respondent.

There is one further matter which must be dealt with. Somewhat surprisingly the Mbhashe Local Municipality (24th respondent) entered an appearance to oppose the *MEC* application. The Municipal Manager, Mbhashe Local Municipality (twenty fifth Respondent) deposed to an affidavit in this regard. In that affidavit twenty fifth respondent states specifically that twenty fourth respondent opposes the application only insofar as the MEC sought "*specific relief against the municipality, namely the mandamus and the declarator referred to above*." In other words twenty fourth respondent takes issue with the relief sought in paragraphs 1.3 and 1.4 of the Rule Nisi. I do not intend to burden this judgment with any discussion of the issues raised by the twenty fourth respondent. It appears that twenty fourth respondent has taken umbrage at allegations made by the MEC in his founding affidavit to the effect

that the twenty fourth respondent was dysfunctional. In this regard the twenty fifth respondent states that the MEC has made "*bold and spurious allegations"* and avers that before approaching this Court for relief the MEC should have attempted to resolve whatever issues he had with the twenty fourth respondent. He avers that *"applicant is interfering with the municipality's right to govern its own affairs, thus violating the doctrine of separation of powers and the municipality's autonomy*."

There is no merit whatsoever in these averments, which, surprisingly, were persisted in during the course of submissions made by Ms. Da Silva on behalf of twenty fourth respondent. The orders granted on 14 July 2009 in paragraphs 1.3 and 1.4 of the rule nisi in no way interfere with the twenty fourth respondent's right to govern its own affairs and in no way violate the doctrine of separation of powers (which has no application between spheres of government) and the municipality's autonomy. Were the MEC to have been granted the orders sought by him declaring that the twenty one respondents had ceased to be councillors of the twenty fourth respondent, and that they accordingly be interdicted from participating in local government as councillors then there could be no objection to the orders set out in paragraphs 1.3 and 1.4. It appears from its opposition that the twenty fourth respondent is engaged in no more than a petty turf squabble with the MEC. By entering the fray in the manner in which it has done it has occasioned entirely unnecessary and unjustified expense to all parties. There is, in my view, no reason why the MEC or the councillors should be prejudiced in respect of the costs of the unwarranted intervention in the matter by the twenty fourth respondent. I accordingly intend to order that the costs occasioned by the opposition of the twenty fourth respondent in these proceedings shall be borne by the twenty fourth respondent.

One final aspect as to costs. It was agreed that all the costs previously reserved would remain reserved for decision at the review application save and except for the costs relating to the postponement of the two applications which were postponed on 6 August. Mr. Hobbs did not contend that the councillors were not liable to pay those costs in each application.

Accordingly the following order is made in case no 2765/2009:

1. Pending the finalisation of the application to review and set aside the decision of the National Disciplinary Committee of Appeal of the African National Congress taken on 20 June 2009 confirming the expulsion of the applicants from the African National Congress, the expulsion of the applicants from the African National Congress is set aside and applicants are reinstated as councillors of the fifth respondent with all emoluments due to them by virtue of their councillorship.

2. The costs of the application for interim relief on 29 October 2009 shall be paid by first respondent, second respondent and seventh respondent, jointly and severally, the one paying the others to be absolved.

3. The applicants shall pay the wasted costs occasioned by the postponement of the matter on 6 August 2009, jointly and severally the one paying the others to be absolved.

In case no 2793/2009 the following order shall issue:

1. The Rule Nisi is discharged and the application is dismissed.

2. The applicant is ordered to pay first to twenty first respondent's costs of the application on 29 October 2009.

3. The remaining costs of the application are reserved for decision at the hearing of the review application referred to in case no 2765/2009 save for the wasted costs occasioned by the postponement of the matter on 6 August 2009 which shall be paid by the first to twenty first respondents jointly and severally, the one paying the others to be absolved.

4. Such costs as were occasioned by the opposition of twenty fourth respondent in the application shall be paid by twenty fourth respondent.

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**J.D. PICKERING**
**JUDGE OF THE HIGH COURT**