Reportable:	YES
Circulate to Judges:	YES
Circulate to Magistrates:	YES
Circulate to Regional Magistrates	YES

IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

CASE NUMBER: UM199/2023

In the matter between:-

THABO APPOLUS	1st Applicant
CLLR LORATO SETHLAKE	2nd Applicant
CLLR LEBOGANG JACOBS	3rd Applicant
CLLR VUYISWA MORAKILE	4th Applicant

and

NALEDI LOCAL MUNICIPALITY	1st Respondent
NALEDI LOCAL MUNICIPAL COUNCIL	2nd Respondent
CLLR PGC GULANE *N.O* *(Speaker)*	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 AND TRADITIONAL AFFAIRS NORTH WEST PROVINCE	6th Respondent
SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION (SALAGA)	7th Respondent
PROVINCIAL TREASURY: NORTH WEST PROVINCE	8th Respondent

AND

CASE NUMBER: UM53/2023

THABO APPOLUS	1st Applicant
CLLR LORATO SETHLAKE	2nd Applicant
CLLR LEBOGANG JACOBS	3rd Applicant
CLLR VUYISWA MORAKILE	4th Applicant

and

NALEDI LOCAL MUNICIPALITY	1st Respondent
NALEDI LOCAL MUNICIPAL COUNCIL	2nd Respondent
NELSON MONGALE N.O *(former Acting Municipal Manager)*	3rd Respondent
CLLR PGC GULANE N.O (*Speaker of the Council)*	4th Respondent
CLLR J GROEP N.O *(Mayor)*	5th Respondent
MR MODISENYANE SEGAPO N.O	6th Respondent

(Newly appointed Municipal Manager)

THE MEC FOR COOPERATIVE GOVERNANCE HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS NORTH WEST PROVINCE 7th Respondent

SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION (SALAGA) 8th Respondent

PROVINCIAL TREASURY 9th Respondent

This judgment is handed down electronically by circulation to the legal representatives of the parties. The date and time of the handing down of the judgment is deemed to be ***18 March 2024 at 14h00***

JUDGMENT

FMM REID J

Introduction:

[1] This judgment deals with the legal position of the parties, and the process to be followed, in terms of sections 18(3) and 18(4) of the **Superior Courts Act** 10 of 2013 (Superior Courts Act), specifically having regards to the execution or the stay of a court order in certain circumstances. It additionally deals with the issue whether section 18(4)(ii) allows for a second automatic right to appeal to the "next highest court" against the enforcement of a court order granted in terms of section 18(3) of the Superior Courts Act.

[2] In this instance, a court order was granted on an urgent basis reviewing and setting aside the appointment of a Municipal Manager (office bearer). An application for leave to appeal was filed and leave has been granted to appeal against the review order to the Supreme Court of Appeal (SCA) on 23 January 2024. An order to enforce the review order has been granted in terms of section 18(3) pending the appeal process on 17 November 2023. The order to enforce the review order was launched, and heard, under a different case number than the review order.

[3] Prior to leave to appeal to the SCA being granted, and under the second case number, an automatic appeal was lodged in terms of section 18(4)(iv) of the Superior Court Act calling on the Judge President to convene a full court, as a court of appeal in terms of section 18(4)(ii), with the effect that the order against which the appeal has been lodged, is suspended *ex lege*.

[4] The applicants contend that the appeal to the full court has lapsed, and that this Court should grant an order that the

appeal to the full court has become lapsed *ex lege.* The respondents contend that the appeal to the full court automatically suspends the execution of the review order. It is argued on behalf of the respondents that the appeal to the Supreme Court, under the first case number is prosecuted as an appeal in terms of section 17 of the Superior Court Act, where the appeal under the second case number is brought under section 18(4) on the basis of an automatic right to appeal as set out in the Superior Court Act.

[5] The legal representatives of both parties submit that two distinct and separate processes of appeal are running parallel to each other: one appeal pending in the Supreme Court of Appeal, the other to be heard by a full court that is to be constituted. For reasons set out here under, I disagree.

Factual background

[6] On 10 March 2023 the 1st and 2nd respondents, Naledi Local Municipal Council (the Municipality) appointed the 5th respondent (Segapo) as Municipal Manager. This appointment is for a fixed term of five (5) years, subject to the provisions of section 57(6)(a) of the **Municipal Systems Act**

32 of 2000.

[7] Aggrieved by the appointment, the applicants (collectively referred to as “Appolus”) approached this Court on an urgent basis to have Segapo’s appointment reviewed and set aside. The 7th respondent (the MEC for Cooperative Governance Human Settlement and Traditional Affairs North West Province “the MEC”) did not support the appointment of Segapo. In the MEC’s report, reference is made to gross irregularities, reflecting numerous procedural and substantive requirements that were blatantly not met in the appointment process.

[8] After hearing the application for review against the appointment of Segapo as Municipal Manager, on an urgent basis, this Court ordered that the appointment of Segapo is reviewed and set aside as invalid and unlawful. The Municipality was ordered to re-advertise the position and to commence the recruitment process *de novo* (“the review judgment”). The review judgment was handed down on 19 September 2023.

[9] The Municipality requested leave to appeal against the review judgment on 29 September 2023, which *ex lege* suspended the execution of the review judgment. Appolus approached this Court, again on an urgent basis, and a judgment was handed down on 17 November 2023 that the review judgment be enforced in terms of section 18(3) of the **Superior Court Act** 10 of 2013 (Superior Court Act) pending the appeal process ("the enforcement judgment").

[10] The application for leave to appeal was heard and on 23 January 2024 this Court granted leave to appeal to the Supreme Court of Appeal ("the leave to appeal judgment"). A summation of the reasons why leave has been granted to the Supreme Court of Appeal is set out in paragraph [22] of this judgment.

[11] Currently, Segapo remains in the position of Municipal Manager and performs the day to day functions of the Municipal Manager. The Municipality has not executed the review judgment and the enforcement judgment.

[12] At this stage I deem it prudent to mention that two (2)

separate case numbers, as set out in the heading of this judgment, is at play between the parties. This becomes relevant as a pertinent issue later in the judgment. The two case numbers are the following:

12.1. The application for review was brought, and the review judgment was granted, under case number UM53/2023. Leave to appeal was sought, and granted to the Supreme Court of Appeal in case number UM53/2023.

12.2. The application for enforcement of the review judgment, and the enforcement judgment, was granted under case number UM199/2023. An automatic appeal was lodged requesting the Judge President to convene a full court on an urgent basis in case number UM199/2023.

12.3. Two different case numbers were presumably issued since an additional respondent, being the 3rd respondent under case number UM53/2023 Nelson Mongale NO, the former Acting Municipal Manager, was not included as a respondent in case number UM199/2023. Segapo is the 6th respondent in case number UM53/2023 and

the 5th respondent in case number UM199/2023. Aside from this difference, the parties remain exactly the same.

Relief sought

[13] The applicants seek an order declaring that the appeal lodged by the 1st to 5th respondents in terms of section 18(4) of the **Superior Court Act** 10 of 2013 (Superior Courts Act) in case no UM199/2023 has become lapsed. The applicants further seek an interdict that the respondents are to give effect to the order and judgment granted by this Court on 19 September 2023 in case no UM53/2023 that sets aside the appointment of Segapo as Municipal Manager and orders the 1st and 2nd respondents (Naledi Local Municipality and Naledi Local Municipal Council or "the Municipality") to re-advertise the position of Municipal Manager and commence the recruitment process *de novo*.

[14] In the notice of appeal dated 20 November 2023 under case number UM199/2023, the Judge President is requested to convene a full court to deal with this issue on appeal and as a matter of urgency. The argument on behalf of the respondents is that the Office of the Judge President is to

respond and they are awaiting the response. Up and until the time that they receive a response, so the argument goes, the review and execution orders are automatically suspended in terms of section 18(4)(iv) of the Superior Court Act.

[15] The different case numbers, and the two separate appeals under the two matters UM53/2023 and UM199/2023 is, with respect, much of a muchness. Both matters under case numbers UM53/2023 and UM199/2023 deal with exactly the same issue between the same parties. I deem it pragmatic to grant an order that the two (2) matters under case numbers UM53/2023 and UM199/2023 be heard together, for the reasons set out in paragraph [16].

[16] Hearing both matters will prevent the implementation of parallel processes that can lead to uncertainty and confusion between the parties. This will also prevent duplication of proceedings in these two matters. It will furthermore prevent a situation where, as in this instance, leave to appeal to the full court is lodged in November 2023 under case number UM199/2023 and addressed to the Judge President, whilst

leave to appeal to the Supreme Court under case number UM53/2023 has been granted on 23 January 2024.

[17] The review judgment (dated 19 September 2023), the enforcement judgment (dated 17 November 2023) and the leave to appeal judgment (dated 23 January 2024) deals with the factual background and my reasoning in coming to the conclusions and orders that I have made. It would serve no purpose to repeat the content thereof herein.

The law

[18] The legislative provisions of appeals have been set out in the Superior Court Act. The position is that leave to appeal against an order of a single judge, has to be granted to the full court of that Division. It is only under very limited circumstances, as set out in section 17 of the Superior Court Act, that leave to appeal can be granted to the Supreme Court of Appeal.

[19] The aforesaid is stipulated expressly in section 17(6)(a), that reads as follows:

"(6)(a) If leave is granted under subsection (2)(a) or (b) to appeal against a decision of a Division as a court of first instance consisting of a single judge, the judge or judges granting leave must direct that the appeal be heard by a full court of that Division, unless:

(i) That the decision to be appealed involves a question of law of importance, whether because of its general application or otherwise, or in respect of which a decision of the Supreme Court of Appeal is required to resolve differences of opinion; or

(ii) That the administration of justice, either generally or in the particular case, requires consideration by the Supreme Court of Appeal of the decision, in which case they must direct that the appeal be heard by the Supreme Court of Appeal.

(b) Any direction by the court of a Division in terms of paragraph (a), may be set aside by the Supreme Court of Appeal of its own accord, or on application by any interested party filed with the registrar within one month after the direction was given, or such longer period as may on good cause be allowed, and may be replaced by other directions in terms of paragraph (a).

(7) Subsection (2)(c) to (f) apply with the changes required by the context to any application to the Supreme Court of Appeal relating to an issue connected with an appeal."

[20] The Supreme Court of Appeal cemented the aforesaid position in the matter **City of Tswane Metropolitan Municipality v Vresthena (Pty) Ltd and others** 2023 (6) SA

434 (SCA) where it was confirmed that the interpretation of section 18(4) relating to "the next highest court" does not allow the appellant a second right to automatic appeal to approach the next highest court where a full court has already heard an appeal in terms of section 18(4) of the Superior Court Act. Section 18 of the Superior Court Act reads as follows:

> *"**18 Suspension of decision pending appeal***
> *(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, 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.*
> *(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.*
> *(3) A court may only order 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.*
> *(4) If a court orders otherwise, as contemplated in subsection (1)-*
> *(i) the court must immediately record its reasons for doing so;*
> *(ii) the aggrieved party has an automatic right of appeal to the next highest court;*
> *(iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and*
> *(iv) such order will be automatically suspended, pending the outcome of such appeal.*
> *(5) For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules."*

[21] The facts in **Ntlemeza v Helen Suzman Foundation** 2017 (5) SA 402 (SCA) are similar to the facts in this matter. In the **Ntlemeza** case, an appeal was lodged against a successful review application in terms of which the appointment of General Ntlemeza as Head of the Directorate for Priority Crime Investigation (the Hawks) was reviewed and set aside, and an execution order was granted. The legal position pertaining to the execution order has been set out by the Supreme Court of Appeal as follows:

> *"[28] The primary purpose of s 18(1) is to reiterate the common-law position in relation to the ordinary effect of appeal processes — the suspension of the order being appealed, not to nullify it. It was designed to protect the rights of litigants who find themselves in the position of General Ntlemeza, by ensuring that, in the ordinary course, the orders granted against them are suspended while they are in the process of attempting, by way of the appeal process, to have them overturned. The suspension contemplated in s 18(1) would thus continue to operate in the event of a further application for leave to appeal to this court and, in the event of that being successful, in relation to the outcome of a decision by this court in respect of the principal order. Section 18(1) also sets the basis for when the power to depart from the default position comes into play, namely, exceptional circumstances which must be read in conjunction with the further requirements set by s 18(3). As already stated and as will become clear later, the legislature has set the bar fairly high."*

and further

[35] Section 18(1) entitles a court to order otherwise "under exceptional circumstances". Section 18(3) provides a further controlling measure, namely, a party seeking an order in terms of s 18(1) is required "in addition", to prove 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.

[36] ***In Incubeta Holdings (Pty) Ltd and Another v Ellis and Another*** *2014 (3) SA 189 (GJ) para 16, the court said the following about s 18:*

> *"It seems to me that there is indeed a new dimension introduced to the test by the provisions of s 18. The test is twofold. The requirements are:*
>
> *• First, whether or not exceptional circumstances exist; and*
>
> *• Second, proof on a balance of probabilities by the applicant of —*
>
> *— the presence of irreparable harm to the applicant/victor, who wants to put into operation and execute the order; and*
>
> *— the absence of irreparable harm to the respondent/loser, who seeks leave to appeal."*

[37] As to what would constitute exceptional circumstances, the court, in Incubeta, looked for guidance to an earlier decision (on admiralty law), namely ***MV Ais Mamas: Seatrans Maritime v Owners, MV Ais Mamas, and Another*** *2002 (6) SA 150 (C), where it was recognised that it was not possible to attempt to lay down precise rules as to what circumstances are to be regarded as exceptional and that each case has to be decided on its own facts. However, at 156H – 157C, the court said the following:*

> *"What does emerge from an examination of the authorities, however, seems to me to be the following:*
>
> *1. What is ordinarily contemplated by the words exceptional circumstances is something out of the ordinary and of an unusual nature; something which is excepted in the sense that the general rule does not apply to it; something uncommon, rare or different; besonder, seldsaam, uitsonderlik, or in hoë mate ongewoon.*
>
> *2. To be exceptional the circumstances concerned must arise out of, or be incidental to, the particular case.*
>
> *3. Whether or not exceptional circumstances exist is not a decision which depends upon the exercise of a judicial discretion: their existence or otherwise is a matter of fact which the Court must decide accordingly.*
>
> *4. Depending on the context in which it is used, the word exceptional has two shades of meaning: the primary meaning is unusual or different; the secondary meaning is markedly unusual or specially different.*

> *5. Where, in a statute, it is directed that a fixed rule shall be departed from only under exceptional circumstances, effect will, generally speaking, best be given to the intention of the Legislature by applying a strict rather than a liberal meaning to the phrase, and by carefully examining any circumstances relied on as allegedly being exceptional.'"*

[22] In the enforcement judgment it is set out in detail what the exceptional circumstances are, and what considerations were given to irreparable harm as legislatively prescribed by section 18(3) of the Superior Court Act. The reasons why this Court deemed the Supreme Court of Appeal to be the appropriate forum as the next highest court, has been set out in the judgment dated 23 January 2024. In summation, this Court found the following to be exceptional circumstances and considered the following irreparable harm:

22.1. The appeal mainly deals with the correct interpretation of the **Municipal Systems Act** 32 of 2000 and the powers of the MEC in the appointment of an office bearer, in this case the Municipal Manager. In matters such as these, a municipal council becomes divided and litigates against each other. The part of the municipal council that controls the budget, uses municipal funds to sustain the litigation. This is not in the interest of the community

that the municipality is to serve, and the correct interpretation of the **Municipal Systems Act** 32 of 2000 is therefore of both provincial and national importance.

22.2. The correct interpretation of the **Municipal Systems Act** 32 of 2000 and the powers of the MEC as a governing body of the Municipality is a legal position that is best suited to be determined by the Supreme Court of Appeal to have national impact, as opposed to the full court of this Division.

22.3. The content of the MEC's report refers to nine (9) instances where the Municipality patently ignored and contravened the regulations applicable to appointment procedures, leading to gross and serious procedural irregularities in the appointment of Segapo. The appointment of Segapo is time sensitive, being for a fixed period of five (5) years. Should the full court first hear the appeal and there-after the Supreme Court of Appeal, the issue of the irregularity of Segapo's appointment may have become moot.

22.4. No review application has been brought against the MEC's report and as such, the MEC's report stands to be implemented.

22.5. Appolus states that Segapo has the opportunity to commit acts of grave financial misconduct, to approve budgets irregularly, and to enter into unlawful or unethical contracts by virtue of his position as Municipal Manager. This would of course cause irreparable harm to the Municipality and the community at large.

22.6. In comparison of the harm to be suffered, this Court in the execution judgment considered that Segapo will not suffer any irreparable harm, should the appointment process for a Municipal Manager commence *de novo*. Should Segapo be the successful candidate for the position of Municipal Manager, he will be appointed to the position. This is in stark contrast with the prejudicial position that the Municipality will find itself, if contracts have to be set aside and tenders have to be withdrawn.

22.7. Peculiarly, the irreparable harm to be suffered in the

event that the execution of the order be stayed, lies in the interest of the community that is to be served by the Municipality. In a twist of irony, it is the Municipality itself that asks for the execution to be stayed. The duty of the Court is *inter alia* to proverbially protect the Municipality against itself in order to serve the interest of the community, which does not have a voice in this application.

[23] In support of the Municipality's argument that the Judge President is to provide directives as to convening a full court, the respondents rely on **JAI HIND EMCC CC t/a Emmarentia Convenience Centre v Engen Petroleum Ltd South Africa** 2023 (2) SA 252 (GJ) in which Sutherland DJP (Adams J and Thompson AJ concurring) found:

> *"[29] The default procedure when s 18(4) is invoked must be to approach the head of court at once. In the Gauteng Division, because of the use of a digital platform for all civil cases, it is very simple to expedite a s 18(4) appeal with genuine 'extreme urgency' in any case where oral evidence was not received, of which this case is an example. A record for the appeal can be produced by doing no more than adding an additional index to the Caselines file of all the documentation relevant for the appeal, and excluding what is irrelevant. That can be done on*

the same day the notice of appeal is filed. No compiling and printing and copying of a record are needed. All that remains to make the matter ripe to be heard is the filing of heads of argument, if needed. A further ad hoc directive, after a meeting with the Deputy Judge President to set a date, completes the process. It is conceivable that a hearing can take place within no more than 20 – 25 court days, at most.

[30] What is appropriate is that a directive be issued by the Judge President to cater for the absence of rules. Until that occurs, the procedure to follow is as follows:

(a) File a notice of appeal and appeal index in the same digital file as soon as reasonably possible after the s 18(3) order was made.

(b) Simultaneously approach the Deputy Judge President for directions about heads of argument and a date for a hearing."

(footnotes omitted)

[24] The principles set out in **Emmarentia Convenience Centre** *supra* sets principles in the Gauteng Division in application of section 18(4). It is different to the facts *in casu*, where leave to appeal to the Supreme Court has already been granted.

[25] The applicants rely on **Symes NO v Harry's Tyres** (Pty) Ltd (CIV APP FB 10/2023) [2023] ZANWHC 171 (15 September 2023) in support of the argument that the *ex lege* position on whether an appeal has lapsed or not, can be determined by a single judge. This judgment has been overturned by the

full court on 14 March 2024 under the same case number and the argument is therefore rejected. The relief sought in declaring that the appeal has lapsed, is thus incompetent and behoves no further discussion.

[26] As to the practical effect of the execution of a court order pending appeal, it was held by the full court in **JAI HIND EMCC CC t/a Emmarentia Convenience Centre** *supra* that:

> *"[8] Accordingly, the exercise is to locate exceptionality and thereafter determine whether, as a fact, irreparable harm shall be suffered by Engen, and thereafter determine, as a fact, whether irreparable harm shall be suffered by Jai Hind if the order is implemented at once. It was incumbent on Engen to prove exceptionality and that it would suffer irreparable harm if the order was not implemented at once. If it proved that, it had still to prove that if Jai Hind succeeded in the appeal, sometime in the future, it would suffer no irreparable harm if it complied with the order implemented at once."*

[27] In relation to the interpretation of section 18(4) of the Superior Court Act, the following was held by the full court in **JAI HIND EMCC CC t/a Emmarentia Convenience Centre** *supra*:

> *"[22] The case is therefore moot. However, it is appropriate that the appeal be decided, notwithstanding that fact. The court has a discretion to deal with a matter, even if moot, if a proper reason exists to do so to address a 'legal issue of importance' or in the 'interests of justice'.*

> *[23] This case ventilates controversies in an area of law that has had, as yet, only a little jurisprudential scrutiny. Few examples of the application of s 18(4) are reported. The facts in this case call for an elaborate examination which illuminates the nuances in the application of s 18, both substantively and procedurally."*
> (footnotes omitted)

[28] I agree with Sutherland DJP that few examples of the application of section 18(4) has been reported. To borrow from the judgment of Sutherland DJP: *"the nuances in the application of section 18(4), both substantively and procedurally"* has to be examined and, through the common law, be established.

[29] The matter *in casu* is furthermore unique in the sense that leave to appeal to the Supreme Court has been granted after an appeal in terms of section 18(4) has been noted (albeit under a different case number).

Analysis

[30] For the reasons set out in paragraph [25] above, the declaratory relief in relation to a position that is *ex lege*, is incompetent.

[31] This being said, the confusion of both parties *in casu* are the

legal position, where an automatic appeal in terms of section 18(4)(iv) of the Superior Court Act automatically suspends the execution of the order *ex lege*, under circumstances where an order has already been granted to execute the order and where leave to appeal has been granted to the Supreme Court of Appeal.

[32] The fact that there are two case numbers and two applications for leave to appeal, should not cause confusion. There is only one automatic right to appeal, for which leave to appeal has been granted to the Supreme Court of Appeal.

[33] The legislature provided for circumstances where the exception to the rule is to be made, granting an opportunity for the Court to exercise a discretion in determining whether the circumstances warrants an execution of the court order pending the finalisation of an appeal process. *In* casu, this has been done when the execution judgment was granted. As such, it is my view that the review judgment should be executed as already determined in the execution judgment dated 17 November 2023.

[34] The argument of the respondents that they are awaiting directives from the Judge President's office, is in my view opportunistic. The submission made by both sets of counsel that there are two (2) appeals pending, is in my view misguided. As clarified by the Supreme Court of Appeal in the **Vresthena** *supra* matter, a party has only one automatic right to appeal to the next highest court. The next highest court, in terms of section 17 of the Superior Court Act, is the full court of the Division unless it was determined by a single judge that the appeal is justified to be heard by the Supreme Court of Appeal, in line with the legal principles set out in the Superior Court Act.

[35] At the time that the appeal in terms of section 18(4) was noted to request the Judge President to convene a full court in November 2023, leave to appeal to the Supreme Court of Appeal has not yet been granted. In my reasoning, it should follow that the application for leave to appeal to a full court, was answered in the judgment that leave to appeal to the Supreme Court of Appeal is granted on 23 January 2024. To do otherwise, would be to grant a party two opportunities to appeal. It is also to over-emphasise semantic differences

between case numbers and subsections of legislation.

[36] The Court's discretion has to be exercised holistically in consideration of the unique facts before it, and in my mind constitution of a full court would be nonsensical in circumstances where leave to appeal to the Supreme Court of Appeal has already been granted.

[37] The further argument of the respondents that the application for appeal to the full court addressed to the Judge President suspends the execution of the review judgment, is similarly opportunistic in my view. The review judgment is the subject of the appeal, and leave to appeal has been granted to the Supreme Court of Appeal. Pending the appeal, an execution order has been granted. Fancy legal footwork cannot obfuscate the practicality of court orders.

[38] On the basis of the above, I hold the view that the application for appeal to a full court as lodged with the Judge President in November 2023 is answered by the order granted on 23 January 2024 in which leave to appeal to the Supreme Court of Appeal is granted.

[39] For the reasons set out above, I conclude that the judgment of 19 September 2023 must be executed and the leave to appeal to the Supreme Court as granted on 23 January 2024 be pursued.

Costs

[40] The normal rule is that the successful party is entitled to its cost. The applicants are partly successful in seeking an order directing the 1st and 2nd respondent to immediately give effect to the order and judgment granted in terms of section 18(3) on 17 November 2023 enforcing the court order that was granted on 19 September 2023.

[41] I find no reason to deviate from the normal rule. The respondents that opposed the application, should pay the costs of the applicant. Both parties employed two (2) counsel and having regard to the novelty of the legal arguments, I hold the view that the appointment of two (2) counsel is warranted.

[42] In the premise, the respondents who opposed the application

should be ordered to pay the costs thereof.

Order

In the premise, the following order is hereby granted:

i) The non-compliance of the Uniform Rules of Court is condoned in terms of Rule 6(12) and the matter is heard on an urgent basis.

ii) The applications under case numbers UM53/2023 and UM199/2023 are to be heard together.

iii) Leave to appeal to the Supreme Court of Appeal has already been granted by this Court on 23 January 2024 under case number UM53/2023 and this order remains in force.

iv) The notice of appeal in terms of section 18(4) of the **Superior Courts Act** 10 of 2013 instituted on 20 November 2023 under case number UM199/2023 for leave to appeal to the full court of this Division, follows the outcome of the leave to appeal to the Supreme Court of Appeal that was already granted on 23 January 2024 under case number UM53/2023.

v) The judgment granted on 19 September 2023 by Reid J is enforced in terms of section 18(3) of the **Superior Courts Act** 10 of 2013 pending the outcome and finalisation of the appeal process.

vi) The respondents who opposed the application (namely the 1st to 5th respondents in case number UM199/2023 and 1st to 6th respondents in case number UM53/2023) is ordered to pay the costs of the application, jointly and severally, the one paying the other to be absolved, on a scale of party and party, to be taxed which costs is to include the instruction of two (2) counsel.

_____

FMM REID
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION MAHIKENG

DATE OF HEARING: **22 FEBRUARY 2024**

DATE OF JUDGMENT: **18 MARCH 2024**

APPEARANCES:

FOR THE 1ST TO 5TH APPLICANTS: ADV CZ MUZA
WITH ADV NM MPYA

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