

REPUBLIC OF SOUTH AFRICA

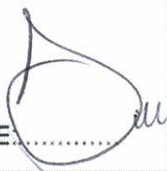


IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION; POLOKWANE.

CASE NO.13207/2022.

CASE NO.13268/2022

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
DATE: 29.09.2023	SIGNATURE: 

In the matter between:

CLLR BUTANA BEN TLHABADIRA

APPLICANT

and

CLLR JUDITH TSHEGOFATSO MOGAPI

FIRST RESPONDENT

CLLR TSHEGOFATSO RAMOABI

SECOND RESPONDENT

CLLR JOHANNAH ELIZABETH SWANEPOEL

THIRD RESPONDENT

CLLR THEMBA MKANZI

FOURTH RESPONDENT

CLLR XOLILE NOZOZO

FIFTH RESPONDENT

CLLR KINIKI ABEL SESOMA	SIXTH RESPONDENT
CLLR DAVID MASILO	SEVENTH RESPONDENT
CLLR MAXWELL KEOBAKA MAGATSE	EIGHTH RESPONDENT
CLLR PONTSHO SOLOMON SELLO	NINTH RESPONDENT
MPINA LOUIZATH MATLALA	TENTH RESPONDENT
CLLR STEPHEN GABAETSIWI LERUMO	ELEVENTH RESPONDENT
CLLR MAVHU LYDIA SIKHWARI	TWELFTH RESPONDENT
CLLR THEO KHALUNGA	THIRTEENTH RESPONDENT
SEGALE SETSWE PILANE	FOURTEENTH RESPONDENT
LINDIWE MAKAYA	FIFTEENTH RESPONDENT
MEC FOR CORPORATIVE GOVERNMENT, HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS, LIMPOPO PROVINCE	SIXTEENTH RESPONDENT
MINISTER OF CORPORATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	SEVENTEENTH RESPONDENT
	CASE NO: 13268/2022
In the matter between	
DEMOCRATIC ALLIANCE	FIRST APPLICANT
JOHANNA ELIZABETH ALBERTINA SWANEPOEL	SECONDT APPLICANT
and	
THE COUNCIL OF THE THABAZIMBI LOCAL MUNICIPALITY	FIRST RESPONDENT
JUDITH MOTSEI MOGAPI	SECOND RESPONDENT
TSHEGOFATSO RAMOABI	THIRD RESPONDENT
LETSEKA GLADWIN TLOUBATLA	FOURTH RESPONDENT
KEDISALETSE JOHANNES MATLOU	FIFTH RESPONDENT
BUTARA BEN TLHABADIRA	SIXTH RESPONDENT

and 13207/2022. The decision to write one judgment is informed by the similarities in the relief sought in both applications and the grounds upon which the parties rely. The judgments in case number 475/2023 and 762/2023 were delivered separately. The word 'applicants' in this judgment refers to the applicants in the two review applications. The word 'respondents' refers only to those who are opposing the application.

[2] The common cause facts in the two review applications are that the applicant in case number 13207/2022, one Butana Ben Thlabadira was the speaker of the Thabazimbi Local Municipality as at the 21 October 2022. The second applicant in case No. 13268/2022, Swanepoel, was the mayor. As the speaker of council, Thlabadira had the power to ensure that council meets at least quarterly as envisaged in section 37 of the Local Government Municipal Structures Act 117 of 1998 (the Structures Act).

[3] It is common cause that a Special Council Meeting was scheduled for the 31 August 2022 at 10:00. For some reason, that meeting was adjourned to the 16 September 2022. The meeting could not proceed again on the 16 September and was adjourned to the 21 October 2022.

[4] The applicants state that on the 21 October 2022, when the meeting was about to commence, a group of about 30 to 40 people who were behaving in an unruly manner arrived at the council chambers. It appeared to the applicants that the group was there to prevent councillor Kotetsi from attending the meeting. Tlhabadira sought the assistance of the members of the South African Police Service who later arrived at the chambers. However, it is alleged that the members of SAPS did nothing to bring the group of people under control.

[5] The parties agree that the meeting of the 21 October 2022 was an adjourned Special Council Meeting. They further agree that the following items were on the agenda:

2.1. Opening

2.2. Roll call

2.3. Application of members for leave of absence

2.4. Matters for discussion

2.5. IDP Process Plan to Council

2.6. Delegation of powers

2.7. Extension of Employment Contract for Director Corporative

Services

2.8. Assets Disposals and write off

2.9 Fourth Quarter Performance Report for 2021/2022.

[6] The respondents aver that Tlhabadira failed to commence the meeting at 10:00 as scheduled. The respondents however agree there was a group of people who arrived there and that Tlhabadira, Swanepoel and other councillors left the council chambers or in their own words, staged a walk out. The remaining councillors who were 15 in number and four officials of the municipality remained and signed the attendance register. Two representatives of the Freedom Front Plus left the meeting after an ANC councillor proposed that the meeting should proceed. The meeting proceeded with remaining thirteen councillors.

[7] It follows that the councillors who remained, who are said to be the ANC members, would be the only ones to have first-hand information about what transpired in the meeting. However, their averments in that regard is not disputed by the applicants. In any event, the applicants base their applications on those facts. It is not in dispute that a motion of no confidence against the speaker and the mayor was entered on the agenda

and a resolution to that effect was passed. Tlhabadira and Swanepoel were subsequently removed from their positions. Judith Motsei Mogapi was elected as the new mayor of the Thabazimbi Local Municipality. Tshogofatso Ramoabi was elected as the speaker. Lindiwe Makaya was removed from the position of the acting municipal manager and was replaced by Segale Setswe Pilane. In the subsequent Special Council Meeting of the 1 December 2022, Pilane was replaced by Letseka Gladwin Tloubatla. Thaveshan Chetty was dismissed from the position of acting chief financial officer and was replaced by Kedisaletse Johannes Matlou.

[8] The applicants in both review applications seek the order in terms of which, among others, the resolutions passed and decisions made in the meetings of the 21 October 2022 and 1 December 2022 are reviewed and set aside. The applicants in case number 12368/2022 (the DA) further seek an order in which it is declared that Tlhabadira, Swanepoel and Makaya are the speaker, mayor and acting municipal manager of the Thabazimbi Local Municipality respectively. It should also be declared that Thaveshan Chetty is the acting chief financial officer of the municipality.

[9] The applicants aver that the decisions taken in the meetings that took place after the adjournment of the Special Council Meeting of the 21 October 2022 are unlawful in that they were made contrary to the provisions of the Structures Act and the **Rules of Order for the Meetings of Council and its Committees of the Municipality** (the Rules). It is common to the parties that the following rules are relevant to the resolution of the issues in these two cases.

Rule 8 Urgent matters

8.1 No business shall be transacted at a meeting of the council or any committee other than that specified in the agenda relating thereto, except any matters which the relevant chairperson considers urgent and the said chairperson has ruled the matter to be urgent.

8.2 The Municipal Manager may raise matters which in his/her discretion is urgent, for the decision by council A matter would be deemed urgent when the decision required. If delayed, would prejudice the Council and/or its operations.

Rule 16 Adjourned meetings.

The council or a committee may adjourn a meeting to any date or hour, but no business shall be transacted at any adjourned meeting except such as was out in the notice for the meeting of which it is an adjournment.

Rule 19.1 Agenda

Subject to 19.2 and 19.3 below, all meetings must be conducted in accordance with the order in which matters appear on the agenda and only matters on the agenda may be debated.

Rule 28. Motions

28.1 No matter shall be brought before the council or committee by any member of the council except upon a notice of motion, which shall be in writing and signed by the member giving the notice as well as the member seconding it: Provided that a person who has a personal electronic mail address from where he or she can be identified by the Municipal Manager, can submit such motion by electronic mail.

28.2 Any notice of motion shall be submitted to the Speaker or chairperson before 12:00, ten days prior to the meeting of the council or committee.

Rule 28.8

All notices of motion shall be dated and numbered as received by the Municipal Manager, and shall be entered on the agenda paper in the order in which it was received, save and except that notices of amendments to motions shall be entered immediately after such notice of motion, irrespective of the time at which the notice shall have been received.

Rule 46. Suspension of standing orders

No standing order shall be suspended without the vote of a majority of the members of the council or of the three-fourths of the members present and a motion duly seconded to suspend the standing orders shall be put without debate.

[10] The agenda of the meeting of the 21 October 2022 prior to the alleged adjournment by Tlhabadira is a matter of common cause. In terms of Rule

16, the items on that agenda were the business that was supposed to be transacted on that date. The respondents contend that the invocation of Rule 46 by the remaining councillors led to the suspension of Rule 19.1 It is under those circumstances that the agenda of the adjourned meeting of the 31 August, 16 September and 21 October 2022 was suspended. The respondents further contend that municipal manager in the exercise of his discretion as envisaged in Rule 8, raised a motion of no confidence against Mr Tlhabadira and Swanepoel as an urgent matter that requires urgent decision by the council. This is how the motion of no confidence came to be on the agenda. According to the respondents, Tlhabadira and Swanepoel were therefore lawfully removed from their positions.

[11] The applicants contend that the respondents failed to comply with the requirement laid down in Rule 28 in that the matter of the motion of no confidence were not brought in writing before Tlhabadira who was the speaker of council. Further, that the said motion was not entered on the agenda of the meeting of the 31 August 2022. On that, the respondent contend that the applicants were perfectly aware that there were previous notices to that effect which Tlhabadira chose to ignore.

[12] There is a disagreement with regard to whether the previous notices were withdrawn or not. The respondents admit that at least one such notice was indeed withdrawn, though it is their submission that it was removed unlawfully. I am of the view that whether there were such previous notices is neither here nor there in view of the fact that the notices were not on the agenda of the adjourned Special Council Meeting. They could not have been on the agenda as envisaged in Rule 16.

[13] The respondents contend that the meeting of the 21 October 2022 was not adjourned. According to the respondents the conduct of the group that had gathered to prevent councillor Kotetsi from attending a meeting did not in anyway pose a threat to the lives of the councillors. The applicants aver that the submissions made by the respondents cannot be true. It is stated as an example of the aggression by the group that the group removed the recording equipment. I agree that the continuation of the meeting after the meeting was adjourned and other councillors had left for safety reasons was irregular.

[14] In **Northern Free State District Municipality v Mtshai (090/2004) [2005] ZASCA 30 (30 March 2005)** the Supreme Court of Appeal ruled that the speaker of a municipality is entitled to adjourn meetings in the

event of disorder. Tlhabadira was entitled to adjourn the meeting of the 21 October 2022. The decisions taken after the meeting was adjourned, including the resolutions passed are, as a result, unlawful.

[15] In addition to the Rules, the Thabazimbi Local Municipality is enjoined to conduct its business in terms of the Structures Act. Section 49(1)(a) of the Act provides that the mayor of a municipality presides over its executive committee. In terms of section 53(1), any member of the executive committee or all members may be removed from their office provided that they are given prior notice to that effect. Sections 40 and 58 require the same procedure to be followed when a speaker and mayor are removed. It is common cause that the applicants were not given prior notices of the intended motions of removal in the meeting of the 21 October.

[16] The importance of the prior notice was emphasized by the Supreme Court of Appeal in **tUngquza Hill Local Municipality and Another v Mdungi [2021] 3 All Sa 332 (SCA) at 14** where it was stated that:

“Notice is necessary to afford the afflicted members an opportunity to consider the motion before it is tabled for discussion. Additionally, it is to provide council members similarly with an opportunity to engage meaningfully in the ensuing debates before a resolution is taken.”

All members of the Thabazimbi Municipal Council were denied such an opportunity in this case.

[17] The respondents contend that it was not necessary to give the applicants prior notice of the intended motion of no confidence in that the municipal manager ruled that such motions were urgent. I find the respondents' argument to be without merit. Firstly, the meeting itself was not supposed to have been held in view of its adjournment by Tlhabadira. Secondly, the appointment of the municipal manager who purportedly made such consideration in terms of Rule 8 is questionable and impugned.

[18] The applicants aver that the resolutions passed in the meeting should also be reviewed and set aside on the basis that the meeting did not quorate. The applicants rely on the IEC letter in which it is stated that Councillor Matlala of the Thabazimbi Residence Association (TRA) has been replaced by Councillor Khoza. It is stated in the letter that Councillor Matlala has ceased to be a councillor in the municipality without stating the date on which he so ceased to be a councillor. The letter is dated the 25 October 2022, which is after the date of the meeting. I find that there is no evidence before this court to prove that Matlala was not supposed to be in the meeting and that as a result, the meeting did not quorate.

[19] I agree with the submissions made by counsel for the applicants that the meeting of the 21 October was an adjourned Special General Meeting. Further that in terms of Rule 16, no other business other than that which was on the agenda was supposed to have been transacted, even in the event the meeting was not adjourned. Rule 16 remained applicable in view of the respondents' failure to suspend it as envisaged in Rule 46. The respondents cannot rely on Rule 8 due to the unlawful manner in which council was constituted. Furthermore, the applicants were denied the very opportunity available to them, not only in terms of the Rules, but in accordance with the provisions of the Structures Act, to present their cases before removal from their offices.

[20] In the result the resolutions passed and decisions made in the meeting of the 21 October 2021 and subsequent meetings stands to be reviewed and set aside. It is common cause that another Special Council Meeting was held on the 1 December 2022. In that meeting further appointments and dismissal of other councillors and officials occurred. I find it apposite to review the decisions taken and resolutions passed on the meeting of the 1 December 2022 on the same grounds as in the meeting of the 21 October 2022.

[21] On the issue of costs, the applicants in case number 13268/2022 submits that the respondents who opposed the applications must bare the

costs in their personal capacity. On the other hand, counsel for the applicant in case number 13207/2022 submits that the municipality must bare the costs. I agree with this submission. The decisions were made by counsel and not by individual councillors in their personal capacity. I find no reason to burden them with costs in their personal capacity.

[22] It would not be appropriate to remove the new councillors without restoring the ones removed in accordance with impugned decision in their positions. I am of the view that doing so will lead to chaos in the municipality. It is for this reason that I find that it would be just to grant the declaratory orders as prayed for by the applicants in case number 132068/2022.

[23] In the result I make the following order:

1. The resolutions passed in the Special Council Meeting of the 21 October 2021 of the Thabazimbi Local Municipal are reviewed and set aside, including but not limited to:
 - 1.1. the motion of no confidence and the resultant removal of Johanna Elizabeth Albertina Swanepoel as the Mayor;

1.2 The motion of no confidence and the resultant removal of Butana Ben Tlhabadira as the Speaker;

1.3 The appointment of Judith Motsei Mogapi as the new Mayor;

1.4 The appointment of Tshegofatso Ramoabi as the new Speaker;

1.5 The dismissal of Lindiwe Makaya as the Acting Municipal Manager is reviewed and set aside;

1.6 The appointment of Segale Setsewe Pilane as the Acting Municipal Manager;

2. It is declared that:

2.1 the second applicant is the Mayor of Thabazimbi Local Municipality;

2.2 Butana Ben Tlhabadira is the Speaker of the Thabazimbi Local Municipality;

2.3 Lindiwe Makaya is the Acting Municipal Manager of the Thabazimbi Local Municipality;

3. The resolutions passed at a Special Council Meeting of the Thabazimbi Local Municipality on the 1 December

2022 are reviewed and set aside which includes but not limited to:

3.1 The dismissal of Thaveshan Chetty from the position of the Acting Chief Financial Officer;

3.2 the appointment of Letseka Gladiwin Tloubatla as the Municipal Manager;

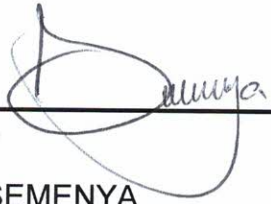
3.3 The appointment of Kedisaletse Johannes Matlou as the Acting Chief Financial Officer;

3.4 the dismissal of Johannes Jacobus Van Der Merwe as the Acting Corporate Services Director;
and

3.5 The appointment of Tebogo Maheso as the Acting Corporate Services Director

4. It is declared that Thaveshan Chetty is the incumbent Acting Chief Financial Officer of the Thabazimbi Local Municipality.

5. The Thabazimbi Local Municipality is ordered to pay the costs of the application which shall include the costs of the employment of two counsel where applicable.



M V SEMENYA

ACTING JUDGE PRESIDENT

LIMPOPO DIVISION; POLOKWANE.

Appearances:

For the applicant in case number 13207/2022

Adv S STEbeile

Instructed by: Mampa and Machete Attorneys

For the applicants in case number 13268/2023

Adv S G Gouws

And

Adv L S Taljard

Instructed by:

Minde Schapiro and Smith Inc

For the respondents:

Adv A B Rossouw

And Adv JAL Pretorius

Instructed by:

Mohale Incorporated.

Date of hearing:

28 July 2023.