



Reportable:	YES/NO
Circulate to Judges:	YES/NO
Circulate to Magistrates:	YES/NO
Circulate to Regional Magistrates:	YES/NO

**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION – MAHIKENG**

CASE NO : UM199/23

In the matter between:

THABO APPOLUS

1st APPLICANT

CLLR LORATO SETHLAKE

2nd APPLICANT

CLLR LEBOGANG JACOBS

3rd APPLICANT

CLLR VUYISWA MORAKILE

4th APPLICANT

NELSON MONGALE N.O

5th APPLICANT

And

NALEDI LOCAL MUNICIPALITY

1st RESPONDENT

NALEDI LOCAL MUNICIPAL COUNCIL

2nd RESPONDENT

CLLR PGC GULANE N.O (Speaker of Council)

3rd RESPONDENT

CLLR J GROEP N.O (Mayor)

4th RESPONDENT

**Mr MODISENYANE SEGAPO N.O
(Newly Appointed Municipal Manager)**

5th RESPONDENT

**The MEC FOR COOPERATIVE
GOVERNANCE HUMAN SETTLEMNENT
AND TRADITIONAL AFFAIRS
NORTH WEST PROVINCE**

6TH RESPONDENT

**SOUTH AFRICAN LOCAL GOVERNMENT
ASSOCIATION
(SALGA)**

7th RESPONDENT

**PROVINCIAL SECRETARY:
NORTH WEST PROVINCE**

8th RESPONDENT

*Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail. The date that the judgment is deemed to be handed down is **27 May 2024 at 16h00.***

ORDER

- (i) The application is struck from the roll for lack of urgency with costs.
- (ii) The applicants are to pay the costs jointly and severally, the one paying the other to be absolved.

JUDGMENT

Reddy AJ

Introduction

[1] On 25 April 2024, this application served before me in urgent court. On the same day, the application was struck off the roll for lack of urgency. The applicants were ordered to pay the costs jointly and severally the one paying, the other to be absolved. On 09 May 2024, the applicants filed a Notice in terms of Rule 49(1)(c) of the Uniform Rules of Court, requesting reasons for same. This request was received by me on 20 May 2024, on return from duties in the Klerksdorp's Circuit Division of the High Court. What follows is my reasons for the order.

[2] In urgent court, the applicants sought the following relief:

“[1]Dispensing with the Rules relating to forms, services and time periods as prescribed by the Uniform Rules of this court and directing that the matter be enrolled and heard as an urgent application in terms of Rule 6(12).

[2]The First- Fifth Respondents’ Letter to the Honourable Judge President and their application for leave to appeal the judgment of Madam Justice Reid dated the 18th of March 2024 under case number UM199/23 in due course and their Rule 30 Notice dated the 8th of April 2024 is hereby declared to be irregular step(s) and set aside.

[3]The First to Fifth Respondents are hereby declared to be in contempt of the court orders and judgments of Madam Justice Reid dated 17th of November 2023 and 18th of March 2024 respectively under the above case number.

[4]The First to Fifth Respondents are hereby declared to be vexatious litigants pursuant to the provisions of section 2(1) (b) of the Vexatious Proceedings Act 3 of 1956 (“the Act”).

[5] The respondents are barred from instituting any further appeals against the judgment(s) granted under case number UM 199/23 against the applicants in this Division, any Division of the High Court of South Africa and or in any inferior court without the leave of the inferior court, the Judge President/Deputy of the High Court as the case may be, as contemplated in section 2(1)(b) of the Act.

[6]The Third to Fourth Respondents are directed to immediately remedy the contempt by giving effect to the order(s) and judgments granted by Madam Justice Reid on the 17th of November 2023 and the 18th March 2023 under the above case number.

[7]Should the Third and Fourth Respondents fail to remedy the contempt within twenty-four hours (24hrs) of the granting of this order, the Applicants are hereby granted leave to approach the court on the same papers duly supplemented for an order of the Third, Fourth and the Fifth Respondents’ committal to imprisonment for a period to be determined by the court.

[8]The First-Fifth Respondents be and are hereby ordered to pay the costs of this application on attorney and own client scale which costs must include the costs of employing two counsels jointly and severally the one paying the other to be absolved.

[9]Further and alternative relief as they court may deem fit considering the unique circumstances of this case.

The parties

- [3] A proper introduction of the parties is peremptory for ease of reading. The first applicant is Thabo Appolus a Director of Corporate Services in the employ of the first respondent. The second applicant is Lerato Sethlake. The third applicant is Lebogang Jacobs. The fourth applicant is Vuyiswa Morakile. The second, third and fourth applicants are councillors of the second respondent under the banner of the African National Congress (“the ANC”). The fifth applicant is Nelson Mongale a former Acting Municipal Manger of the first respondent.
- [4] The first respondent is Naledi Local Municipality a Local Municipality established in terms of section 155 of the Constitution of the Republic of South Africa, Act 108 of 1996, read with Part 2 of Chapter 1 of the Municipal Structures Act 117 of 1998 and Chapter 2 of the Municipal Systems Act 32 of 2000. The second respondent is Naledi Local Municipal Council the highest decision-making body of the first respondent. The third respondent is Councillor PGC Gulane a speaker of the second respondent. The fourth respondent is Councillor J Groep a Mayor of the first and second respondent. The fifth respondent is Modisenyane Segapo a Municipal Manager of the first respondent who was appointed on 10 of March 2023 pursuant to the impugned decision. The sixth respondent is the MEC for Cooperative Governance Human Settlement and Traditional Affairs, North West Province. The seventh respondent is South African Local Government Association (“SALGA”) a constitutionally mandated organization responsible for local government oversight. The seventh respondent is joined as an interested party. No relief is sought against the seventh respondent save for a cost order in the event of opposition to this application. The eighth respondent is the Provincial Treasury; North West Province. The eighth respondent is joined

herein as an interested party in that one of its personnel was part of the panel which presided over the recruitment process of the Municipal Manager. No costs order is sought against it unless, in the event of opposition.

- [5] The application was opposed by the first to fifth respondents (who will be collectively referred to by the appellation “respondents”). The sixth, seventh and eighth respondents did not enter the fray.

Background facts

- [6] On or about 19 September 2023, this Court, as per **Ried J** issued an order in terms of which the appointment of the fifth respondent as Municipal Manager of Naledi Local Municipality was declared unlawful and set aside. On 29 September 2023, the respondents proceeded to lodge an application for leave to appeal. This had the effect of suspending the order of **Reid J** dated 19 September 2023. The applicants responded with an application within the purview of the legislative provisions of section 18 (3) of the Superior Courts Act 10 of 2013,(“ the SCA”), which provided for the enforcement of the order and judgment of **Reid J**. On 17 November 2023 the enforcement application found favour with **Ried J** . **Reid J** accordingly ordered that the judgment of 19 September 2023, be given effect to pending the appeal process.
- [7] On 20 November 2023, the respondents by way of electronic service notified the applicants of their automatic right of appeal as provided for in section 18(4) of the SCA. Supplementing the latter was correspondence that had been addressed to the Judge President of this Division, in same the respondents acknowledge the peremptory procedure that is be followed in section 18(4) of the SCA being triggered into operation. To this end, on 21 November 2023, Mr Mokete,(“Mokete”) the Registrar of this Court informed the respondents to cohere with the strict procedure as set out in their correspondence dated 21 November 2023.

- [8] On 4 December 2023, the legal representatives of the applicants forwarded correspondence to the erstwhile attorneys of the respondents enquiring on the progress of the appeal as demonstrated in section 18(4) of the SCA. This did not elicit any response.
- [9] On 29 January 2024, the office of the Registrar was contacted to ascertain the progress of the appeal. The Registrar required the Notice of Appeal together with the correspondence dated 4 December 2023 to be forwarded. The same was attended to with the requested documents being emailed to Mokete. A generic automated reply was received from the office of Mokete to the effect that he was on leave for the period commencing 17 January 2024 to 29 January 2024. On 5 February 2024, the applicants enquired as to the status of the urgent appeal. Neither Mokete nor the legal representatives of the respondents reacted. On 6 February 2024 further enquiries were made with Mokete, in which the legal representatives of the respondents were carbon copied.
- [10] On 7 February 2024, Mokete replied. Mokete indicated that the local attorneys filing book had been perused and that the only document that had been filed in this matter was correspondence that was addressed to the Office of the Judge President, dated 21 November 2023. Mokete concluded that “we have communicated with the local attorneys to provide us with a copy of the leave so that we can bring same urgently to the attention of the JP’s office and your office will be notified as soon as we receive same.”
- [11] The applicants contend that despite several follow up emails with the respondents being the *dominus litis* in a matter which is inherently extremely urgent, the legal representatives of the respondents:
- (i) failed and/ or neglected to reply to an earlier letter, which was ignored,
 - (ii) failed to cease the opportunity to file the record, comply with the directives, apply for a hearing date and make any further follow up in the absence of Mokete,

(iii) failed and/ or neglected to request an audience with the Office of the Judge President for the allocation of a hearing date as a matter of extreme urgency, which is contended would have been an exercise in futility given that the urgent appeal file was not in order.

[12] A notification was received that the Judge President had resisted the invitation for the allocation of this matter to the Full Court. The matter had to be remitted to **Reid J**. On again being seized with the matter **Reid J** requested detailed motivation why the Full Court would be the next appropriate court to deal with this urgent appeal. After careful reconsideration of the matter, the applicants (the respondents in the urgent appeal), were of the view that by virtue of requesting a date for the urgent appeal to be argued would be no more than legitimizing an incompetent appeal. This was anchored on the fact that the respondents had not filed an urgent appeal record reply which was crafted to this effect with an urgent application to declare the urgent appeal as being lapsed, which would cause the judgment enforceable.

[13] On 18 March 2024, **Reid J** found that the next highest court for the hearing of the urgent appeal would be the Supreme Court of Appeal. The respondents *in lieu* adhering to the order of **Reid J** of 18 March 2024, again called at the door of the Office of the Judge President, persisting with a prior request for the allocation of a date for the hearing of the urgent appeal before the Full Court, notwithstanding an order of court to the contrary. Ultimately, the respondents brought an application for leave to appeal the judgment of **Reid J** of 18 March 2024.

[14] The applicants contended that the respondents in seeking leave to appeal the judgment of 18 March 2024, constituted a superfluous legal remedy. This the averment continued was founded on the fact that the respondents have been granted leave to approach the Supreme Court of Appeal, with the urgent appeal, which is the substantive application.

[15] On 02 April 2024, a Rule 30 Notice was served on the respondents averring that the respondents had taken an irregular step by serving written correspondence on the Office of the Judge President and by initiating an application for leave to appeal the judgment of 18 March 2024. The Rule 30 Notice was accompanied by a letter of demand which implored of the respondents to implement the judgment. In the absence of the judgment not being implemented the applicants threatened that a contempt of court application would follow. The respondents opted not to reply, in its place proceeded in the filing of a Rule 30 Notice, in countenance to the Rule 30 Notice as delivered by the applicants.

[16] The Rule 30 Notice of the respondents asserted, firstly that the applicants had not afforded them ten(10) days within which to remove the cause of complaint as envisaged in Rule 30(2)(b), secondly, the application for leave to appeal the judgment of 18 March 2024, was brought on 27 March 2024, hence this judgment was suspended. The respondents then proceeded to file the record of the urgent appeal in terms section 18(4) of the SCA, in this Court, notwithstanding an order directing that the next highest Court would be the Supreme Court of Appeal. Reacting to the latter, the applicants penned correspondence which culminated in the following:

“7. We have thus concluded that you are acting through a frolic of your own and further that there is no such directive from the JP. In light of the foregoing, we shall be serving you with our Rule 30 and contempt application on an urgent basis on Monday 15 April 2024.

8. We shall be seeking an adverse punitive costs order against the titular appellants you represent in their personal capacities.

9. We hope you find the above in order.”

[17] The applicants assert that they have been compelled to have initiated this urgent application in response to what the applicants perceived to be vexatious litigation by the respondents. To this end, the applicants continued that had they been successful in this application, an appeal was imminent. The purpose of the appeal in the applicants' view would be no more than to suspend the order from

being effective. If the relief sought by the applicants was not being granted, there would be no finality to this litigation. Moreover, the contention ran that the relief sought was in the interest of justice and fairness.

Urgency

[18] Afore the merit of a purported urgent application is considered, the urgent court must first determine whether the application is indeed urgent, that warrants consideration. Where an applicant fails in convincing the court that they will not be afforded substantial redress at a hearing in due course, the matter will be struck from the roll. This will enable the applicant to set the matter down again, on proper notice and compliance. See: *SARS v Hawker Air Services (Pty) Ltd* [2006] ZASCA 51; 2006 (4) SA 292 (SCA).

[19] Off course where the facts demonstrate that the urgency is self-created, an applicant will fall gravely shy of surpassing the threshold of urgency. In this instance the application will be struck from the roll predicated on the failure to demonstrate urgency. It is peremptory for an applicant approaching the court for urgent relief to set forth explicitly the circumstances which is averred, that render the matter urgent and the reasons why the applicant claims that the applicant could not be afforded substantial redress at a hearing in due course. See: Rule 6(12)(b).

[20] Urgency is fact based within the purview of the exigencies and particularities of the application at hand. As a way of dealing with the question of urgency the applicants contended as follows:

“61. I deal with urgency as matter of abundant caution. The judgments which are being frustrated by the endless appeal processes lodged by the Respondents were obtained in the urgent court. The dilatory tactics by the Respondents seek to defeat the urgency of the enforcement of this matter.

62. This is the same reason why S18(4) provides that the appeal must be prosecuted as a matter of extreme urgency. This extreme urgency applies even to a judgment which would have been obtained in due course. In this present instance, all the judgment pertaining to this matter emanate from the urgent court.

63. I therefore contend that we already have judgments from the urgent court. Their enforcement which has been granted twice cannot be frustrated only for the Respondents to contend that we can obtain substantial redress in due course. We have already obtained redress in the urgent court, and wish to enforce the redress.

64. I therefore submit that the matter is urgent and must be enrolled as such. We have not delayed approaching the court. We afforded the Respondents an opportunity to do the right thing. They have resisted and continued to pursue a stillborn 18(4) Appeal. No question of self-created urgency must thus arise.” (my emphasis)

[21] The respondents asseverate that it is incredible for the applicants to suggest that they should be heard on an extremely urgent basis. Further the respondents contend that the applicants have skirted addressing the respondents' application for leave to appeal the order of **Reid J** of 18 March 2024. A reading of the latter would put paid to any averment of the existence of urgency, so the respondents continued.

[22] Whilst the respondents are alive to the applicants' ostensible frustrations. This cannot be brought to bear on the respondents. The respondents are desirous of having this matter reach finality but only upon due process and not by virtue of an endless barrage of urgent applications which the respondents allege is the litigating strategy of the applicants. The present application, the respondents submitted, not only fails on the merits but is an abuse of process if this Court is continuously approached on the urgent bases. A continuance of this conduct is predicated on misconstrued appreciation of the appeal process, so the respondents continued.

The law

[23] The law on urgency is clear. Urgent applications must be brought in accordance with the provisions of Rule 6(12) of the Uniform Rules of Court, taking due cognizance of the guidance that is provided in *Die Republikeinse Publikasies (Edms) Bpk vs Afrikaanse Pers Publikasies (Edms) Bpk* 1972(1) SA 773 (A) at paragraph 782A - G as well as the well-known case of *Luna*

Meubelvervaardigers (Edms) Bpk v Makin and Another 1977(4) SA 135 (W). See also Sikwe vs SA Mutual Fire and General Insurance 1977 (3) SA 438 (W) at 440G - 441A. The applicable Practice Directives of the Division must be meticulously considered and applied.

[24] Urgent relief as evinced in Rule 6(12) is not simply there for the taking. In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* 2012 4 All SA 570 GSJ at paragraph [6] –[8] in which it was held:

[6] The import thereof is that the procedure set out in rule 6(12) is not there for the taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The Rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the Rules it will not obtain substantial redress.

[7] It is important to note that the Rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his cases in that regard.

[8] In my view, the delay in instituting proceedings is not, on its own, a ground for refusing to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given. The important issue is whether, despite the delay, the applicant can or cannot be afforded substantial redress at a hearing in due course. A delay might be an indication that the matter is not as urgent as the applicant would want the court to believe. On the other hand a delay may have been caused by the fact that the applicant was attempting to settle the matter or collect more facts with regard thereto.

[25] In *Mogalakwena Local Municipality v The Provincial Executive Council, Limpopo and others (2014) JOL 32103* (GP) at paragraph [63] – [64], the principle that urgency is not for the taking was reiterated as follows: _

“I proceed to evaluate the respondent’s submission that the matter is not urgent. The evaluation must be undertaken by an analysis of the applicant’s case taken together with allegations by the respondent which the applicant does not dispute. Rule 6(12) confers a general judicial discretion on a court to hear a matter urgently ... It seems to me that when urgency is an issue the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent.

Once such prejudice is established, other factors come into consideration. These factors include (but are not limited to): Whether the respondents can adequately present their cases in the time available between notice of the application to them and the actual hearing, other prejudice to the respondent’s and the administration of justice, the strength of the case made by the applicant and any delay by the applicant in asserting its rights. This last factor is often called, usually by counsel acting for respondents, self-created urgency.”

Discussion

[26] The applicants assume that having enjoined previous successes in the attaining of urgent relief, the current application would axiomatically be covered under the cloak of urgent relief. This is a misnomer. A finding that an application is urgent is confined to the peculiarity of an application, urgency is not a finding that transcends multiple applications. A singular finding on urgency

does not immunize an applicant from the requirements as envisaged in Rule 6(12) in subsequent urgent applications that may follow. Urgency to my mind is not a cut and paste exercise. It is a fact-based enquiry unique to the application that a court is seized with. There is no free passage to the urgent court.

[27] The applicants contended that they had been successful in obtaining substantial redress in urgent court and now sought the enforcement of same. This is irrefutable. What is further indisputable is that both the orders of **Reid J**, are the subject to an appeal process.

[28] To explicate the lack of urgency it is essential to regurgitate the timelines that fragmented the urgency of this application. On or about **19 September 2023**, this Court, as per **Ried J** issued an order in terms of which the appointment of the fifth respondent as Municipal Manager of Naledi Local Municipality was declared unlawful and set aside. On **29 September 2023**, the respondents proceeded to lodge an application for leave to appeal. This had the effect of suspending the order of **Reid J** dated **19 September 2023**. The applicants responded with an application within the purview of the legislative provisions of section 18 (3) of the SCA, which provided for the enforcement of the order and judgment of **Reid J**. On **17 November 2023** the enforcement application found favour with **Ried J**. **Reid J** accordingly ordered that the judgment of **19 September 2023**, be given effect to pending the appeal process.

- [29] On **20 November 2023**, the respondents by way of electronic service notified the applicants of their automatic right of appeal as provided for in section 18(4) of the SCA. Supplementing the latter was correspondence that had been addressed to the Judge President of this Division, in same the respondents acknowledge the peremptory procedure that is to be followed in section 18(4) of the SCA being triggered into operation. To this end, on **21 November 2023**, Mokete the Registrar of this Court informed the respondents to cohere with the strict procedure as set out in their correspondence dated **21 November 2023**.
- [30] On **4 December 2023**, the legal representatives of the applicants forwarded correspondence to the erstwhile attorneys of the respondents enquiring on the progress of the appeal as demonstrated in section 18(4) of the SCA.
- [31] Extracting from the applicants' timelines on **17 November 2023** the enforcement application found favour with **Ried J. Reid J** accordingly ordered that the judgment of **19 September 2023**, be given effect to pending the appeal process.
- [32] In lieu of approaching the urgent court for relief, the applicants contended that they afforded the respondents the “ **opportunity to do the right thing.**” The ineluctable inference to be drawn for this phrase was that the respondents were afforded the opportunity as a matter of extreme urgency to prepare the urgent appeal as demonstrated in section 18(4) of the SCA. The chronology so far as it relates to the timelines as set out by the applicants in

conjunction with the various correspondence as annexed indicate the applicants dilatoriness in pursuing urgent relief. Any attempt to have skirted this by placing reliance on *Eastrock Trading* was misplaced. Resultely, the application was found not be urgent.

[33] There is one final issue that demands address. In correspondence dated 3 May 2024, directed to the Office of the Judge President (which was in the court file) the following is recorded at paragraph [22].

“On the 2nd May 2024, we received an order striking our matter off from the roll for want of urgency with costs. **We fail to fathom how this application cannot be deemed to be urgent.** However, this letter is not aimed at appealing the same hence we shall not delve into the correctness or otherwise of the said order.” (my emphasis)

[34] As officers of the court there is a paramount duty on all legal practitioners to conduct themselves with the highest degree of integrity and to ensure that the dignity of the court is maintained. It must be emphasised that the dignity and decorum of the court is always observed. It bears accentuating that a legal practitioner’s foremost duty is to the court. The words as contained *supra* are unfortunate and unnecessary. This comment displayed an acute disrespect for the court and its role in the administration of justice.

[35] In *S v Khathutshelo and Another 2019 (1) SACR 480 (LT)*, the following was stated as regards a legal practitioners’ duty in respect of the court:

“...Judges and magistrates alike have been entrusted with the most difficult job: to find the truth and administer justice between man and man. **They are**

fallible like all others and, in recognition of this weakness, there is hierarchy of courts so that mistakes can be corrected on appeal or review.... As an officer of the court he is required to assist the court in the administration of justice. Inasmuch as counsel has duty to advance his/her client's case with zeal, vigour and determination, he should always remember that his primary duty is to the court.... He should always maintain the decorum of the court and protect its legitimacy in the eyes of the public, so that its confidence is not eroded in their eyes..." (my emphasis).

[36] I align myself with these sentiments. I further venture to suggest that is concerning that extant orders are being discussed in correspondence with the Judge President of this Division which to my mind is utterly disrespectful. A recurrence of this kind of conduct must be dissuaded and if repeated the Legal Practice Council must be mandated to investigate same.

Costs

[37] There was no reason to deviate from the usual order in applications that are not found to be urgent. I therefore ordered that the applicants were to pay the costs, the one paying the other to be absolved.

Order

[38] In the premises, I reiterate the order handed down on 25 April 2024.

- (i) The application is struck from the roll for lack of urgency with costs.

- (ii) The applicants are to pay the costs jointly and severally, the one paying the other to be absolved.

A REDDY
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

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Date of hearing	25 April 2025
Date of Order	25 April 2024
Date of request for reasons filed	09 May 2024
Date of request for reasons received:	20 May 2024

Date that reasons handed down

27 May 2024