

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: B2057/2023

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 26 April 2023 E van der Schyff

In the matter between:

DEFENDERS OF THE PEOPLE

1ST APPLICANT

VINCENT SIPHO MOKONE

2ND APPLICANT

and

THE MUNICIPAL MANAGER: THE CITY OF
TSHWANE METROPOLITAN UNIVERSITY

1ST RESPONDENT

THE CITY OF TSHWANE METROPOLITAN
MUNICIPALITY

2ND RESPONDENT

INDEPENDENT ELECTORATE COMMISSION

3RD RESPONDENT

RUPHOS MPHAHLELE

4TH RESPONDENT

MAKGABO ALEX KOBO

5TH RESPONDENT

JUDGMENT

Van der Schyff J

Introduction

- [1] The applicants approached the court on an urgent basis. They seek temporary relief in that they seek an order interdicting the fourth respondent (Mr. Mphahlele) from representing to the Electoral Commission and the public that the second applicant (Mr. Mokone) has been expelled from the first applicant (DOP), and instructing the Municipal Manager and /or Chief of the Electoral Commission to declare a vacancy on the DOP's PR seat within the Council for the City of Tshwane Metropolitan Municipality. In the event that the Municipal Manager of the Chief Electoral Commission has been instructed to declare the said vacancy, interdicting the first, second, and third respondents from acting in accordance with the instructions of Mr. Mphahlele, pending the finalization of a review to set aside various orders of the third and fourth respondents. The DOP also wants to interdict the respondents from substituting Mr. Mokone with the fifth respondent, Mr. Kobo.
- [2] The application was ostensibly served by email on the first to third respondents, and on Mr. Mphahlele and Mr. Kobo's 'attorneys of record.' This manner of service when legal proceedings are instituted, e-mail service, is not provided for in terms of the Uniform Rules of Court, but Rule 6(12) of the Uniform Rules of Court provides that the form of service can be condoned in an urgent application. The question that the presiding judge has to ask herself is whether there was effective service. Would the respondent have become aware of the application?
- [3] The first to third respondents, and the fifth respondent, were not before the court. The fifth respondent, Mr. Kobo, has a direct interest in the litigation at hand. Mr. Kobo is described in the application as 'an adult male person with full legal capacity 'C/o Ruphus Mphahlele Office No.3 Rentco Building...'. The application was not served on Mr. Kobo's work or residence address. There is no way in which this court can determine whether Mr. Kobo is aware of the application.

- [4] As for service on the first to third respondents, it is not explained in the service affidavit who the individuals are to whom the emails were ostensibly sent, and whether it was received or read by them. This, in my view, is sufficient reason to remove the matter from the roll to allow for proper service.
- [5] As for the extreme urgency with which this application was brought, the applicants allege that they only became aware on 21 April 2023 through Mr. Mphahlele's Facebook, that Mr. Mokone is no longer a member of the DOP. The applicants, in turn, state that Mr. Mphahlele was recalled as party leader in a National Lekgotla held on 18 March 2023. A National Task Team has since been appointed with a mandate to call for a National Elective Conference.
- [6] In annexure 'DOP 02' to the founding affidavit, a letter dated 19 March 2023, the deponent to the founding affidavit states, that during a meeting of 18 March 2023, '[i]t was discussed that the party has had at least four secretaries general in the past six months. All of whom were unconstitutionally suspended by the President, Defender Ruphos Mphahlele. ... The National Working Group Meeting was requested in 2022, but instead, those who called the meeting were victimized and put on unlawful suspensions". Thus, it is evident that the applicants were aggrieved, rightly or wrongly, by Mr. Mphahlele's conduct, as long ago as 19 March 2023.
- [7] On the applicants' own version, Mr. Mokone was aware as early as 18 March 2023 that Mr. Mphahlele would not accept the outcomes of the meeting on 18 March 2023. A disciplinary hearing was called for on 14 April 2023, and Mr. Mphahlele was expelled from DOP. The applicants should have approached the court already at this point for a determination regarding the disputed leadership. The applicants were also already informed in an email from the third respondent on 28 March 2023 that they needed to approach the court for relief regarding their disputed leadership issue.
- [8] Despite the history of Mr. Mphahlele's alleged unconstitutional conduct, this application was brought on the basis of the utmost urgency. The notice of motion was signed on 24 April 2023. The emails were sent by 18h14, and the respondents

were required to file their notices of intention to oppose and answering affidavits by 10h00 on 25 April 2023.

[9] It is trite, that when an applicant does not approach the urgent court at the earliest opportunity after the need for an urgent court application arose, any urgency that follows, is regarded as self-created urgency. Courts are generally not inclined to come to the aid of litigants whose failure to approach the court timeously leads thereto that they later approach the court on a basis of extreme urgency. Both applicants were aware of the ensuing leadership dispute, and the third respondent's view that they should approach a court for relief, as early as 28 March 2023. Had they acted at that point, the application could have been properly and effectively served, and the papers could be exchanged in an orderly fashion. This would have benefitted the applicants themselves because they would have been able to file a reply to any respondent's opposing affidavit.

[10] In these circumstances, I agree with the fourth respondent's counsel that the applicants, in any event Mr. Mokone, is the author of his own misery in that his failure to approach the court timeously for a declaratory order, resulted in him having had to approach the court on severely truncated timelines, and without serving the application on Mr. Kobo. As a result, the application stands to be struck from the roll.

[11] It is also necessary to reflect on the fact that the application, as it stands, is riddled with factual disputes, and issues that need clarification. Mr. Mokone's *locus standi* to bring this application, and Mr. Monyama's authority to depose to the founding affidavit, are questioned by Mr. Mphahlele. Mr. Mphahlele claims that the deponent of the applicants' founding affidavit was expelled from the DOP as far back as 4 April 2022.

[12] It is clear that a leadership dispute underpins this application. In my view, Mr. Monyamane did not make out a case that he has the necessary authority to depose to an affidavit on behalf of the DOP or enter the DOP into litigation. He describes himself as a member of the DOP's National Task Team and states that he is authorised to depose to the affidavit on behalf of the DOP due to his position as the Task Team Leader. He failed, however, to substantiate his claim with reference to

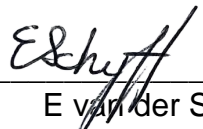
the DOP's Constitution. Due to the extreme urgency and truncated time period within which the application was launched, the applicants did not reply to the answering papers that were filed after the applicant's counsel made his submissions. Mr. Mphahlele's assertion that Mr. Monyamane was expelled from the DOP, already in 2022, thus stands uncontested. On the papers, as it stands, neither Mr. Monyamane, nor Mr. Mokone made out a case that they were authorised to institute litigation on behalf of the DOP.

[13] As a result, the application stands to be struck off the roll with costs.

ORDER

In the result, the following order is granted:

1. The application is struck from the roll with costs.



E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

For the applicant:	Adv. H. Legoabe
Instructed by:	LEOFI LESHABANA ATTORNEYS
For the respondent:	Mr. Maboko
Instructed by:	NJ NDHLOVU ATTORNEYS
Date of the hearing:	25 April 2023
Date of judgment:	26 April 2023