



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

**CASE NUMBER: 11032/2024P**

**In the matter between:**

**NONGOMA LOCAL MUNICIPALITY**

**FIRST APPLICANT**

**SIPHO BHEKISIZWE NKOSI**

**SECOND APPLICANT**

**BHEKOKUHLE OTTO MENYUKA**

**THIRD APPLICANT**

**AND**

**MEMBER OF THE EXECUTIVE COUNCIL FOR  
COOPERATIVE GOVERNANCE &  
TRADITIONAL AFFAIRS (KWAZULU-NATAL)**

**FIRST RESPONDENT**

**A B MNKATHI**

**SECOND RESPONDENT**

**B W NDLOVU**

**THIRD RESPONDENT**

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**JUDGMENT**

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**P C BEZUIDENHOUT J:**

[1] Applicants brought an urgent application for the relief set out in the First Order Prayed. The relief which is sought therein is that First Respondent's decision to second Second and Third Respondents as the Acting Municipal Manager and Acting Chief

Financial Manager be suspended. Secondly that Second and Third Applicants are authorised to perform their functions in their positions per the council resolution of 24 June 2024. Thirdly that First Respondent is interdicted and prevented from introducing the Second and Third Respondents to the Nongoma Local Municipality and fourthly costs for the First Order Prayed be reserved for decision by the court hearing the Second Order Prayed.

[2] The relief in the Second Order Prayed relates to review proceedings in respect of the decision which was made by First Respondent seconding Second and Third Respondents to First Applicant.

[3] The Municipal Manager and Chief Financial Officer of First Applicant had been arrested for fraud and money laundering and as a result thereof were placed on special leave. Second Applicant was then appointed as the Acting Municipal Manager and Third Applicant as the Acting Chief Financial officer each for a period not exceeding 3 months. The decision was taken by resolution of the council on 28 March 2024. On 6 May 2024 First Respondent appointed Second and Third Applicants in the positions of Acting Municipal Manager and Chief Financial Officer for a period not exceeding 3 months with effect from 1 April 2024. This period then ended on 30 June 2024. This was after First Applicant addressed a letter to First Respondent on 28 March 2024 requesting the acting appointments.

[4] On 21 June 2024 the council of First Applicant resolved that the contracts of Second and Third Applicants be extended for a further 3 months. On 24 June 2024 the Mayor of First Applicant addressed a letter to First Respondent requesting the extension of the acting appointments of both Second and Third Applicants with effect from 1 July

2024 in accordance with the resolution that was taken by the council of First Applicant. The letter states that the Municipality would like to make submissions to the MEC for extension of the acting appointments of Second and Third Applicants. It was requested that it be extended for a further period of 3 months from 1 July 2024. It was requested in terms of section 54 A and 56 (1)(a)(ii) and (1)(b) of the Municipal Systems Act 32 of 2000.

[5] On 12 July 2024 First Respondent responded to the request of the Mayor of First Applicant for the extension of the appointments of the two officials. In the said letter it was stated that their attention was drawn to sections 54(2)A and 56(1)(c) of the Local Government Municipal Systems Act 32 of 2000 which provides that a senior manager appointed in an acting capacity may not be appointed to act for a period exceeding 3 months provided that the Municipality may in special circumstances and on good cause shown apply in writing to the MEC for local government to extend the period of appointment. It stated that the Council did not have the authority to approve any extension of the acting appointments and that it was therefore *ultra-vires*. It stated that in terms of section 154 of the Constitution and section 105 of the Municipal Systems Act First Respondent was empowered to assess the support needed by municipalities and as a support measure has seconded Ms A B Mnikathi as the Acting Municipal Manager and B W Ndlovu as the Acting Chief Financial Officer for a period of 3 months with effect from 15 July 2024.

[6] At 22h06 on 15 July 2024 First Respondent advised First Applicant by email that the two individuals who have been seconded would be brought to be introduced to the Municipality, on 17 July 2024 at 11h00.

[7] On 16 July 2024 First Respondent was requested by First Applicant to rescind the secondment of the two officials. The urgent application was then issued.

[8] It was submitted by Mr. Kuboni on behalf of Applicants that First Respondent relied on the powers set out in section 54A(6)(a)(b) of the Systems Act but that it did not have the power to appoint the seconded officials as this could only be done at the request of the council. It therefore exercised a power that it did not have. It was therefore submitted that the prospects of success on review were good.

[9] It was submitted by Mr. Dickson SC on behalf of Respondents that in terms of section 41 of the Constitution and the Inter of Governmental Relations Framework Act 11 of 2005 that as both parties were government departments they first had to attempt to settle the issue before an application was brought and that there was no attempt to settle. It was further submitted that there was no urgency as the notice was only granted the day before. He also referred to the provisions of section 54A which I have mentioned above.

[10] It was submitted by Mr. Kuboni that the Inter-Governmental Relations Framework Act did not apply as was found in the case of *Bitou Municipality v Minister of Local Government, Western Cape & others* (2021) 42 ILJ 993 (LAC) para 48-50. It held at paragraph 51 "Section 39(1)(a) of IGFRA provides the complete answer. It can hardly be contended that section 54A of the Systems Act is not "other national legislation" that provided resolution mechanisms and procedures, as envisaged in section 39(1)(a). The court a quo's conclusion that First Respondent did not have to first comply with section 45(1) of IGFRA is thus unassailable. "Mr. Kuboni" further submitted that there were

attempts to engage First Respondent as appeared from page 51 of the indexed papers. This issue therefore needs no further consideration.

[11] The matter was urgent and it was triggered by the refusal of First Respondent to cancel the secondments and the communication to bring the seconded persons to First Applicant on 17 July 2024. First Applicant was sent an email the evening of 15 July 2024 stating the seconded individuals would be brought to be introduced on 17 July 2023. First Applicant requested the extension of the acting appointments of Second and Third Applicants on 24 June 2024. First Respondent only replied on 12 July 2023 as set out above. The matter therefore did become urgent as the officials were to be introduced on 17 July 2024 and their appointments to be from 15 July 2024.

[12] It was further submitted by Mr. Dickson SC that the relief sought in paragraph 2.2 of the First Order Prayed could not be granted as it would result in an order for which there is no authority to do so. The Court would then be granting itself powers which it does not have. First Applicant can still consider whether to approach First Respondent and it was accepted by Mr. Dickson SC that the relief in paragraph 2.1 of the First Order Prayed could be granted as First Respondent did not have the powers to make such appointments. If that is so the effect would be that the relief in paragraph 2.3 can also be granted as First Respondent did not have the authority to appoint the seconded officials.

[13] Section 54 A (1)(b) of the Local Government Municipal Systems Act 32 of 2000 reads:

“The Municipal Council must appoint an Acting Municipal Manager under circumstances and for a period as prescribed.”

Subsection 2 A (a) states:

- “(a) A person appointed in terms of subsection (1)(b) may not be appointed to act for a period that exceeds 3 months.
- (b) A Municipal Council may, in special circumstances and on good cause shown, apply in writing to the MEC for Local Government to extend the period of appointment contemplated in paragraph (a) for a further period that does not exceed 3 months.”

Subparagraph (6) (a) reads:

“The Municipal Council may request the MEC for Local Government to second a suitable person, on such conditions as prescribed to act in the advertised position until such time as a suitable candidate has been appointed.”

[14] Section 54A therefore provides that the appointment of an Acting Municipal Manager can be extended for a further 3 month period in writing to the First Respondent after good cause or special circumstances has been shown. Subsection (6)(a) provides that the council may request the secondment of a suitable person to act in the advertised position until a suitable candidate has been appointed. If such a person has not be seconded within 60 days by the NEC the Municipal Council may request the Minister to second a suitable person until such time as a suitable candidate has been appointed.

[15] It would appear from the wording of the section that it is until a suitable candidate has been appointed.

[16] The reason provided by First Respondent for not extending the acting appointments is that the Council was not entitled to extend such terms. It had to apply in

writing to First Respondent to extend the period of appointment as appears from the letter of First Respondent dated 12 July 2024.

[17] First Respondent justifies the appointment of the seconded persons on the basis of the provisions of section 154 of the Constitution and section 105 of the Systems Act that empowers to assess the support needed by municipalities and as a support measure he seconded the two named persons.

[18] It would therefore appear that First Respondent, in terms of the provisions of the Systems Act, can only second persons if there was such a request in writing from the council of a municipality. Although subsection 6 refers to the secondment until a suitable candidate has been appointed it appears that it relates to when there is a vacancy. In the present case there is no vacancy as the appointed Municipal Manager and Chief Financial Officer are only on special leave. However it appears, from the limited information available, that this may be for an indefinite period until the whole process has been finalised that the seconded person may have to be appointed to fill such positions until the process has been completed.

[19] However what is clear from section 54A is that the Council can only appoint such an Acting Manager for a period of 3 months and then only with the consent of the MEC after good cause shown, have it extended for another period of 3 months. First Applicant acted incorrectly when its Council extended the acting appointments and only thereafter requested First Respondent to extend it. There was therefore no valid request to do so and also no special circumstances or good cause set out in the request. First Applicant may have to rescind the resolution extending the acting appointments and

then submit the request for the extension to First Respondent in terms of the Systems Act.

[20] First Respondent, in the circumstances appear not to have the necessary authority to second staff to First Respondent on its own and such secondment is therefore also not valid and must be rescinded. Section 154 of the Constitution and section 105 of the Systems Act in my view does not grant First Respondent such right in these circumstances.

[21] Therefore the decision by the Council of First Respondent to extend the acting appointments, cannot stand but the appointment of the seconded persons can also not stand and it would appear that the matter would have to be dealt with in terms of, the provisions of the Systems Act.

[22] The following order is made:

1. An order is granted in terms of paragraph 2, 2.1, 2.3 and 2.4 of the First Order Prayed in the Notice of Motion.
2. The relief in the Second Order Prayed is adjourned sine die.

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P C BEZUIDENHOUT J



Date Reserved: 19 July 2024

Date Delivered: 31 July 2024

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