

**IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case No: 4569/23

In the matter between:

<b>ALFRED DUMA LOCAL MUNICIPALITY</b>	<b>1<sup>ST</sup> APPLICANT</b>
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<b>THE SPEAKER: ALFRED DUMA MUNICIPAL COUNCIL</b>	<b>2<sup>ND</sup> APPLICANT</b>
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<b>THE MUNICIPAL MANAGER: ALFRED DUMA LOCAL MUNICIPALITY</b>	<b>3<sup>RD</sup> APPLICANT</b>
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and

<b>MEMBER FOR THE EXECUTIVE COUNCIL: COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, KWAZULU-NATAL</b>	<b>1<sup>ST</sup> RESPONDENT</b>
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<b>THE ALFRED DUMA MUNICIPAL COUNCIL</b>	<b>2<sup>ND</sup> RESPONDENT</b>
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<b>BONISIWE GWALA</b>	<b>3<sup>RD</sup> RESPONDENT</b>
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<b>PHILILE MBAMBO</b>	<b>4<sup>TH</sup> RESPONDENT</b>
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<b>LWAZI NKOSI</b>	<b>5<sup>TH</sup> RESPONDENT</b>
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<b>NIKIWE MTSHALI</b>	<b>6<sup>TH</sup> RESPONDENT</b>
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<b>SIFISO MADONDO</b>	<b>7<sup>TH</sup> RESPONDENT</b>
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<b>LINDIWE KUBHEKA</b>	<b>8<sup>TH</sup> RESPONDENT</b>
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<b>MZWANDILE MBHELE</b>	<b>9<sup>TH</sup> RESPONDENT</b>
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<b>NONHLANHLA ZIKALALA</b>	<b>10<sup>TH</sup> RESPONDENT</b>
<b>NKOSINATHI S SITHOLE</b>	<b>11<sup>TH</sup> RESPONDENT</b>
<b>XOLANI MNGADI</b>	<b>12<sup>TH</sup> RESPONDENT</b>
<b>STHEMBISO MAKHATHINI</b>	<b>13<sup>TH</sup> RESPONDENT</b>
<b>NKULULEKO MKHASIBE</b>	<b>14<sup>TH</sup> RESPONDENT</b>
<b>GLADYS KUBHEKA</b>	<b>15<sup>TH</sup> RESPONDENT</b>
<b>LINDIWE HLONGWANE</b>	<b>16<sup>TH</sup> RESPONDENT</b>
<b>NJABULO MLOTSHWA</b>	<b>17<sup>TH</sup> RESPONDENT</b>
<b>MOSLEY MLOTSHWA</b>	<b>18<sup>TH</sup> RESPONDENT</b>
<b>NATHI MLOTSHWA</b>	<b>19<sup>TH</sup> RESPONDENT</b>
<b>LONDATHINA HLOMUKA</b>	<b>20<sup>TH</sup> RESPONDENT</b>
<b>THOLAKELE XABA</b>	<b>21<sup>ST</sup> RESPONDENT</b>
<b>THULILE HADEBE</b>	<b>22<sup>ND</sup> RESPONDENT</b>
<b>XOLANI ZWANE</b>	<b>23<sup>RD</sup> RESPONDENT</b>
<b>SANDILE ZIKALALA</b>	<b>24<sup>TH</sup> RESPONDENT</b>
<b>SIMPHIWE X.M. ZWANE</b>	<b>25<sup>TH</sup> RESPONDENT</b>
<b>SIPHAMANDLA KHUMALO</b>	<b>26<sup>TH</sup> RESPONDENT</b>

<b>THABISILE NJOKO</b>	<b>27<sup>TH</sup> RESPONDENT</b>
<b>N.B. DLAMINI</b>	<b>28<sup>TH</sup> RESPONDENT</b>
<b>M.S. MNGADI</b>	<b>29<sup>TH</sup> RESPONDENT</b>
<b>SINDI NXUMALO</b>	<b>30<sup>TH</sup> RESPONDENT</b>
<b>N.J. SITHEBE</b>	<b>31<sup>ST</sup> RESPONDENT</b>
<b>A. MCHUNU</b>	<b>32<sup>ND</sup> RESPONDENT</b>
<b>V MEMELA</b>	<b>33<sup>RD</sup> RESPONDENT</b>
<b>ENM MTHETHWA</b>	<b>34<sup>TH</sup> RESPONDENT</b>
<b>SIBONGILE KUBHEKA</b>	<b>35<sup>TH</sup> RESPONDENT</b>
<b>MONICA MBHENSE</b>	<b>36<sup>TH</sup> RESPONDENT</b>
<b>B B BIYELA</b>	<b>37<sup>TH</sup> RESPONDENT</b>
<b>PHASIKA NSELE</b>	<b>38<sup>TH</sup> RESPONDENT</b>
<b>P M NZUZA</b>	<b>39<sup>TH</sup> RESPONDENT</b>

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## **REASONS FOR JUDGMENT**

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**E Bezuidenhout J**

**Introduction**

[1] This matter came before me during the court recess on 29 March 2023 as an urgent application. After hearing argument, I granted an order in the terms set out below and indicated that I will be provide my reasons in due course. These are my reasons.

[2] The order granted reads as follows:

- '1. The Applicants' non-compliance with the Rules of the above Honourable Court in relation to notice and service of the application be and is hereby condoned in accordance with Rule 6(12) and the Applicants' non-compliance with section 35 of the General Law 21 Amendment Act 62 of 1955 in relation to notice of the application be and is hereby condoned.
2. A rule nisi is hereby issued calling upon the Respondents or any other interested party to show cause on **31<sup>st</sup> May 2023** at **9h30** as to why the following terms should not be made final:
  - 2.1 The decision of First Respondent to call, convene and chair a meeting of the Second Respondent in terms of section 29(1A) of the Local Government: Municipal Structures Act 117 of 1998, dated 27 March 2023, is hereby declared inconsistent with the Constitution and invalid.
  - 2.2 The decision of the MEC to call, convene and chair a meeting of Second Respondent in terms of section 29(1A) of the Local Government: Municipal Structures Act 117 of 1998, dated 27 March 2023, is hereby reviewed and set aside.
  - 2.3 The Respondents are interdicted from proceeding with any Council Meeting convened by the First Respondent in terms of the decision referred to in paragraph 2.1 above.
  - 2.4 The First Respondent together with any of the Respondents who oppose the application are directed to pay the Applicants' costs of suit jointly and

severally, one paying the others to be absolved, such costs to include the costs of two counsel where employed.

3. Paragraph 2.3 shall operate as an interim interdict and with interim effect pending the final determination of this matter.
4. The costs of 29 March 2023 shall be costs in the cause in the determination of the rule nisi.'

[3] It subsequently came to my knowledge that the first respondent's attorneys filed a notice in terms of Uniform rule 49(1)(c), requesting me to provide a written judgment in respect of the order granted on 29 March 2023, on an urgent basis, showing the facts found to be proved and the reasons for my order. The rule is strictly speaking not applicable as I did not indicate or declare in court that reasons will be furnished on application by any party. The first respondent's attorney also appears to confuse the provisions of magistrates' court rule 51(1)(a) and (b) with what is contained in the Uniform rules.

[4] The second applicant, Mr B P Sithole is the speaker of the Alfred Duma Local Municipality (the Municipality) who is the first applicant. He attested to the founding affidavit. The third applicant is Mr S S Ngiba, who is the municipal manager of the Municipality. I will refer to the second applicant as the speaker and to the third applicant as the municipal manager.

[5] As appears from the nature of the relief granted, the applicants *inter alia* sought to interdict the first respondent, the Member of the Executive Council: Cooperative Governance and Traditional Affairs, KwaZulu-Natal (the MEC) and the remaining respondents, which included 37 members of the Municipality's council, from proceeding with a meeting called by the MEC for 30 March 2023.

[6] The facts and circumstances that gave rise to this meeting are as follows. On 13 March 2023, the municipal manager received a petition "purportedly" signed by 37 councillors wherein they requested a council meeting in terms of section 29(1) of the Local Government: Municipal Structures Act 117 of 1998 (the Structures Act)

read with rule 8(1) of the Municipality's Bylaw on Standing Orders (the standing orders).<sup>1</sup>

[7] Section 29(1) of the Structures Act reads as follows:

'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.'

Section 29(1A) of the Structures Act is also relevant, and reads as follows:

'(1A) If the speaker or acting speaker refuses to call a meeting of the council as requested in terms of subsection (1), the municipal manager, or in the absence or refusal by the municipal manager, a person designated by the MEC for local government in the province, may call and chair the meeting.'

[8] Rule 8(1) of the standing orders reads as follows:

'The Speaker may at any time and shall, upon request by a majority of the councillors for the Municipality, call an extreme emergency meeting of the Council.'

The remainder of rule 8 is also relevant and reads as follows:

'(2) A special meeting must be held in compliance with Rule 7(1)(b) and no later than four days from the date of receipt of a request.

(3) A request for the calling of a special meeting, as contemplated in Rule 8(1), shall:-

(a) be signed by no less than 50% plus one of all councillors of the Municipality;  
and

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<sup>1</sup> By-Law on Standing Orders for Council and its Committees, PN 72, KZN PG 1842, 29 June 2017.

(b) be accompanied by:-

(i) a duly signed notice of motion; and

(ii) a written statement by the councillor signing the notice of motion giving reasons as to why the intended business of the special meeting is urgent and cannot wait for ordinary meeting of Council;

(c) if the Speaker fails to convene a meeting in terms of this Rule, the Municipal Manager or Executive Director: Corporate Services or his nominee must convene such meeting.'

[9] On 15 March 2023 the municipal manager responded to the councillors and informed them that their "letter" of 13 March 2023 needed to be directed to the speaker of the council, not to the municipal manager. This was apparently because in terms of section 29(1) of the Structures Act, the speaker must first be asked to convene a meeting.

[10] On 16 March 2023, the councillors delivered the same petition or request for a meeting, now addressed to the speaker. It contained a request for a special meeting to be called for 23 March 2023 at 10h00 am. It also contained the names and signatures of 37 councillors and attached to it were the following three urgent notice of motions:

(a) The first notice of motion was proposed by Councillor E N Mthethwa (the 34<sup>th</sup> respondent) and called for the removal of the mayor. The reason for the motion was the 'failure to perform the duties as Mayor of the Council'.

(b) The second notice of motion was proposed by Councillor L Nkosi (the 5<sup>th</sup> respondent) and called for the removal of the deputy mayor. The reason for the motion was the 'failure to perform his duties as the Deputy Mayor'.

(c) The third notice of motion was proposed by Councillor M Mbhele (the 9<sup>th</sup> respondent) and called for the removal of the speaker. The reason for the motion was the 'failure to perform his duties as speaker of the Council'.

[11] The three councillors signed a joint statement wherein they requested the urgent meeting for the removal of the mayor, deputy mayor and speaker. The reason for the urgency was

'because of the recent floods that happened again in Ladysmith. It shows that the council is leaderless as people who are expected to lead and give oversight are failing. They gave the community the assurance that the town will never flood again of which these were false promises.'

[12] The statement did not contain any reasons why the 'intended business' of the special meeting was so urgent that it could not wait for an ordinary meeting of council as required by rule (3)(b)(ii) of the standing orders.

[13] The speaker, when perusing the councillors' request for a meeting, came to the conclusion that a number of the signatures of the councillors on the request were not authentic. On 20 March 2023, he addressed a letter to Councillor Mthethwa in which he informed him that he needed to investigate the authenticity of the signatures and had requested a list of original signatures of all 37 of the councillors to be submitted for investigation. He requested to be afforded 14 days to investigate the authenticity of the signatures and will get 'a legal person to assist in the analysis and investigation of the said signatures and handwriting'.

[14] In his letter, the speaker also made it clear that he was not refusing to call a meeting but that he wanted to make sure that the meeting is called by 'legitimate councillors of this municipality by seeking a qualified legal investigator and /or handwriting/signature expert' to put him at ease before such a meeting is convened.

[15] On 21 March 2023, the speaker received a letter from Councillor Mthethwa which was also addressed to the municipal manager, and in which he *inter alia*



stated that the speaker's intention to call the special meeting after 14 days, "purportedly" to conduct the aforementioned investigation, is designed to frustrate the convening of the meeting. It was accordingly construed as a refusal to convene the special meeting as contemplated in section 29(1A) of the Structures Act.

[16] The speaker replied to Councillor Mthethwa's letter on 23 March 2023 and stated that he was not refusing to call a special meeting but had requested time to investigate the authenticity of the signatures so that he could comply with the request of a special meeting.

[17] The letter of 21 March 2023 by Councillor Mthethwa also directed a request to the municipal manager for a special meeting to be convened, as the speaker has, through his conduct, refused to call a special meeting as requested by a majority of the councillors. He stated that the speaker has communicated his intention to only convene a special meeting after 14 days in order to conduct an investigation.

[18] The municipal manager replied to Councillor Mthethwa's letter on 23 March 2023 and stated that section 29(1A) of the Structures Act only permitted him to convene a meeting if the speaker has refused to call a meeting. His understanding was that the speaker had not refused to convene a meeting of council 'instead he raised concerns which have serious legal implications'. The municipal manager requested the councillor to wait for the speaker's investigation, which was underway, to be completed. He reiterated that he was not refusing to call a meeting but that he viewed the speaker's request as reasonable and fair.

[19] The speaker also addressed a letter to the MEC on 23 March 2023 wherein he advised her what was happening in the Municipality and what actions he was taking. He attached copies of all the correspondence exchanged between the parties. He made it clear that he indicated to the councillors that he was requesting an indulgence to authenticate the signatures and was not refusing to convene a meeting.

[20] It is common cause that the MEC did not respond to the speaker's letter.

[21] The speaker did however receive two letters on 27 March 2023. One letter was from the MEC herself and the other one was from Mr T Tubane, Head of the Department of Cooperative Governance and Traditional Affairs (Cogta).

[22] The MEC informed the speaker, all councillors and “management” of the Municipality that she had received a petition signed by a majority of councillors, requesting her to designate a person to convene and chair a meeting of the municipal council in terms of section 29(1A) of the Structures Act. She also referred to section 29(1) and (2) of the Structures Act. She stated that she had considered all the documents submitted as well as the rules and orders of the Municipality and that she was satisfied that the speaker and/or the municipal manager were “unable” to comply with the requirements of section 29(1A) of the Structures Act. Accordingly, she designated Mr T Tubane to chair the meeting.

[23] Mr Tubane, in his letter, notified the speaker, all councillors and management of the Municipality that he had been designated to chair a meeting of the municipal council to consider the motions. The meeting was convened for Thursday, 30 March 2023 at 12h00 at the Municipality’s council chamber.

[24] Mr Tubane’s letter was accompanied by a formal notice of a special council meeting signed by him, as well as an agenda which *inter alia* reflected the three notice of motions to pass votes of no confidence in the speaker, mayor and deputy mayor, followed by the election of three new officials.

[25] Two days later, on 29 March 2023, the applicants brought the urgent application applying for the relief which was more or less in line with the order I granted, as set out above.

[26] The speaker attached a copy of the petition he initially received on which he had marked the signatures of the councillors which appeared to him to have been “fabricated”. The original papers contained no such marked signatures but I was provided with a highlighted copy at the hearing. It appeared that 26 signatures were marked or highlighted. The speaker alleged that the municipal council consisted of 73 councillors. A majority council would be 37 councillors. The petition received by

him contained 37 signatures of which 26 were marked as “fabricated” by the speaker. He stated that he attempted to contact these councillors but was unable to receive any communication from them.

[27] The speaker expressed his concern that the petition did not satisfy the requirements of section 29(1) of the Structures Act as the meeting had not been requested by a majority of councillors if the fraudulent signatures were excluded. He also stated that on 22 March 2023, he requested Ms Andrea le Sueur, a handwriting expert, to authenticate the signatures.

[28] The speaker was adamant that neither he nor the municipal manager refused to call the meeting requested in the petition. He had indicated that he would convene the meeting after 4 April 2023 by which date he would have completed his investigation. Once it was determined that a majority of councillors had indeed requested a meeting, he would immediately call a meeting.

[29] The speaker dealt with the question of urgency. He stated that the MEC ignored his letter of 23 March 2023 in which he advised that he required 14 days to investigate his concerns. He only received notice of her intention to convene the meeting on 27 March 2023. He also alleged that she has usurped his function as the speaker and convened the meeting irregularly. Immediately upon receipt of the notice, he consulted with his attorneys and the application papers were prepared. The matter had to be set down for 29 March 2023 as the meeting was due to take place on 30 March 2023. He alleged that the matter was eminently urgent as it deals with the unlawful and unconstitutional assumption of powers by the MEC, which powers are constitutionally guaranteed to him as the speaker.

[30] The speaker briefly dealt with the issue of the failure to give the MEC 72 hours’ notice of the application, which was clearly impossible due to the short time frames. He sought condonation for such failure.

[31] The speaker dealt in detail with the requirements for interdictory relief, namely a clear or prima facie right, the balance of convenience, prejudice or reasonable

apprehension of irreparable harm and the lack of an alternative remedy. I will only highlight a few of the aspects raised.

[32] When dealing with the applicants' clear or prima facie right, reference was made to section 40 of the Constitution, which deals with the three spheres of government, being national, provincial and local government. In particular, reference was made to section 41(1)(e) of the Constitution which reads as follows:

'(1) All spheres of government and all organs of state within each sphere must—  
...

(e) respect the constitutional status, institutions, powers and functions of government in the other spheres'.

[33] The speaker also referred to section 151(3) and (4) of the Constitution, which reads as follows:

'(3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.

(4) The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.'

[34] The speaker stated that he was obliged to ensure that any decision purportedly taken by the majority has in fact been taken by the majority. He also referred to section 37 of the Structures Act which imposed certain obligations on him which *inter alia* entailed ensuring compliance with the Code of Conduct, the Rules and the Orders of the council. He was also responsible for the ethics and accountability of the municipal council. He further stated that he had a statutory obligation to ensure that where the majority of councillors call a meeting in terms of section 29(1) of the Structures Act and rule 8(1) of the standing orders, and he suspected that the meeting was not called by a majority of councillors, to investigate such suspicions.

[35] The speaker further stated that the MEC has violated the clear right he has as speaker and acted ultra vires by usurping his power. The interdictory relief seeks to stop the illegality and to prevent a domino effect which would occur if the meeting continues and it is subsequently found that it was not convened by a majority.

[36] Concerning the balance of convenience, the speaker stated that the respondents will suffer no prejudice. If his concerns turn out to be unfounded, then the meeting will be convened after 3 April 2023, which at the time was less than three days away. If an adverse investigation report was provided, it will be provided to the respondents to allow them to respond to it.

[37] If on the other hand, the meeting was allowed to proceed, the municipal council would be placed in an unenviable position where a meeting would have been called without a majority. The decisions taken would be susceptible to review.

[38] When dealing with the question of prejudice and the reasonable apprehension of harm, the speaker stated that the calling of a meeting not foreshadowed in section 29(1A) of the Structures Act, will cause harm to the principle of separation of powers. Decisions taken at the meeting will be irreversible and once the harm has occurred, it cannot be undone. The actions of the MEC are subverting the autonomy of the municipal council and will cause serious and irreparable harm to the Municipality's constitutionally guaranteed autonomy.

[39] The speaker lastly stated that they had no alternative or satisfactory remedy available other than what was being sought. It was the only mechanism available against the impugned conduct and decision taken by the MEC.

[40] The speaker dealt with the review of the MEC's impugned decision. Many of the points raised were already referred to above and will not be repeated, except that the speaker contended that the MEC's decision to call the meeting was irrational as the MEC did not conduct her own investigation. There is accordingly no guarantee that the majority of councillors requested the meeting. The decision of the MEC to assume the speaker's power in terms of section 29(1) of the Structures Act was thus argued to be irrational and falls to be reviewed and set aside

[41] The MEC filed a very brief answering affidavit, stating that most issues were common cause except for the following:

(a) That the signatures of the councillors appended to the petition to the speaker are forged 'without proffering any basis for such'. It was submitted that the signatures were genuine. The MEC did not elaborate on what basis it was submitted that the signatures were in fact genuine.

(b) That the first applicant is not refusing to call the special council meeting as requested. He was clearly refusing and the allegation of forged signatures was used as a ruse to delay or completely frustrate the sitting of the meeting on 30 March 2023. His conduct was a direct contravention of the law and the standing orders.

[42] It was further submitted that the best, reliable and undisputed method to verify the signatures was to request each signatory to confirm or dispute his or her signature. It was proposed that the person who was designated by the MEC to preside over the meeting on 30 March 2023, should be directed to have on the agenda as the first item, the verification of the petitioner's signatures. It would therefore be unnecessary to delay the meeting.

[43] The MEC prayed for an order that the matter be struck off the roll with costs and that the signatures of the petitioners be verified before the meeting continues.

[44] Counsel for the applicants, Mr G Madonsela SC, appearing with his junior, Mr I Veerasamy, provided me with a helpful note for oral argument which contained their main submissions and the authorities relied on. I will only highlight a few of the points raised in argument before me.

[45] It was submitted with reference to section 151(3) of the Constitution that a municipality is autonomous and that there should be no interference from government. The only instance where interference would be justified is in terms of section 139 of the Constitution which provides for the intervention by the relevant provincial executive if a municipality cannot or does not fulfil its executive obligations.

[46] It was also submitted that the MEC should have engaged with the speaker and the municipal manager before taking the decision to call the special meeting. The MEC was made aware of the speaker's concerns but simply ignored the speaker and the reasons provided by him for requesting a period of 14 days before convening the meeting.

[47] It was further submitted that the request made to the speaker in terms of section 29(1)(a) of the Structures Act must be a valid request. Reliance was placed on *Dhlamini v The City Manager of the City Ekurhuleni Metropolitan Municipality and others*<sup>2</sup> where the court upheld the speaker's argument that section 29(1A) of the Structures Act only empowered the city manager to call a meeting if the speaker refused to agree to a valid request for such a meeting by the majority of the councillors. It was held that a valid request is one that *inter alia* complied with the rules of council. It was submitted that in the present case, the speaker did not reject a valid request and there was accordingly no refusal to call a meeting. It follows that the MEC's intervention was unlawful.

[48] I was also referred to the provisions of rule 8(3) of the standing orders in terms of which a request for a special meeting shall be accompanied by a written statement giving reasons why the intended business was urgent that it could not be conducted in a normal meeting of council. As mentioned above, this was not contained in the request by the councillors for a special meeting.

[49] In the written heads of argument, it was submitted that the MEC failed to offer an explanation as to why she did not consult, investigate or seek clarity as to the reasons why the speaker did not call the meeting.

[50] When dealing with the requirements for an interim interdict, it was further submitted in the written heads of argument that 'a *prima facie* right may be established by demonstrating prospects of success in the review'. Reliance was placed on *South African Informal Traders Forum and others v City of Johannesburg*

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<sup>2</sup> *Dhlamini and another v City Manager of The City of Ekurhuleni Metropolitan Municipality and others* [2023] ZAGPJHC 147 paras 22-25, and 42.

and others<sup>3</sup> and *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and others*.<sup>4</sup> It was submitted that the applicants had a strong case on the merits in the review. The applicants furthermore had a right and an obligation to ensure that council meetings are convened lawfully. It also had a right, if not an obligation, to ensure that the MEC does not unlawfully ‘trench on the constitutional autonomy of Municipal Councils’.

[51] Counsel for the first respondent, Mr I Pillay SC, appearing with a junior, whose name is not clear from the record, made submissions regarding the speaker’s allegations that 28 of the signatures on the petition were fraudulent or forged. He referred to the speaker’s affidavit and in particular to para 7 where the speaker said the following:

‘It appeared to me that some of the signatures had been inscribed by persons other than the named signatory. I came to this conclusion in that I know the signatories’ signatures very well, having samples of them in my office.’

[52] Mr Pillay submitted that the allegation by the speaker amounts to opinion evidence which is not admissible, not even as part of an urgent application. The applicants have furthermore failed to put up the samples of the signatures referred to. It is not certain whether the objection to the evidence was based on the fact that the speaker was a lay person or whether the evidence was irrelevant. Bearing in mind the subject matter of the application, the evidence was clearly relevant. It is also an accepted common law principle that a lay person is permitted to identify handwriting which then provides *prima facie* evidence of such identification. Section 4 of the Civil Proceedings Evidence Act 25 of 1965 likewise provides for evidence on disputed writings.<sup>5</sup>

[53] It was further submitted that the high-water mark of the applicants’ case and its urgency was that the MEC has failed to respond to the speaker’s

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<sup>3</sup> *South African Informal Traders Forum and Others v City of Johannesburg and Others* [2014] ZACC 8; 2014 (4) SA 371 (CC) para 25.

<sup>4</sup> *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and others and a related matter* [2022] ZACC 44; 2023 (5) BCLR 527 (CC) paras 272 and 279.

<sup>5</sup> P J Schwikkard and S E van der Merwe *Principles of Evidence* 4 ed (2016) at ch8-p97.



correspondence. It was submitted that the MEC was not required to do so as she had a statutory duty to intervene.

[54] It was also submitted by Mr Pillay that the speaker did not provide evidence of what attempts were made to contact the councillors. Reference was made to the allegations by the speaker that he attempted to contact councillors whose signatures he suspected to be fabricated but that he had been unable 'to receive communication from them'. Bearing in mind the limited time available, it is not sure what was expected of the speaker.

[55] It was submitted that the speaker and the municipal manager clearly refused to convene a meeting and that any concerns could have been addressed by asking the councillors at the meeting to confirm their signatures.

[56] It was further submitted that no resolution was attached to the speaker's founding affidavit authorising the bringing of this application. The majority of the councillors sought to call a special meeting and would not have authorized the bringing of this urgent application. This point was not raised by the MEC in her answering affidavit.

[57] In reply, Mr Veerasamy submitted that the MEC ignored the complaint of the speaker. She should have engaged with the applicants and asked them why they were not complying with the request. The alleged breach by the speaker should have been investigated by the MEC. Reliance was placed on *Premier, Gauteng and others v Democratic Alliance and others*.<sup>6</sup> Although the Constitutional Court was dealing with an intervention in terms of section 139(1) of the Constitution, it referred in para 108 to section 106(1) of the Local Government: Municipal Systems Act 32 of 2000, in terms of which an MEC who has reason to believe that a municipality in his province cannot or does not fulfil a statutory obligation, must, by written notice to the municipality, request it to supply the MEC with any information it needs. I was also referred to para 118 where it was held that '[i]n the spirit of co-operative governance and intergovernmental relations, it was necessary for the provincial government to

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<sup>6</sup> *Premier, Gauteng and others v Democratic Alliance and others* [2021] ZACC 34; 2022 (1) SA 16 (CC).

engage with the speaker in order to determine whether the executive obligations were unfulfilled and the reason therefor'. Mathapo AJ ultimately made an order in terms of which the MEC had to appoint a person or committee to investigate the cause of the deadlock of the council.

[58] As far as the submissions made on behalf of the MEC regarding the challenge to the applicants' authority to bring the application are concerned, Mr Veerasamy submitted that the MEC failed to challenge the applicants' authority. If she wanted to do so, she should have utilised the provisions of Uniform rule 7.

## **Discussion**

[59] For the sake of convenience I will deal with the issue of authority raised in the previous paragraph first. In terms of Uniform rule (7)1 the authority of anyone to act on behalf of a party may, within 10 days after it has come to the notice of a party, be disputed. In *ANC Umvoti Council v Umvoti Municipality*<sup>7</sup> Govern J dealt extensively with this issue and held that rule 7(1) must be used and is the only appropriate procedure to use. The MEC has not utilised this procedure. I agree with what was further held by Govern J, namely that it was accordingly not necessary for the applicants to prove the authority to initiate the application.

[60] Attached to the speaker's founding affidavit was an unreported judgment penned by Ncube J in the matter of *Nongoma Local Municipality and 3 others v The MEC for Co-Operative Government and Traditional Affairs and others*.<sup>8</sup> It contained his reasons for an interim order he granted in an urgent application. The matter, similar to the present matter, involved a rejection by the speaker of a request to convene a special meeting where after the MEC was approached to designate a person to call and chair the meeting of the council. The purpose of the meeting was to debate the removal of the speaker and the mayor on a vote of no confidence. The meeting took place where after the urgent application was brought before court.

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<sup>7</sup> *ANC Umvoti Council Caucus and others v Umvoti Municipality* 2010 (3) SA 31 (KZP) paras 28-29.

<sup>8</sup> *Nongoma Local Municipality and 3 others v The MEC for Co-Operative Government and Traditional Affairs and others* (KZP) unreported case no 2846/23P. The matter was heard on 24 February 2023 but it is not recorded when the reasons were handed down.

[61] At para 14, Ncube J dealt with the question of urgency and *inter alia* held that the unlawful removal of the speaker and the mayor has a negative effect on service delivery.

[62] It is clear from the facts of the matter before me that the speaker was placed in an invidious position. He had to act in terms of the relevant legislation and standing orders but also had to satisfy himself that a lawful request was placed before him. The nature of the motions to be considered no doubt would have had serious consequences for the Municipality and future service delivery. The respondents demanded strict compliance with the rules and legislation but as mentioned above, the petition for a special meeting failed to comply with the standing orders in one important aspect, namely why the matter was so urgent that it could not wait for an ordinary meeting.

[63] In my view, the speaker's doubt in respect of the authenticity of the signatures clearly deserved to be investigated. His request for time to do so does not appear unreasonable, especially bearing in mind what was held in *Dhlamini* regarding the validity of a request for a meeting.

[64] The MEC proceeded to convene a meeting with no reference to the speaker or the municipal manager. She failed to respond to the speaker's letter of 23 March 2023, despite the fact that he, in my view, raised serious issues in the letter. She made no apparent efforts to investigate the issues. A proposal is made that prior to the meeting, each signatory or councillor should be asked to verify his or her signature. One would hardly expect someone to admit that his or her signature was forged by someone else if the ultimate goal was to force the speaker to call a meeting. It is also unclear in what way the MEC considered the speaker and the municipal manager 'unable' to comply with the Structures Act.

[65] The applicants addressed the requirements of an interim interdict in great detail in the founding papers. I was satisfied that a case had been made out for urgency and for the relief claimed. I was further swayed by the undisputed fact that the MEC called a meeting without at all engaging with either the speaker or the municipal manager, especially considering the serious consequences of what was to

be decided upon at the meeting. Had the meeting been allowed to proceed, the consequences of a successful vote to oust the speaker and other officials by far outweigh any harm the respondents stand to suffer should the meeting simply be delayed to ensure the speaker's concerns are addressed. As far as the merits of the review is concerned, I won't express any strong views on this issue as it is for the court hearing the matter for final relief to decide. I am however, prima facie, of the view that the applicants have prospects of success. Section 29(1A) of the Structures Act is clearly open to abuse by provincial government, especially in a politically charged environment and its potential impact on volatile situations perhaps need careful reconsideration.

[66] It is for these reasons that I granted the order as set out above.

**E BEZUIDENHOUT J**

Date of hearing: 29 March 2023

Date of hand down of reasons for judgment: 22 May 2023.

The reasons were handed down by distribution via email and publication on SAFLII

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