

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(ORANGE FREE STATE PROVINCIAL DIVISION)**

Case No.: 1648/2003

In the matter between:

**M.K. MAKUME**

First Applicant

(In his capacity as the Executive Mayor  
of the Council of the Northern Free State  
District Municipality)

**ROMEO DITSIETSIE SELLO**

Second Applicant

(In his capacity as Councillor of the Mayoral  
Committee of the Northern Free State District  
Municipality)

and

**NORTHERN FREE STATE DISTRICT**

Respondents

**MUNICIPALITY**

(In its capacity as such)

**AND 20 OTHERS**

—

**CORAM:**

**RAMPAI, J**

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**HEARD ON:**

**24 JULY 2003**

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**DELIVERED ON:**

**21 AUGUST 2003**

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[1] The matter came to this court by way of an ordinary application. The proceedings were initiated on Monday, 12 May 2003. The first and the

second respondents delivered their answering affidavit on Friday, 23 May 2003. The applicants delivered their replying affidavits on Monday, 30 June 2003. The matter was then enrolled for hearing on Thursday, 24 July 2003. It was argued before me by Adv. W.J. Edeling on behalf of the applicants and by Adv. P.J. Leeuwner on behalf of the respondents. I then reserved judgment.

- [2] The applicants seek a declaratory remedy. They seek a court order whereby the council meeting of the first respondent, which was held at Sasolburg on Friday, 13 December 2002, is declared null and void and of no force and effect. This is the primary relief sought by the two applicants. They seek an alternative remedy should their prayer 4 or their primary remedy fail. The alternative relief sought is a court order whereby the decisions taken by the respondents against the applicants at Sasolburg on Friday, 13 December 2002 are rescinded and the applicants reinstated in the positions they were previously holding.

- [3] I deem it necessary to give a historical background of this dispute in order to illuminate the issues. In his founding affidavit the first applicant deposed that he, Mr M.K. Makume, was the executive mayor; that Mrs V.G. Matshai was the council speaker and that Mr Ben Molotsi was the

municipal manager. All were functionaries of the first respondent. On Monday, 9 December 2002 the three met and decided there were no urgent matters which necessitated that a special council meeting be convened by the council speaker for Wednesday, 11 December 2002.

- [4] On Thursday, 12 December 2002 the second respondent convened a special council meeting for Friday, 13 December 2002 at 10h00. The relevant notice of the meeting was purported to be given in terms of section 29(1), Local Government Municipal Structures Act No. 117/1998. The notice was faxed to the applicant. The councillors were urged to bring along an agenda dated 4 December 2002 relating to the special council meeting. The unsigned notice purported to emanate from the municipal manager, the second respondent. Mr Makume was amazed to receive the notice.

- [5] On Friday, 13 December 2002 a special council meeting was held. The executive mayor, Mr Makume, and the local government speaker Mrs V.G. Matshai were removed from their respective official positions. Mr M.B. Sesele, the 18th respondent, became the new executive mayor and Ms.T.G. Hadebe, the 19th respondent, became the new local government speaker. The changes were implemented with immediate effect.

[6] In the answering affidavit filed on behalf of the first respondent and the second respondent the deponent Mr B. Molotsi deposed that the applicant and the aforesaid Mrs V.G. Matshai were, apart from the official designation as the executive mayor and council speaker respectively, members of the ruling party, the African National Congress. The party caucus of the ANC had found the first applicant in his official capacity as the executive mayor guilty of embezzling the funds of the council. This misconduct the executive mayor committed, so alleged the municipal manager, by misusing his official credit card. The same party caucus also had found that the council speaker Ms Matshai was guilty of dereliction of duty in that she had failed to take appropriate steps to discipline the first applicant. Consequently the ANC decided to remove Mr Makume and Mrs Matshai from their aforesaid positions in the municipal district council of the first respondent. The decision was implemented on Friday, 13 December 2002.

[7] Mrs Matshai contested the decision taken against her and brought a similar application against the first respondent and 20 others. Her application was argued before Musi, J. She was successful. The decision complained of was set aside on 7 March 2003 as was the election of her successor or the new district municipal speaker.

[8] The first respondent has accepted the decision of the court in the Matshai matter and is abiding by that judgment. Notwithstanding such judgment and its acceptance, the respondent still persists in its refusal to reinstate the first applicant. It maintains that the underlying facts in the instant case are fundamentally different and therefore distinguishable from those in the Matshai matter.

[9] Mr Molotsi deposed further that the first applicant was notified of the ANC caucus meeting which was to be held. The proposed meeting was held in the morning on Friday, 13 December 2002. The first applicant attended the meeting. At that party caucus meeting the fourth respondent, Mr Ramokhoase, informed him that the provincial executive committee of the African National Council had decided to have him removed from the mayoral office and that he should relinquish his position as the executive mayor. The first applicant, the deponent went on, accepted the decision and agreed to relinquish his position.

[10] The special council meeting was held on Friday, 13 December 2002. The first applicant attended the special council meeting as did the fourth respondent, the chairperson of the district caucus of the African National Congress. The latter publicly announced that the ANC had decided to withdraw the first applicant from his position as the executive mayor. After the announcement the first applicant vacated the mayoral seat. Soon after such vacation, the 18th respondent, Mr Sesele, took over as an acting executive mayor. The first applicant did not raise any objection against the motion to remove him and to replace him with Mr Sesele as the new executive mayor, albeit in an acting capacity.

[11] The foundation of the first applicant's case is that he was removed from the public office he was holding in an unlawful manner. He denies that he resigned or relinquished his position. He complains and contends that certain legal prescripts were flagrantly violated. The respondents put up the defence that the first applicant had on his own accord and free will relinquished his position as the executive mayor and vacated his public office. They vigorously dispute the contention that any unorthodox methods or strategies were used to dethrone the first applicant. As far as the municipal manager is concerned, the first applicant resigned his official position as the executive mayor and vacated his mayoral office with dignity.

[12] The heart of the matter here is the question whether the first applicant has been unlawfully removed from his position as the executive mayor or whether the first applicant has voluntarily resigned from such office. I shall deal with the alleged forced removal first and the alleged voluntary surrender afterwards.

[13] Before I proceed to consider the real issue, I deem it necessary to comment on certain legal provisions, legal rules and legal procedures pertaining to the dispute at hand.

[14] Section 29(1), Local Government Municipal Structures Act No. 117/1998 provides:

“The speaker of a municipal council decides when and where the council meets subject to section 18(2), but if a majority of the councillors requests the speaker in writing to convene a council meeting, the speaker must convene a meeting at a time set out in the request.”

- [15] 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.

[16] Section 58, Local Government Municipal Structures Act No.117/1998 provides:

**“Removal from office -**

A municipal council, by resolution may remove its executive mayor or deputy mayor from office. Prior notice of an intention to move a motion for the removal of the executive mayor or deputy executive mayor must be given.”

[17] It is common knowledge here that the requisite prior written notice to move a motion at the council meeting of 13 December 2002 for the removal of the first applicant as the executive mayor from the office was never given by any councillor. It follows therefore that in the absence of a proper notice of the intended motion there could have been no valid council resolution to carry the non-existent motion. No council resolution can be taken in a vacuum. A municipal council is an assembly of divergent political parties. These various political parties had their say



when the executive mayor was enthroned by popular vote. Those various political parties ought to have their say when the executive mayor is dethroned. Logically those various political parties in the local assembly cannot democratically have their say in a meaningful way unless they are timeously notified prior to the relative council meeting by way of a written notice of the intended motion for the removal of the executive mayor from office. Since there was no prior notice, there was likewise no such item on the agenda. The council meeting can only deliberate on items properly placed on the agenda. It was improper and legally impermissible for the council meeting to transact the removal of the first applicant and the election of his successor. Any councillor or any political party intending to impeach the executive mayor was legally obliged to timeously inform, not only the mayor, but also each and every member of the municipal council of his or her intention to do so. It was not done here. It is clear and obvious that what was done here was done in violation of the duty owed to the mayor and the duty owed to the council at large.

- [18] Certainly it is not enough to say the executive mayor knew beforehand that he was going to be removed. The fact of the matter is that all the councillors irrespective of their political affiliations were also entitled to

know. They did not all know. Those who knew did not get to know through the legally permissible avenue. They heard a rumour of what the majority party and not the multi-party local assembly intended doing. Such clandestine party political strategies offend the ideal of transparency which underpins the values of an open and democratic society which we as a nation should always try to nurture and to promote. The ANC as the majority party should demonstrate its honest commitment to good governance not only by making the rules but also by cultivating, promoting, practising and respecting the values of transparency and openness in all the spheres of government. The noble commitment to clean governance should be pursued with due regard to the rule of law. Respect for law is as important as clean public administration itself. None of the two should be sacrificed on the altar of the other.

[19] Having made those comments, I now turn to consider the issue. Let me restate that the respondents through the lips of their counsel Mr Leeuwner conceded that they did not comply with the above legal prescripts in their purported removal of the first applicant from the office of the executive mayor. Despite this concession, Mr Leeuwner, however, argued that the removal was still lawful since the first applicant in fact had resigned as the executive mayor. The resignation of the executive mayor is covered

by section 59, Act No.117/1998. It reads as follows:

**“Vacation of office -**

An executive mayor or deputy executive mayor vacates office during a term if that person -

- (a) resigns as executive mayor or deputy mayor;
- (b) is removed from office as executive mayor or deputy executive mayor; or
- (c) ceases to be a councillor.”

It will be noted that there are no statutory formalities spelt out for the resignation of the executive mayor.

[20] Unless the executive mayor vacates his office in terms of section 59 (*supra*) his term of office ordinarily endures for a term of five years when the next municipal council is declared elected in the ordinary course of events (*vide* section 57, Act No. 117/1998). Section 59(c) does not apply seeing that the first applicant has not ceased to be a councillor. Similarly section 59(b) does not apply seeing that the prescribed procedure for his removal from office was not adhered to. As regards the correct procedure which a local government council has to follow I wish to say no more than - to quote Rule 90 Standard Rules and Orders of Free State Province published on 1 December 2000. It reads as follows:

**“Removal from office of the executive mayor**

- 90(1) A councillor (hereby called “the initiator”) may by written motion, which must be seconded by at least three other councillors, move that the executive mayor be removed from office. Such a motion must be submitted to the municipal manager and may not be sent by electronic mail, telex or telegram. If such motion is transmitted by facsimile, the original must be delivered to the municipal manager within seven days.
- (2) The motion must contain a brief summary of the reasons for the motion.
- (3) A motion in terms of sub-rule (1) may, despite the provisions of rule 56, not be withdrawn.
- (4) The municipal manager must, upon receipt of a motion in terms of sub-rule (1), forthwith send a copy to the speaker and the executive mayor.
- (5) The speaker must forthwith upon receipt of the motion determine the date, time and venue for a special council meeting in terms of rule 4. The date of such a special meeting may not be less than fourteen and not more than twenty-one days from the date the speaker received a copy of the motion from the municipal manager.

(6) Despite the provisions of rule 10(1) at least seven days notice of a meeting in terms of sub-rule (5) must be given.

(7) If the executive mayor resigns from office at any time before a meeting in terms of sub-rule (5) takes place, the motion lapses and the meeting does not go ahead. If the executive mayor resigns, the members of the mayoral committee are deemed to have resigned from the same date.

(8) The meeting may not be closed for the public or the media before a vote had been taken on the matter.

(9) The speaker presides over the proceedings on a motion in terms of sub-rule (1) but he or she does not have a casting vote.

(10) The executive mayor has the right and must be allowed the opportunity during the proceedings to -

(a) respond to every allegation made in the motion and during the debate;

(b) call witnesses and to cross-examine any witnesses called by the initiator; and

(c) submit documents and to examine any documents submitted by the initiator, provided that if the executive mayor is not present during the meeting, the council may, in its sole discretion, continue with the proceedings.

A proposal to proceed in the absence of the executive mayor is carried if a majority of the councillors of the municipality votes in favour of

it.”

Section 59(a) does apply where the executive mayor voluntarily vacates his office. In this resignation scenario there is no procedure formally defined. There are certain rights, privileges, benefits, honour and interests which attach to the office of the executive mayor. In my view resignation from such an office is akin to a waiver of all these. In our law there is a presumption which operates against waiver. The *onus* to rebut a presumption rests on the one who alleges the waiver - *in casu* the respondents.

- [21] They allege that on Friday 13 December 2002 a local caucus of the ANC held a meeting; that the caucus meeting was held shortly before the special council meeting scheduled for the same day; that the first applicant attended the caucus meeting; that he was informed of the decision of the provincial executive council of the ANC; that he accepted the decision to vacate his office as the executive mayor; that he also attended the special council meeting afterwards; that the local chief whip of the ANC announced in the special council meeting that the ANC was withdrawing the name of the first applicant as the executive mayor and that of Mrs V.G. Matshai as the council speaker; and that the first

applicant stepped down with dignity and that by so doing he accepted the decision of his party to remove him from office. The contention of Mr Molotsi that, because Mr Makume did not, at the special council meeting, raise any objection against Mr Ramokhoase's motion to have him removed and replaced as the executive mayor, is misguided. This is so because legally there was no legitimate motion for Mr Makume to oppose. His presence in the meeting did not legitimise the fatally defective procedure adopted by the respondents.

[22] On 7 March 2003 Musi, J delivering judgment against the first respondent in the case of Mrs V.G. Matshai who was removed from her office as the council speaker remarked:

“In my view the procedure herein followed was seriously flawed and irregular. Firstly, the respondents contends that the speaker was given a verbal notice of the relevant meeting and informed that her removal would be discussed. Assuming that this is so (and I have serious reservations about it), the question is whether she was informed of the allegations against her. It is noteworthy that in terms of the rules the motion proposing removal must state the reasons therefor. That is in line with the normal rules of the common law based on the principles of natural justice as aforesaid that a person facing a hearing which may

cause him or her serious prejudice must be informed of the charges against him or her, and that is an ingredient of the *audi alteram partem* rule. This has to be so, for how would such a person be able to prepare himself or herself and competently be able to deal with the allegations levelled against her if she was not informed of same beforehand? *In casu* the applicant was not told of the reasons for her removal and there is nothing in the respondents' papers to that effect. It is significant that such an item was in fact not incorporated in the agenda of the relevant special meeting, which is peculiar.”

- [23] Mr Leeuwner argued that the facts of Matshai's case were distinguishable from the facts in the instant case. The distinction, he contended, was rooted in the fact that Mrs Matshai attended neither the party caucus meeting nor the special council meeting, whereas Mr Makume had attended both. This submission is not only shallow and thin, it is fundamentally flawed. It reminds one of the ancient and debatable argument that the end justifies the means. As I see it, flagrant flouting of the law can never be justified by the ultimate objective of cultivating a culture of clean public administration. Breaking the law and defying legal procedures is as bad as having a dirty government administration. The fact of the matter is that as on Friday, 13 December 2002 the first respondent did not have and never had prior to that date any intimation



whatsoever from the first applicant that he was resigning or that he intended resigning. I am not persuaded by counsel's submission that although the prescribed procedure was violated, the first applicant had, by conduct, condoned the irregular procedure and by conduct had accepted the party decision and by conduct had openly resigned in the special council meeting. It is undisputed that the first applicant did not say a word in the special council meeting after the announcement was made on behalf of his party. He was degraded, humiliated and powerless to say anything. He had been sadly and unfairly ambushed.

- [24] Subsequent to his demotion by the municipal council which was instigated by his own political party, the first applicant wrote a compassionate letter to the provincial leadership of the African National Council and copied the national leadership thereof in which letter he bitterly voiced out his deep hurt concerning the manner in which he was treated by his party at Sasolburg on Friday, 13 December 2002. The letter essentially raises two fundamental issues, namely glaring lack of procedural fairness in the first instance, as well as glaring lack of substantive fairness in the second instance. The flying rumours aside, the first applicant made the point that his political party officially and for the first time informed him of its decision to impeach him as the executive

mayor of the council ten minutes before the crucial special council meeting was held. It is clear that the decision to evict him from that office was taken elsewhere in his absence by the PEC of his party conveyed to him at the district caucus by the chief whip of his party and endorsed by the uninformed municipal council of the first respondent.

[25] The letter reads as follows:

“Re: CLARITY ON MY UNFAIR REMOVAL AS THE  
EXECUTIVE MAYOR

With reference to the above I hereby seek clarity from yourselves regarding my unfair removal as the Executive Mayor of the NFS District Municipality. On the 13<sup>th</sup> Dec 2002, at our district municipal chambers, an ANC caucus was briefed about my removal (and that of the Speaker, cde V. Matshai) 10 minutes before the proceedings of the “Special meeting”. I was told that the PEC officials were still going to discuss with me the matter as decided in the PEC.

In the above-mentioned ANC caucus, I informed cdes that I was not satisfied with the manner in which the whole process was handled. I’m not contesting any decision taken by writing to you, however the treatment I had received during the period towards my unfair removal, on the day and after my unfair removal.

Here are some of the facts which justify my ill-treatment and unfair removal:

- a) On the date, which I have forgotten, during Nov 2002 I was called by the officials of the PEC where I was asked to explain the use of the credit card which was for the use of discretionary funds by the office of the Executive Mayor. The concern raised in

that meeting was the purchasing of liquor and after my explanations to the meeting it was concluded therefore that the matter will be dealt with me and the officials of the PEC. However I was shocked later to learn that I had bought a prostitute at one of the brothel with the same credit card. (This issue I had addressed it in another letter sent to you). My concern is why cdes did not let me know in the meeting I have mentioned above during Nov 2002? And the only time I got that incorrect and defaming information was during my telephonic conversation with cde Themba Mjikane, chairperson of the district caucus, after the meeting which was briefed by cde Ace Makgashule, chairperson of the province. That meeting was held on the 6<sup>th</sup> of Dec 2002. When the PEC officials had called me during November, what was the intention, to correct and build or was it to destroy? If it was to correct and build, a better approach was to firstly inform me and wait for my response before it could have been put to any of the forums the chairperson have briefed in my absence, however if the intention was to destroy me it had been correctly handled.

- b) The other issue is that of the caucus of the 6th Dec 2002, which was briefed by the chairperson of the province, o the 5th and 6th Dec 2002 there was an indaba called by the Ministry of

Provincial and Local governments on the financial viability of municipalities in S.A. I attended that indaba and therefore I couldn't make it for the caucus called, but the other reason was that I was not invited to that caucus meeting, I only learnt about the caucus meeting from cde Romeo Sello, a member of the mayoral committee, asking if I was aware of such a caucus convened and cde Sizwe Mbala, an REC member, also called and left voice message in my cell phone on the 6<sup>th</sup> at 13h08 reminding me of the caucus, as if I was informed prior to the date of the caucus. My question is was the non-invitation deliberate so that I can be absent and then my personal integrity be attacked? Am I not an ANC member any more? I am asking this because the treatment I had received was like the PEC dealing with an enemy of the organization.

- c) The other matter is the handling the PEC information or decisions, I wish to mention that even before I was unfairly removed on the 13<sup>th</sup> Dec 2002, news were already all over the region and the province that I am going to be removed as the Executive Mayor because I had differed with you during the regional and provincial conferences. During the Nov 2002 meeting, I also briefed the chairperson about having being called by the Lesedi stereo on my use of the credit card and my

imminent removal as Executive Mayor by the PEC. If my unfair removal was truly based on comradeship, honesty and on the spirit of building, was it therefore necessary that my removal be discussed with the opposition before it could be discussed with me? Why do we use media and opposition to settle our differences? Can I therefore be convinced that this was a fair treatment, where you are being convicted before you could be given a fair hearing? It is even worse when incorrect information is being used to settle other issues.

- d) Some platforms in which our unfair removal was announced are organizational platforms that I know, however I do not think the platforms have been created in order for us to destructively criticize and defame each other, through LIES and incorrect information. Caucuses and any other platform of the ANC are there for any member to constructively criticize and build each other in a process. My concern here is, if wrong information is used as a base to remove cdes from positions, it is going to be difficult for us to know our mistakes. The tendency to behave as if we are immune to the mistakes is wrong and the tendency to settle our scores after conferences is also wrong.
- e) Since the 13<sup>th</sup> Dec 2002 (it was Friday the thirteen) I had never

received any form of communication from the PEC, despite the fact that I was told by cdes who inform our caucus about my unfair removal. Without rushing the PEC cdes but I think it is fairly justified that I be informed about what I have done wrong so as I can correct my mistakes and respond to the wrong and incorrect information the PEC is having about me. It becomes easy for me to speculate the intentions of your actions or decisions because I'm still in the dark not knowing what have I done WRONG? I deserve the right to know as an ANC member.

f) Cdes, I also need to mention that many procedures and legislations were not properly followed and deliberately broken in my unfair removal. I'm wondering if those were also part of your instructions to cdes who were sent to implement your decisions.

1) In terms of standard, rules and orders approved by council, a Special meeting is handling only issues on the agenda and on the 13<sup>th</sup> Dec 2002 our agenda was entailing only the cross-floor items, my question is have I crossed the floor?

2) Notice of the meetings must either be signed by the

Municipal Manager or the Speaker or anyone acting on their behalf, in our case notices were not signed at all and that actual means the meeting was unofficially called.

- 3) Meetings of the council including the special council meetings must at least be called 48hrs before, in our case a meeting was called in less 24hrs.

Noting that our movement is the ruling party and was instrumental in developing and promulgating the laws of the country. I humbly submit that we as the ANC members and custodians of the constitution must be exemplary by being law-abiding citizens. Ours is a constitutional democracy and therefore the RULE OF LAW is supreme and must prevail. These rules are made by the ANC and it is expected of us as the ANC members to respect those rules because we are the custodians of those rules. My question is, are we allowed to disregard the law, our own law, because we are ANC members? These unlawful acts have also added to my speculation that my unfair removal was not just about the usage of the credit card, if cdes had to break the law to ensure that I am being removed. Therefore there was more to my unfair removal than just the issue of the usage of the credit card. I have deliberately used the word “remove” because it is my personal opinion that no deployment or redeployment that can be handled the

way my case was done.

Cdes be assured that I do not have any life outside the ANC, therefore I am jealous about it more than anything including my life. If I commit mistakes it is not because I intend to tarnish the image of the organization but it is because I am a human being subject to commit mistakes.

I hope my letter will receive a positive response.

My request is that I will be happy if I can receive your response in writing.”

The letter was written approximately six months before the hearing of this application. But there was deafening silence from the leadership. There was hardly any acknowledgement of receipt. What a sorry state of affairs!

[26] Mr Edeling, counsel for the applicants, submitted that this letter strongly militated against the contention that the first applicant had voluntarily given up his livelihood as the executive mayor. I endorse this submission. Certainly those are not the sentiments of a guilty man who has confessed his wrongs, had freely, honestly and willingly accepted and acknowledged that resigning was the only honourable thing to do in the circumstances. His outcry for justice sounds like the soul serenade of a comrade betrayed by his fellow-comrades for ulterior political motive. He was unceremoniously evicted from an office of great aura, image and honour, not on the merits of a case or a disciplinary enquiry properly initiated by the municipal council as the real victim of the alleged embezzlement and openly debated in a properly convened council meeting, but on the



strength of the unsubstantiated rumours flying outside the council chamber. The alleged misuse of the mayoral credit card is first and foremost a matter which primarily affects the council. On Friday, 13 December 2002 there was virtually nothing before the council to substantiate any misconduct by the executive mayor. As far as the council was concerned the alleged misconduct was nothing more than simple hearsay, which is inadmissible in these proceedings, and will remain inadmissible in any proceedings of the council unless the alleged claim of embezzlement is properly investigated, and any first hand evidence implicating the first applicant is properly placed before the council by credible and reliable witnesses, and the applicant is afforded the opportunity of refuting the allegation levelled against him, and the council takes a resolution in the prescribed manner to dispose of the matter.

[27] In conclusion I have to state that I could find no substance in the submission that the first applicant had resigned his office. It follows logically from this conclusion that the provisions of section 55(3) Local Government Municipal Structures Act No. 117/1998 were also not complied with in the election of the 18th respondent as his successor or the new executive mayor. Such election was *ab initio* null and void and

of no legal force and effect. Similarly the dismissal of then entire mayoral executive committee was unlawful. It was done in violation of the legal prescripts, for instance section 53, section 45, section 48 and rule 88 Standing Rules and Orders Free State Province, published 1 December 2000. I hold the view that the first applicant, the second applicant and indeed the entire mayoral executive committee ought to be reinstated to the respective positions they were holding before their purported removal on Friday, 13 December 2002.

[28] Accordingly, as regards the first applicant, I order as follows:

28.1 The decision of the first respondent taken at Sasolburg on Friday, 13 December 2002 against the first applicant whereby he was purportedly removed from office as the executive mayor is hereby set aside as null and void *ab initio*.

28.2 The first applicant Mr Makume is hereby reinstated in his position as the executive mayor of the Northern Free State District Municipal Council with all the rights, privileges and benefits attached to such position at the time.

28.3 The decision of the first respondent taken at Sasolburg on Friday, 13 December 2002 in favour of the 18th respondent whereby Mr M.B. Sesele was purportedly elected as the new executive mayor is also hereby set aside as null and void.

28.4 This entire order operates retrospectively from Friday, 13 December 2002.

28.5 The costs of this application shall be borne and paid by the first respondent alone in favour of the first applicant on a party and party scale.

[29] Accordingly, as regards the second applicant, I order as follows:

29.1 The decision of the first respondent taken at Sasolburg on Friday, 13 December 2002 against the second applicant Mr R.D. Sello and all the members of the mayor's executive committee is hereby set aside as null and void.

29.2 The second applicant and all the adversely affected members of the mayor's executive committee are hereby reinstated in their

positions as the mayoral executive committee members of the Northern Free State District Municipal Council with all the rights, privileges and benefits which went along with such positions.

29.3 The decision of the first respondent taken at Sasolburg on Friday, 13 December 2002 or at any subsequent date in favour of anyone who was purportedly elected as the member of the new mayoral executive committee is also hereby set aside as null and void.

29.4 This entire order operates retrospectively from Friday, 13 December 2002.

29.5 The costs of this application shall be borne and paid by the first respondent alone in favour of the second applicant on a party and party scale.

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**M.H. RAMPAL, J**

**On behalf of Applicants:**

Adv. W.J. Edeling  
instructed by

Bokwa Attorneys

**On behalf of Respondents:**

Hill, McHardy & Herbst

Adv. P.G. Leeuwner  
instructed by

/scd