



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

CASE NO. 14327/2023P

In the matter between:

NOLUTHANDO PATRICIA DLAMINI

FIRST APPLICANT

GABRIEL ZAMANI MALEMBE

SECOND APPLICANT

MBONGISENI RICHARD DLAMINI

THIRD APPLICANT

VINCENT SILAM ZONDI

FOURTH APPLICANT

VUKANI GWALA

FIFTH APPLICANT

LINDOKUHLE NU ZONDI

SIXTH APPLICANT

MBUYISENI NDABA YAKHE MAJOZI

SEVENTH APPLICANT

and

MUNICIPAL MANAGER

UMVOTI LOCAL MUNICIPALITY

FIRST RESPONDENT

INDEPENDENT ELECTORAL COMMISSION

SECOND RESPONDENT

**MEC FOR CO-OPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS KAWAZULU-NATAL**

THIRD RESPONDENT

COUNCILLORS FOR UMVOTI LOCAL MUNICIPALITY FOURTH RESPONDENT

UMVOTIL LOCAL MUNICIPALITY FIFTH RESPONDENT

MINISTER OF CO-OPERATIVE GOVERNANCE

AND TRADITIONL AFFAIRS

SIXTH RESPONDENT

JUDGMENT

P C BEZUDENHOUT J:

[1] In this matter Applicants are seeking interim relief pending an application to review their expulsion from the council for the Umvoti Local Municipality. The only Respondent which is not opposing the relief claimed is the Independent Electoral Commission (Second Respondent). The Municipal Manager Umvoti Local Municipality, the Council for Umvoti Local Municipality and the Umvoti Local Municipality (First, Fourth and Fifth Respondents) were represented by Mr Luthuli and the MEC for Co-operative Governance and Traditional Affairs Kwazulu-Natal (Third Respondent) by Mr Pammenter SC who appeared together with Ms Mbonena. Applicants were represented by Mr Xulu.

[2] A similar application was brought by Petros Mthandeni Ngubane as the Applicant represented by Mr Moodley SC but in that matter the Respondents are different in that Mr Ngubane was also a member of the Umzinyathi District Municipality.

[3] Both matters result from the expulsion of Applicants from the Umvoti Municipality council and although there are many similarities between the two applications I will deal with them separately. It was however submitted by Mr Xulu appearing on behalf of Applicants in case number 14327/2023P and Mr Moodley SC appearing in case number

14399/23P for Applicant that in the event of Applicants being successful they both seek an order similar to that which is sought in case number 14399/2023P.

[4] Only interim relief pending the review application is sought at this stage. The main issues are that of urgency and whether a case has been made out for interim relief. There was further contentions by Respondents that there was non-joinder of the other political parties in the council.

[5] Mr Singh appeared on behalf of the Abantu Batho Congress handed up an affidavit and requested that the party be granted leave to intervene. Mr Xulu submitted he did not receive the affidavit and Mr Pammenter SC and Mr Luthuli submitted that they have no objection if the Abantu Batho Congress is granted leave to be joined. Mr Singh aligned himself with the Respondents submissions and made no further submissions.

[6] The expulsion of Applicants results from allegations that they did not attend certain meetings of the Umvoti Council. It is contended by Applicants that on 18 September 2023 Third Respondent communicated her decision to First and Second Respondent. This was after Third Respondent appointed a committee of three persons to conduct an investigation on 4 September 2023. Applicants were expelled without observing the procedure provided for in Rule 16(8) read with section 3 of PAJA. It was further contended that the sanction was not appropriate in the circumstances.

[7] The complaint was laid by Councillor Mavundla with the Speaker of Fifth Respondent that three meetings listed were allegedly not attended by Applicants. On 5 July 2023 at a meeting to consider the complaint a Rules Committee was established of which the said Mr Mavundla was a member of the committee. This was irregular as he was the person that laid the complaint and should therefore not have been part of the

Special Rules and Ethics Committee. Applicants were requested to provide written explanations by 19 July 2023 which was done. It was submitted on behalf of Applicants that First, Second and Seventh Applicants were proportional representatives where the other Applicants were elected members of the Council.

[8] It was submitted that there was a duty upon Third Respondent to inform Applicants that she was to remove them and to allow them to make submissions. It was accordingly submitted that there was therefore prospects of success in the review application. The matter was urgent because of the consequences that would follow when the IEC advertises the said vacancies and also that the immediate removal or expulsion of Applicants has severe consequences. It is submitted that the balance of convenience favoured Applicants as they would suffer more than Respondents if interim relief was not granted.

[9] It was submitted by Mr. Luthuli that the case pleaded by Applicants was not what was argued on their behalf. He submitted that the main aim of Applicants was for the Municipal Manager not inform the IEC of the vacancies but this was already done by the Municipal Manager to the IEC on 26 September 2023. The urgency therefore fell away. He submitted that recommendations were made to the Third Respondent in terms of Rule 16(8) and that the process which was followed on 4 September 2023 was not needed and can be abandoned. He further submitted that there was non-joinder of the other political parties that have a direct interest in this matter. He submitted that no case was made out for urgency neither for interim relief to be granted.

[10] Mr Pammenter SC submitted there was non-joinder of the other political parties in council and that this was a fatal error. He submitted if it was a proportional representative then the next one on the list would move up. As far as urgency was concerned he submitted that new elections would have to be held within ninety days and accordingly that there was no urgency. If it was a proportional representative then

as already stated the next one on the list would merely move up. No case had been made out for a loss of income and why the application was brought at such short notice. He submitted that the correct procedure was followed and there was no reasonable prospects of success on review and that interim relief should accordingly be refused.

[11] It was submitted by Applicants that in annexure "A" to Third Respondent's affidavit it set out in paragraph 9.5 that a certain Mr. Makhaye was not to be expelled. It was also submitted that Applicants did not resign and that there was nothing attached to the letter addressed to the IEC on 26 September 2023 that the councillors had resigned as stated in the letter. It was also submitted that no list from which proportional representation could be determined was available.

[12] The letter which was addressed to the Electoral Commission by the Municipal Manager dated 26 September 2023 indicates that there are vacancies for eight councillors and that by-elections should be held to fill these vacancies. It provides the names of eight councillors stating that they were expelled. It then states that the letters of resignation are attached and that their last date was 20 September 2023. Considering the said letter it is improbable that if a councillor was expelled he/she would then sign a letter of resignation. These letters were not attached. The letter requested the IEC to hold by-elections. Accordingly it would appear to me that the urgency which Applicants relies upon is that on the 26 September 2023 the IEC was informed to convene the by-elections. Accordingly the process which would follow would then be detrimental because if the review application succeeds then the whole process which has been put in place by the IEC for elections which could then be completed would have been a waste of time and unnecessary expenditure. Accordingly it would appear to me that it is a matter of urgency that this issue be decided as soon as possible so as to establish whether interim relief should be granted or not. It would be very costly to reverse all the steps taken and appointments made if the review succeeds.

[13] The question of Mr. Mvundla who was the complainant and reported the matter and then also sat on the committee which investigated the matter may be a factor which, on review, the court can find was irregular. Further Applicants were not granted the right to make further submissions to Third Respondent before they were expelled. This can also be a factor which on review could be considered to have been irregular or that the procedure was not fair. Accordingly, considering these factors, it would appear to me that there are prospects of success on review and considering all these factors that the balance of convenience favours Applicants more than Respondents and that accordingly the granting of interim relief is justified in the circumstances.

[14] In my view it was not necessary to join the other political parties as the relief claimed only affected the rights of Applicants. If the review is not successful then the other parties would be entitled to contest the by-elections which would then be held.

[15] As the parties are not exactly the same in both cases it is difficult to grant an order by merely stating that the order herein should be as per the order in case number 14399/2023P. The order would have to be amended to ensure that it is in line with that of case number 14399/2023P. I have amended the order accordingly.

[16] I can see no prejudice to any of the parties if the Abantu Batho Congress is granted leave to intervene as a Respondent.

Order

1. An order is therefore granted in terms of paragraphs 1 and 2 of the order attached hereto dated and initialled.
 2. The Abantu Batho Congress is granted leave to intervene and to be joined as the Seventh Respondent in this case.
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P C BEZUIDENHOUT J.

1.

That a Rule *Nisi* do hereby issue calling on the Respondents and any other interested parties to show cause before the above Honourable Court, on the 10th day of November 2023 at 9h30 or so soon as counsel may be heard why, pending the final determination of the relief sought in Part B, an order in the following terms should not be granted.

- 1.1 That the decision taken by the Third Respondent on 18 September 2023 and communicated to the Applicants on 19 September 2023 to remove Applicants as Councillors of the Umvoti (Greytown) Local Municipality (Fifth Respondent) be and is hereby stayed with immediate effect:
- 1.2 That the First Respondent, Second Respondent, Third Respondent, Fourth Respondent, Fifth Respondent and Sixth Respondent be and are hereby interdicted and restrained from implementing the decision by the Third Respondent taken on or about 18 September 2023 to remove Applicants as Councillors of the Fifth Respondent.
- 1.3 That the First Respondent, Second Respondent, Third Respondent, Fourth Respondent, Fifth Respondent and Sixth Respondent are interdicted from taking any action to call for or hold by-elections in respect of the seats held by Applicants as Councillors on the council of the Fifth Respondent.
- 1.4 That the Speaker of Umvoti Local Municipality alternatively the First Respondent be and is hereby directed and ordered to give Applicants proper notice of any Council Meeting to be held in respect of the Fifth Respondent and he or any other person shall not block Applicant from attending and participating at such Council Meeting.
- 1.5 The First Respondent, Fourth and Fifth Respondents are ordered to pay Applicants costs on an attorney and client scale such costs are to include the costs consequent upon the employment of Senior Counsel if applicable and in

the event of any of the other Respondents opposing the application, they be ordered to pay the costs of the application on the same scale as referred to above jointly and severally with the first, Fourth and Fifth Respondents, the one paying the other to be absolved.

2.

That pending the final determination of the review application as set out in Part B of the Notice of Motion, the orders referred to in sub-paragraphs 1.1 to 1.4 operate as interim interdicts and/or orders against the respective Respondents.

JUDGMENT RESERVED ON: 2 OCTOBER 2023

JUDGMENT HANDED DOWN: 6 OCTOBER 2023

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