

**IN THE HIGH COURT OF SOUTH AFRICA  
EASTERN CAPE DIVISION - GRAHAMSTOWN**

**CASE NO: 3667/2013**

**DATE HEARD: 27/03/2014**

**DATE DELIVERED: 3/04/2014**

**NOT REPORTABLE**

In the matter between:

**CATHCART RESIDENTS ASSOCIATION**

**APPLICANT**

**and**

**THE MUNICIPAL MANAGER FOR THE AMAHLATHI  
MUNICIPALITY**

**FIRST RESPONDENT**

**THE INDEPENDANT ELECTORAL  
COMMISSION**

**SECOND RESPONDENT**

**THANDI WELLEM**

**THIRD RESPONDENT**

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**Voluntary association – decision to terminate membership of member – effect  
– in absence of challenge to lawfulness of decision, termination of  
membership stands.**

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**JUDGMENT**

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**PLASKET J**

[1] In terms of s 27(c) of the Local Government: Municipal Structures Act 117 of 1998 (the Structures Act) a municipal councillor elected as a proportional

representative loses his or her seat when he or she ceases to be a member of a party that he or she represented in the election concerned. When this happens, the municipal manager of the municipality concerned is required by s 18(1)(b) of Schedule 1 of the Structures Act to inform the chief electoral officer of the Electoral Commission (the EC) that the councillor concerned has ceased to hold office. Section 18(1)(a) provides that he or she will then be replaced by another person on the party's list after the chief electoral officer has declared this to be the case.

[2] In this application, the applicant, the Cathcart Residence Association, is a voluntary association that is registered as a political party. In the local government elections in May 2011, the third respondent, Mr Thandi Wellem, became a proportional representation member of the Amahlathi Municipality (the municipality), representing the applicant. According to the applicant, he is no longer a member but the first respondent, the municipal manager of the municipality, has failed to inform the EC, the second respondent,<sup>1</sup> of the vacancy on the council that has arisen.

[3] As a result, the applicant seeks an order that the first respondent be directed to 'declare a vacancy' and inform the chief electoral officer of the EC that the third respondent has ceased to hold office as a councillor. It also seeks a costs order against the first respondent as well as any other respondent who opposes the relief sought.

[4] Only the third respondent opposes the application. He does so on two bases: first, that Mr Kenneth Sigidi, the deponent to the applicant's founding affidavit, lacks the authority to represent the applicant; and secondly, that he is still a member of the applicant and so is still its representative in the council.

[5] It is evident from the papers that a great deal of enmity exists between Sigidi and the third respondent. The reasons for this are disputed by each of them but are irrelevant to this matter.

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<sup>1</sup> The second respondent is referred to inaccurately in the papers as the Independent Electoral Commission (the IEC). This was the original name of the body created in 1993 to oversee the first democratic elections and other elections thereafter. See s 4(1) of the Independent Electoral Commission Act 150 of 1993. It is now called the Electoral Commission. See s 3 of the Electoral Commission Act 51 of 1996. Section 24 of this Act states that the EC is the successor in title of the IEC.

[6] It is not in dispute that Sigidi was the chairperson of the applicant at the time of the local government elections and immediately thereafter. It is also not in dispute that as a result of conflict of one form or another within the applicant, the third respondent's membership of the applicant was terminated at a meeting held on 13 July 2011. Sigidi chaired that meeting. The third respondent stated that he had no knowledge of the passing of the resolution to terminate his membership, as he had already left the meeting when it was passed. Sigidi's version about the passing of the resolution, supported by the minutes of the meeting (which are attached to his founding affidavit) must be accepted.<sup>2</sup> The third respondent does not accept, however, that the decision to terminate his membership was lawfully taken.

[7] He admitted receiving a letter from the ad hoc secretary of the applicant informing him of the termination of his membership and the reasons for that decision. This letter was dated 15 July 2011. On the same day, the first of a number of letters was sent by the applicant to the first respondent to inform him that the third respondent had been 'expelled' from the applicant and requesting that he 'declare a vacant seat' for the applicant and advise the EC of this so that Sigidi could be sworn in as the applicant's proportional representation counsellor.

[8] It would appear that the third respondent and others then claimed to be the executive of the applicant. This is evident from an undated letter addressed to the first respondent and signed by one Pula Sipango, who claimed to be the applicant's secretary, in which it was stated inter alia that the third respondent's membership of the applicant had not been terminated. The letter referred to an executive meeting on 20 July 2011.

[9] Despite being requested to do so on numerous occasions, the first respondent never informed the EC of the vacancy, probability because of the opposing claims of the two factions of the applicant as to whether the membership of the third respondent had indeed been terminated.

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<sup>2</sup> *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C; *Stellenbosch Farmers' Winery Ltd v Stellenbosch Winery (Pty) Ltd* 1957 (4) SA 234 (C) at 235E-G.

[10] The saga took another turn in December 2012. The applicant sent the third respondent a letter to request him to attend a meeting to account to and report to the applicant on developments concerning local government, despite his membership having been terminated on 13 July 2011. In response to this letter, Sigidi was handed a letter signed by Sipango to inform him that he had been suspended as chairman of the applicant with immediate effect.

[11] Later still, the applicant decided to 'regularise' its termination of the third respondent's membership by holding a disciplinary hearing. He was given notice of the hearing and the charges he faced but opted, not surprisingly, in the light of the history of the matter, not to attend. A decision was taken again to terminate his membership but he claims that this decision was never communicated to him.

[12] The matter must be decided on the facts that I have set out. While the affidavits are replete with allegations and counter-allegations and claims and denials concerning almost everything, most are irrelevant to the issues that I must determine. On the relevant facts, there are no genuine disputes of fact.

[13] The first issue is Sigidi's authority. Essentially, it is the third respondent's argument that because Sigidi was suspended by himself and his allies, he has no authority to represent the applicant. In the first place, Sigidi attaches to his founding affidavit an extract from the minutes of the applicant that authorise him to bring these proceedings. That is the best evidence of his authority.<sup>3</sup> Secondly, on the assumption that the termination of the third respondent's membership of the applicant was effective, an issue I shall deal with below, the third respondent and his allies could not have suspended Sigidi from the applicant. There is nothing in the papers to suggest that Sigidi ceased to be the applicant's chairperson. The challenge to his authority must therefore fail.

[14] I turn now to the crux of the matter – the effect of the decision, taken on 13 July 2011 and communicated to the third respondent on 15 July 2011, to terminate the third respondent's membership of the applicant. The effect of a decision such as

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<sup>3</sup> *Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk* 1957 (2) SA 347 (C) at 351G-352B.

that was dealt with by Rall AJ in *Shunmugam & others v The Newcastle Local Municipality & others; The National Democratic Convention v Mathew Shunmugam & others*.<sup>4</sup> After finding that decisions taken by political parties to terminate the membership of members were not administrative actions for purposes of the Promotion of Administrative Justice Act 3 of 2000 but exercises of private power by bodies established by agreement,<sup>5</sup> Rall AJ proceeded to say:<sup>6</sup>

'I therefore approach the matter on the basis that the expulsion of the councillors was no different from the expulsion of a member of any other voluntary association. In my opinion, a member of a voluntary association or organisation such as a political party who has been expelled and who both contends that the expulsion was unlawful and wishes to enforce his or her membership rights, must, if the organisation does not concede the unlawfulness of the expulsion, take steps to have the expulsion reviewed and set aside. Such a person is put to an election. If the person, notwithstanding the contention that the expulsion was unlawful, decides not to challenge it, he or she is taken to have accepted the expulsion, and the expulsion will stand notwithstanding the fact that it may not have been lawful. In my opinion the situation is analogous to the one described in the *Oudekraal* case (*supra*), although not on all fours with it.'

[15] I am in agreement with this statement of the law. In the case referred to by Rall AJ, *Oudekraal Estates (Pty) Ltd v City of Cape Town*,<sup>7</sup> Howie P and Nugent JA explained why it is necessary to approach the issue from the perspective that administrative decisions stand until set aside. They said:<sup>8</sup>

'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 recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside.'

[16] In my view, these same considerations apply for the same reasons and with equal force to the decisions of voluntary associations. It is not difficult to imagine the

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<sup>4</sup> *Shunmugam & others v The Newcastle Local Municipality & others; The National Democratic Convention v Mathew Shunmugam & others* [2008] 2 All SA 106 (N).

<sup>5</sup> Para 41.

<sup>6</sup> Para 42.

<sup>7</sup> *Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA).

<sup>8</sup> Para 26.

chaos that would be caused in organisations ranging from massive trade unions or church bodies to small sporting or cultural clubs if this default setting was otherwise.

[17] The third respondent has done nothing for a few months short of three years to challenge the lawfulness of the termination of his membership of the applicant. He must be taken to have accepted it and, whatever doubts may arise as to the legal pedigree of the decision, it must be accepted as having legally valid consequences until it is set aside.

[18] That being so, the third respondent's membership of the applicant was terminated on 15 July 2011 at the latest when he was notified of the decision and, as from then, he was no longer a proportional representation councillor in the municipality for the applicant. That means that, as from that date, a vacancy existed and the first respondent was obliged to notify the EC of this fact. As he has not done so, and apparently does not plan to do so, the applicant is entitled to the relief that it claimed, including its costs as against the first and third respondents.

[19] I make the following order:

(a) The first respondent is directed to inform the chief electoral officer of the Electoral Commission of the vacancy on the council of the Amahlathi Municipality on account of the termination of the third respondent's membership of the applicant, and to do so within seven days of the date of this order.

(b) The first and third respondents are directed to pay the applicant's costs.

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C Plasket

Judge of the High Court

#### APPEARANCES

For the applicant: J Koekemoer instructed by Netteltons

For the third respondent: M Beard instructed by Mili Attorneys