



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
NORTHWEST DIVISION – MAHIKENG**

CASE NO: UM161/2023

In the matter between:

SEBATANA CASSIUS SEJAKE

Applicant

And

RATLOU LOCAL MUNICIPALITY

1st Respondent

DR AJ MOTHUPI (MUNICIPAL MANAGER)

2nd Respondent

Heard: 25 AUGUST 2023

Reasons requested: 6 NOVEMBER 2023

**Delivered: The date for the hand-down is deemed to be on 18
JANUARY 2024**

REASONS FOR JUDGMENT

DJAJE AJP

[1] This matter came before me as an urgent application on **25 August 2023** and thereafter a number of urgent applications

followed resulting in various orders. On **6 November 2023** the respondents filed a request for reasons for the order of **25 August 2023**. I was not able to attend to the reasons immediately as the file was with another Judge dealing with the same parties. I now furnish the reasons for the order of **25 August 2023**.

[2] The applicant approached court for an order as follows:

- “1. *Dispensing with the provision of Rules relating to time and manner of service referred to therein and dealing with the matter as one of urgency in terms of Rule 6 (12) of the Uniform Rules.*
2. *That it be declared that the judgment and orders of this Court under case number:M290/2021 dated 20 July 2023 is suspended pending the decision of the application for leave to appeal or appeal of the Applicant filed on the 25 July 2023 which is still pending before this Court.*
3. *That it be declared that pending the decision of the application for leave to appeal of the Applicant, the first and second Respondents’ notice dated 24 July 2023 terminating the employment/ appointment of the Applicant as Senior Manager: Planning and Development with immediate effect.*
4. *That pending the decision of the application for leave to appeal or appeal of the Applicant, the first Respondent be ordered to reinstate the Applicant as the first Respondent’s Senior Manager: Planning and Development with immediate effect.*
5. *That pending the decision of the application for leave to appeal or appeal of the Applicant, the first Respondent be interdicted from appointing a permanent Senior Manager: Planning and Development.*
6. *That leave be granted to the Applicant to file the supplementary affidavit to which this notice of motion is attached.*

7. *That leave be granted to the Applicant to amend the notice of motion.*
8. *That the first and second Respondent be ordered to pay the costs occasioned by this application on an attorney and own client scale jointly and severally the one paying the other to be absolved.”*

[3] The following order was granted:

- “1. *THAT:* *The Rules relating to time and manner of service referred to therein are hereby dispensed with and this matter is dealt with as one of urgency in terms of Rule 6 (12) of the Uniform Rules.*
2. *THAT:* *It is declared that pending the decision of the application for leave to appeal of the Applicant, the first and second Respondents’ notice dated 24 July 2023 terminating the employment/ appointment of the Applicant as Senior Manager: Planning and Development of the first Respondent is suspend.*
3. *THAT:* *Pending the decision of the application for leave to appeal or appeal of the Applicant, the first Respondent is interdicted from appointing a permanent Senior Manager: Planning and Development.*
4. *THAT:* *Leave is granted to the Applicant to file the supplementary affidavit to which this notice of motion is attached.*
5. *THAT:* *Leave is granted to the Applicant to amend the notice of motion.*
8. *THAT:* *The First and Second Respondents are ordered to pay the costs occasioned by this application on an attorney and own client scale jointly and severally the one paying the other to be absolved.”*

- [4] This matter proceeded on an unopposed basis on **25 August 2023** as there was no appearance for the respondents, despite their attorneys being served on **23 August 2023**. It is important to sketch out briefly the background on this matter to give context to the order of **25 August 2023**. This matter has a history dating back to **2019** which resulted in a series of litigation between the parties. The important and relevant litigation is one where the respondents brought an application to declare the appointment of the applicant as a Senior Manager Planning and Development unlawful and to be reviewed and set aside. On **20 July 2023** judgment was handed down in favour of the respondents, reviewing and setting aside the appointment of the applicant as a Senior Manager.
- [5] On **24 July 2023** the second respondent sent correspondence to the applicant terminating his employment as a result of the judgment of **20 July 2023**. The applicant filed an application for leave to appeal on **25 July 2023**. He was barred from reporting for duty on **25 July 2023** and after correspondence from his attorneys to the respondent he was able to report on **27 July 2023**. However, subsequent to that he was unable to gain access to his work. This resulted in an urgent application by the applicant which was heard on **11 August 2023**. The application was struck off the roll for lack of urgency and jurisdiction in relation to prayer 3. The matter came back to court on **18 August 2023** by the respondents with a counter-application and was struck off the roll for not being properly indexed and paginated.

- [6] Subsequent to those court appearances the respondents convened a Special Council meeting on **23 August 2023** to deal with the appointment of Acting Senior Manager, Planning and Development. This prompted the applicant to approach court on **25 August 2023** as the respondents had not been granted an order in terms of section 18(3) of the Superior Court Act 10 of 2013 to enforce the judgment of **20 July 2023** pending the application for leave to appeal.
- [7] In terms of section 18(1) of the Superior Courts Act, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal is suspended pending the decision of the application or appeal, unless the court orders otherwise. This now takes us to the provisions of section 18(3) which provides that *'A court may only otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.'*
- [8] Section 18(3) of the Superior Court Act allows for the execution of the order if it has been proven on a balance of probabilities by the party applying that it will suffer irreparable harm if the execution is not ordered. This was the argument advanced by the applicant that the respondents have not approached court in terms of section 18(3) to have the order of **20 July 2023** executed. The filing of the leave to appeal on **25 July 2023** by the applicant, suspended the order of **20 July 2023** as provided for in section 18(1). The

applicant argued that when the respondents called the special meeting of **23 August 2023** to discuss the appointment of the Acting Senior Manager, they were in contravention of section 18(1) of the Superior Courts Act.

- [9] When the matter was heard on **25 August 2023**, there was no application in terms of section 18(3) by the respondents. There was a leave to appeal the order of **20 July 2023** which effectively meant the respondents could not execute the order of **20 July 2023**. It was for that reason that the order of **25 August** was granted. The respondents were ordered to pay costs on a punitive scale due to their conduct of disregarding the law.

J.T. DJAJE

**DEPUTY JUDGE PRESIDENT OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG**

APPEARANCES

DATE OF HEARING : 25 AUGUST 2023

DATE REQUEST FOR REASONS : 06 NOVEMBER 2023

DATE OF JUDGMENT : 18 JANUARY 2024

COUNSEL FOR APPLICANT : ADV C Z MUZA