

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED.

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7 November 2023

CASE NO: 7895/2022

In the matter between:

**THE DEMOCRATIC ALLIANCE**

Applicant

and

**CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY** First Respondent

**COUNCIL OF THE CITY OF JOHANNESBURG  
METROPOLITAN MUNICIPALITY** Second Respondent

**THE CITY MANAGER OF THE CITY OF JOHANNESBURG  
METROPOLITAN MUNICIPALITY** Third Respondent

**FLOYD BRINK** Fourth Respondent

**THE EXECUTIVE MAYOR OF THE CITY OF JOHANNESBURG  
METROPOLITAN MUNICIPALITY** Fifth Respondent

**THE SPEAKER OF THE CITY OF JOHANNESBURG  
METROPOLITAN MUNICIPALITY** Sixth Respondent

**COLLEEN MAKHUBELE** Seventh Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR CO-OPERATIVE  
GOVERNANCE AND TRADITIONAL AFFAIRS, GAUTENG  
PROVINCIAL GOVERNMENT**

Eighth Respondent

**MINISTER OF COOPERATIVE GOVERNANCE AND  
TRADITIONAL AFFAIRS**

Ninth Respondent

**THAPELO AMAD**

Tenth Respondent

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## **JUDGMENT**

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**S BUDLENDER AJ:**

- [1] This matter concerns two decisions taken by the Council of the City of Johannesburg Metropolitan Municipality relating to the appointment of the fourth respondent, Mr Brink, as the City Manager.
- [2] The applicant is the Democratic Alliance. It is one of the political parties represented in the Council. It contends that that two decisions giving rise to the appointment of Mr Brink as City Manager are invalid and fall to be set aside. I return to the grounds of challenge below.
- [3] Five of the respondents have opposed the application. They are the five City entities cited in their official capacities, that is: the Municipality, the Council, the City Manager, the Executive Mayor and the Speaker. For ease of reference I refer to these five collectively as ‘the respondents’.
- [4] Lengthy papers have been filed in this matter and the arguments before me ranged across a series of procedural and substantive matters. However, as will appear from what follows, in my view the matter can be resolved somewhat more

narrowly than some of these debates might suggest.

## PRELIMINARY ISSUES

[5] Before turning to set out the chronology of key events, it is appropriate to deal with three preliminary matters.

[6] First, the respondents initially complained that the matter had been improperly brought as an urgent application.

[6.1] The respondents contended, in particular, that the urgency was self-created and that the delay in launching the application was unjustified.

[6.2] It is not necessary to resolve these debates. It was ultimately accepted – quite properly – by counsel for the respondents that given the importance of the resolutions at issue, it was in all parties' interests for the court to pronounce on the merits of the matter.

[7] Second, the respondents, in their papers, contended that the matter had been improperly brought in terms of Rule 6, rather than Rule 53.

[7.1] In my view, the point is misplaced. It has been clear since at least *Jockey Club of South Africa v Forbes*<sup>1</sup> that Rule 53 is designed to confer benefits on an applicant – such as requiring the provision of the Rule 53 record so that the applicant is not “in the dark”. The applicant is fully entitled to proceed in terms of Rule 6 should it so choose.

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<sup>1</sup> *Jockey Club of South Africa v Forbes* 1993 (1) SA 649 (A) at 661E-H.

[7.2] Difficulties and complexities do sometimes arise when a review is launched in terms of Rule 6 and cites private parties who would wish to have access to the record to defend the impugned decision.<sup>2</sup> But those difficulties do not arise here. While some quasi-private respondents have been cited, none have opposed the relief sought or complained that they required access to the Rule 53 record.

[8] Third, when the matter was allocated to me, I drew to the parties' attention that I had previously acted for both the Democratic Alliance and the City of Johannesburg and that I was engaged in pending matters for each. I did so in writing and explained that the subject-matter of the previous and current briefs was unrelated to the present dispute.

[8.1] The respondents initially raised certain issues via correspondence with the applicant. However, they ultimately decided not to make any request that I should recuse myself. During oral argument, I expressly confirmed with Senior Counsel for the respondents that his clients were not seeking any recusal.

[8.2] The applicant also did not suggest I should recuse myself.

[8.3] In the absence of a proper basis to recuse myself, I understand that I have a duty to sit and decide matters allocated to me.<sup>3</sup>

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<sup>2</sup> See the discussions in *South African Football Association v Stanton Woodbrush (Pty) Ltd t/a Stan Smidt & Sons and Another* 2003 (3) SA 313 (SCA) at para 5

<sup>3</sup> *President of the Republic of South Africa & others v South African Rugby Football Union & others* 1999 (4) 147 (CC) at para 148.

## THE CHRONOLOGY OF KEY EVENTS

- [9] In December 2021, the law-firm ENSafrica was appointed by the City's Group Head of Legal Contracts to investigate certain transactions and non-compliance with approval processes. Mr Brink was potentially implicated in these investigations in his capacity as Acting City Manager.
- [10] On 13 January 2022, the Council embarked on a recruitment process to appoint a new City Manager. It resolved to approve the advertisement process of the vacant City Manager position and to approve the composition of the interview panel. The City duly advertised the City Manager vacancy.
- [11] On 22 January 2022, ENSafrica released its report. It made various findings of financial misconduct in relation to two transactions. Some of these implicated Mr Brink in his capacity as Acting City Manager. ENSafrica concluded that there ought to be a further investigation in terms of the Regulations of Financial Misconduct Procedures.
- [12] On 13 March 2022, the Office of the Executive Mayor tabled a report notifying Council of the allegations of gross misconduct and negligence against Mr Brink in the ENSafrica report.
- [13] On 26 April 2022, the Council resolved to authorise the Executive Mayor to appoint an independent investigator to investigate the allegations in the ENSafrica report against Mr Brink. Another law-firm, Mothle Jooma Sabdia ('MJS'), was appointed to investigate the allegations against Mr Brink.

[14] MJS submitted its first report on 29 July 2022. There was much debate before me as to how the MJS report interacted with the ENSafrica report. I return to this briefly below.

[15] In the meantime, it had become clear that the recruitment process for the City Manager position had not been successful. On 5 August 2022, the Mayoral Committee was notified that the first ranked candidate had become unavailable and that the second ranked candidate (Mr Brink) had not passed the vetting requirements.

[16] On 10 August 2022, the Council resolved to note the outcome of the recruitment and selection process and to approve the re-advertisement of the City Manager post. The post was duly re-advertised.

[17] MJS submitted its second and third reports on 29 August 2022.

[18] On 16 November 2022, Mr Brink filed a formal complaint with the Council. He contended that his appointment as City Manager had been unlawfully obstructed by various role-players.

[19] On 22 February 2023, the Speaker tabled a report before Council. In that report, the Speaker advanced the proposition that Mr Brink had been exonerated by the MJS reports from the allegations contained in the ENSafrica report.

[20] What followed were the two resolutions that are impugned in this application.

[21] First, on 22 February 2023, the Council resolved to:

[21.1] rescind August 2022 resolution to readvertise the position of City Manager; and

[21.2] authorise the Executive Mayor to apply corrective measures pertaining to Mr Brink as a matter of urgency.

[22] Second, on the next day, 23 February 2023, the Council resolved to approve the appointment of Mr Brink as the City Manager and to authorise the Executive Mayor to offer Mr Brink a five year employment contract.

[23] I refer to these resolutions of 22 and 23 February 2023 as the ‘impugned resolutions’.

## **THE GROUNDS OF CHALLENGE AND THE APPLICABLE STANDARD**

[24] The applicant challenges the impugned resolutions on essentially three main grounds:

[24.1] First, the applicant contends that the decisions were procedurally unlawful as the manner in which the speaker tabled the resolutions violated the Council’s Standing Rules and Orders and the principle of legality.

[24.2] Second, the applicant contends that the decisions are substantively unlawful in that Mr Brink did not meet the statutorily prescribed mandatory requirements for the position of City Manager.

[24.3] Third, the applicant contends that the decisions are substantively

unlawful in that Mr Brink had been implicated in serious and potentially criminal conduct.

[25] There was some debate between the parties regarding whether the impugned decisions amount to administrative action in terms of the Promotion of Administrative Justice Act<sup>4</sup> (PAJA).

[25.1] The applicant contended that “*since ‘the Council is a deliberative body which exercises both legislative and executive functions,’ and the impugned decisions are executive, they are most likely administrative.*”

[25.2] I do not agree. The argument appears to overlook the exception in paragraph (cc) of the definition of “*administrative action*” in PAJA – that is “*the executive powers or functions of a municipal council*”. Executive functions of a municipal council are therefore expressly excluded from the definition of administrative action.

[26] However, that does not mean that the impugned resolutions are not subject to review.

[26.1] It is common cause between the parties that, even assuming that the impugned decisions are not subject to PAJA, they are certainly subject to the principle of legality.

[26.2] This is undoubtedly correct. Our highest courts have repeatedly held that all exercises of public power are subject to the principle of legality. The

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<sup>4</sup> Act 3 of 2000.



principle of legality operates as a “*safety net to ensure that courts have some degree of control over public power that does not amount to administrative action*”.<sup>5</sup>

[26.3] I therefore proceed only on the basis of the principle of legality.

[26.4] Of course, the standard of review under the principle of legality is not the same as the standard of review under PAJA. It is, in certain important respects, a less intrusive standard of review than under PAJA.

## **THE PROCEDURAL CHALLENGE**

[27] I begin with the first ground of challenge. That challenge, as I have mentioned, involves a contention by the applicant that the decisions were procedurally unlawful as the manner in which the speaker tabled the resolutions violated the Council’s Standing Rules and Orders and the principle of legality.

[28] In order to understand and assess the challenge, it is necessary to consider the Council’s Standing Rules and Orders (‘the Rules’).

[29] I start with the ordinary position relating to Council meetings and resolutions. Unsurprisingly, the Rules are careful to ensure that proper notice is given of all meetings and proposed resolutions, together with time to consider the proposed agenda and resolution. So, for example:

[29.1] Rule 62(1) provides that the Programming Committee must “*determine*

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<sup>5</sup> Eg: *National Director of Public Prosecutions and Others v Freedom Under Law* 2014 (4) SA 298 (SCA) at para 29.

*all business of the Council in accordance with these Rules*". As I understand it, the Programming Committee consists of representatives from multiple parties – rather than simply the majority party.<sup>6</sup>

[29.2] The important role of the Programming Committee is confirmed by Rule 95(1) which provides that, unless the Rules provide otherwise, "*a motion must be selected by the Programming Committee before it is considered by the Council*".

[29.3] Rule 55(1) provides that notice of any meeting must be served on every councillor at least three calendar days before the meeting takes place.

[29.4] Rule 94(1) provides that a councillor who wishes to introduce a motion must submit a signed copy of the motion to the Secretary of Council for placing on the Council Agenda fourteen days prior to the Council meeting.

[30] Equally unsurprisingly, the Rules make provision for a departure from these ordinary procedures in certain urgent circumstances. However, for this to occur, certain specific criteria must be met. This is clear from Rule 64, which is headed "Urgency Reports" and provides as follows:

*"(1) Upon submission of a written motivation of urgency, at least 2 hours before a Council meeting, the Speaker may allow urgency reports to be tabled in Council, however, only if in the Speaker's opinion the contents of such Reports:*

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<sup>6</sup> See Rule 114(2): "*Political parties are entitled to be represented on Committees in substantially the same proportion as the proportion in which they are represented in Council.*"

- (a) *do not require the oversight and concurrence of the Section 79 Oversight Committee(s); or*
  - (b) *are not substantive.*
- (2) *In the interests of justice, democracy and good governance, Parties shall be allowed time to collectively discuss the Urgency Report(s) before the Report(s) is/are put to a vote.*
- (3) *In the case of an exceptional circumstance and acquiesced by the Speaker of Council a report may be tabled which can retrospectively be considered by the oversight committee.”*

[31] It was essentially common cause between the parties that the two impugned resolutions did not meet the standards for ordinary resolutions. They were not, for example, scheduled by the Programming Committee and were scheduled on extremely short notice.

[32] The debate between the parties therefore lay elsewhere. It was whether the impugned resolutions had been brought within the urgency provisions of Rule 64. The respondents contended that the Rule 64 requirements were met and that the resolutions were accordingly procedurally lawful. The applicant contended that the Rule 64 requirements were not met and that the resolutions were accordingly procedurally unlawful.

[33] The first complaint raised by the applicant is that Rule 64(1) cannot apply because there was no “submission of a written motivation of urgency” as the Rule requires.

[33.1] This requirement makes perfect sense when it is a member other than the Speaker who is seeking to table the urgent motion. In those

circumstances, the member must submit the written motivation of urgency for the Speaker to consider whether to allow the motion to proceed.

[33.2] It is somewhat less obvious whether this requirement applies also when it is the Speaker herself who is tabling the motion. But having considered the matter, I have concluded that the requirement continues to apply in such situations. The departure from prescribed procedures and time periods is a serious matter which has considerable potential for abuse. It would therefore be surprising if the Speaker could do so without a formal written motivation justifying the urgency.

[33.3] There is some suggestion by the respondents that the heading of the Speaker's memorandum confirms that the matters were urgent and exceptional. I do not agree. At most that heading indicates that the matters were serious. But the fact that a matter is serious does not by itself justify urgency, let alone extreme urgency.

[33.4] On this basis alone, the impugned resolutions were invalid. They were dealt with urgently, without the written motivation of urgency required by Rule 64(1).

[34] But even if there had been a written motivation of urgency (or if that requirement did not apply), the impugned resolutions still cannot be rendered valid by Rule 64(1).

[34.1] This is because the resolutions were plainly "substantive". Indeed, the

respondents expressly conceded that this was the case in their answering affidavit.

[34.2] The first resolution rescinded the August 2022 resolution to readvertise the position of City Manager and authorised the Executive Mayor to apply corrective measures pertaining to Mr Brink as a matter of urgency. The second resolution approved the appointment of Mr Brink as the City Manager.

[34.3] It is hard to imagine clearer examples of substantive resolutions. They are substantive resolutions with critical effects for the City and its residents. As the Constitutional Court has explained:

*“[Section 54A] lays emphasis on the appointment of suitably qualified municipal managers owing to the position they hold in the administration of a municipality. The role played by the managers is crucial to the delivery of services to local communities and the proper functioning of municipalities whose main function is to provide services to local communities.”<sup>7</sup>*

[35] Once it is clear that Rule 64(1) does not render the resolutions lawful, the remaining question is whether Rule 64(3) does so.

[35.1] That Rule provides that *“In the case of an exceptional circumstance and acquiesced by the Speaker of Council a report may be tabled which can retrospectively be considered by the oversight committee.”*

[35.2] It seems to me that this Rule cannot assist the respondents. Even

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<sup>7</sup> *Notyawa v Makana Municipality and Others* [2019] ZACC 43; 2020 (2) BCLR 136 (CC) at para 4

assuming in favour of the respondents that there were exceptional circumstances, it is difficult to understand how the remaining requirements of Rule 64(3) were met.

[35.3] It is not clear to me that this issue falls within the mandate of the Oversight Committee. But even if it did, it is difficult to understand how either resolution could be considered retrospectively. The first resolution was implemented the very next day, via the second resolution. There was no suggestion that that the second resolution would somehow be held in abeyance pending the review of the Oversight Committee.

[35.4] The respondents contend in their heads of argument that the appointment decision “*included the referral of the complaint by the Council to the relevant oversight committees on the firm of the Ethics and Disciplinary Committee and other committees.*” But this is plainly not the sort of “retrospective” consideration that Rule 64(3) had in mind.

[36] In my view, therefore, the impugned resolutions were in breach of the Rules. They did not comply with the ordinary requirements in the Rules and did not fall within the exceptions for urgency permitted by Rule 64.

[37] I emphasise that I have reached this conclusion even without considering whether the resolutions were in fact so urgent and so exceptional that they required this expedited treatment. But when that issue is considered, the resolutions fare no better.

[37.1] Mr Brink’s formal complaint was filed on 16 November 2022. That is more

than three months before the first resolution was tabled and adopted as a matter of great urgency, on 22 February 2023.

[37.2] Even accepting, as the respondents urged, that this was a very serious matter, it is difficult to understand how the Council and Speaker could receive a complaint, take three months to make some initial enquiries, and then suddenly proceed on virtually no notice at all.

[37.3] I note that Rule 64(1) contemplates the Speaker making an assessment of whether, in her “opinion”, the matter is urgent. But that cannot be a purely subjective assessment given the context and the potential consequences. There must at least be a rational basis for the conclusion.

[37.4] This is made clear by the decision *Walele v City of Cape Town*.<sup>8</sup> There, the Constitutional Court explained that “[m]ore is now required if the decision-maker's opinion is challenged on the basis that the subjective precondition did not exist”. Even where jurisdictional facts may be framed in subjective terms, “[t]he decision-maker must now show that the subjective opinion it relied on for exercising power was based on reasonable grounds.”

[37.5] *Walele* was a PAJA case – hence the reference to reasonable grounds. In the present case, because only the principle of legality applies, it seems to me that the Speaker must show that the subjective opinion she

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<sup>8</sup> *Walele v City of Cape Town* 2008 (6) SA 129 (CC) at para 60.

exercised was based on rational grounds.

[37.6] I am unable to find any evidence of a rational basis for the extreme urgency with which the resolutions were dealt. Certainly, none is made out in the answering papers.

[37.7] The same applies to the “exceptional circumstances” requirement in Rule 64(3).

[38] Lastly, the respondents emphasise that section 59(3)(a) of the Municipal Structures Act<sup>9</sup> creates a specific statutory power for municipal councils to review any decision previously taken by the council and to confirm, vary or revoke it.

[38.1] This is undoubtedly so, but it does not answer the procedural complaint.

[38.2] On the contrary, section 59(3)(a) says expressly that a Municipal Council may do so “*in accordance with procedures in its rules and orders*”. It therefore reinforces the need to comply with the Rules.

[39] I am therefore of the view that the impugned resolutions breached the Council’s own Rules and were procedurally unlawful. This falls amply within the principle of legality.

[40] The position is only made worse by the fact that it appears that the ENSafrica report was not squarely placed before Council at the time that it took the two resolutions. This is concerning.

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<sup>9</sup> Local Government: Municipal Structures Act 117 of 1998



[40.1] While there were debates before me as to how the MJS reports and the ENSafrica report interacted, the MJS reports say in terms that “*we do not opine on the correctness or accuracy of the investigation conducted by ENS, or the conclusions they reached*”.

[40.2] Once that was so, it would seem clear that the appropriate way forward was for the ENSafrica and MJS reports, in their entirety, to be placed before the Council for it to consider when considering the proposed resolutions.

#### **IS IT NECESSARY TO REACH THE REMAINING GROUNDS OF CHALLENGE?**

[41] The question which now arises is whether it is necessary for me to reach the remaining grounds of challenge.

[42] I have given anxious consideration to this issue, particularly in the light of statements by the Constitutional Court which might be read to suggest that I am required to do so.

[42.1] For example, in *S v Jordan*, the Court explained that where the constitutionality of a provision is challenged on a number of grounds and the court upholds one such ground it is desirable that it should also express its opinion on the other challenges.<sup>10</sup>

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<sup>10</sup> *S v Jordan and Others (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae* 2002 (6) SA 642 (CC) at para 21

[42.2] Similarly, in *Spilhaus Property Holdings v MTN*, the Court criticised the SCA for having disposed of a matter on standing grounds, without reaching the merits of the dispute. It emphasised that it is desirable, where possible, for a lower court to decide all issues raised in a matter before it.<sup>11</sup>

[43] It seems to me, however, that in both cases, the Court was not laying down a rigid or inflexible rule. Nor was it seeking to suggest that there would never be exceptional instances where it would be appropriate for a lower court to decide the matter on one ground only.

[44] It seems to me that this is such an exceptional case. Having reached the conclusion that the impugned resolutions were procedurally invalid in a series of respects, it would not be appropriate for me also to deal with the substantive challenges. Instead the more appropriate route, which pays due deference to the role of the Municipal Council, is to set the resolutions aside so that Council can consider these issues , and all related issues, properly and afresh.

[45] I therefore express no view on the substantive challenges.

## **REMEDY**

[46] Given that I have held that PAJA is not applicable, my remedial powers flow from section 172(1) of the Constitution. In other words:

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<sup>11</sup> *Spilhaus Property Holdings (Pty) Limited and Others v MTN and Another* 2019 (4) SA 406 (CC) at para 44

[46.1] In terms of section 172(1)(a) of the Constitution, I am required to declare any law or conduct invalid to the extent of its inconsistency; and

[46.2] In terms of section 172(1)(b) of the Constitution, I am entitled to make any order that is just and equitable.

[47] In this regard, I take as my starting point the default position explained by the Constitutional Court in *All Pay II*:

*“Logic, general legal principle, the Constitution, and the binding authority of this Court all point to a default position that requires the consequences of invalidity to be corrected or reversed where they can no longer be prevented. It is an approach that accords with the rule of law and principle of legality.”<sup>12</sup>*

[48] In other words, any departure from the default position is not to be granted too freely. A proper case must be made out in this regard.

[49] The relief sought by the applicant can conveniently be divided into three categories.

[50] The first category of relief, appearing from prayers 2 to 5 of the Notice of Motion, seeks in essence that the two impugned resolutions are declared invalid. In light of the conclusion I have reached on the merits, I see no basis to refuse these orders. Nor was one offered by the respondents.

[51] The second category of relief, appearing from prayers 6 and 7 of the Notice of

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<sup>12</sup> *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* 2014 (1) SA 604 (CC) at para 30

Motion, seeks that any contract entered into between the respondents and Mr Brink is declared invalid. Again I see no basis to refuse these orders. Nor was one offered by the respondents.

[52] However, some provision does need to be made for the Council to appoint an Acting Municipal Manager, following the granting of these orders, to avoid a vacuum or lacunae. Section 54A(1)(b) of the Municipal Systems Act<sup>13</sup> specifically entitles the Council to appoint an Acting Municipal Manager. Given this, I intend to suspend my order for ten court days to allow this to occur. This falls amply within my section 172(1)(b) power to grant just and equitable relief.

[53] Lastly, the third category of relief, appearing from paragraphs 8 and 9 of the Notice of Motion, relates to decisions that Mr Brink has taken or participated in, in his capacity as Municipal Manager.

[53.1] The applicant asks that all of these decisions are declared invalid and reviewed and set aside, subject only to the right of the respondents or an authorised officer to apply to court for an order preserving them within ten days.

[53.2] I have significant difficulties with this proposed remedy. The relief sought has the potential to affect countless members of the public or companies who have relied on or been affected by the decisions concerned. I have no information on how many such decisions there might be, nor what the impact of the order sought will be. Moreover, the order sought makes no

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<sup>13</sup> Local Government: Municipal Systems Act 32 of 2000

provision for anyone other than the City to apply to court for appropriate relief and, even if it did, it would be unrealistic to hope that members of the public would do so.

[53.3] It seems to me that that the better view is that, even though I have held that Mr Brink's appointment was invalid, it should not follow that every decision he made is likewise invalid.

[53.4] This is the stance adopted by the Constitutional Court on numerous occasions.

[53.5] For example, in *Corruption Watch v President*,<sup>14</sup> the Court held that Adv Abrahams had been unlawfully appointed as the National Director of Public Prosecutions and declared that decision invalid. But it declined to set aside the decisions made by Adv Abrahams, holding:

*“The setting aside of decisions taken, and acts performed, by Advocate Abrahams in his official capacity before his appointment was declared invalid would result in untold dislocation in the work of the NPA and in the administration of justice itself. It is thus necessary to appropriately preserve these acts and decisions.”*<sup>15</sup>

[53.6] The same approach must apply here.

## **COSTS**

[54] The applicant has been successful and is entitled to its costs.

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<sup>14</sup> *Corruption Watch NPC and Others v President of the Republic of South Africa and Others; Nxasana v Corruption Watch NPC and Others* [2018] ZACC 23; 2018 (10) BCLR 1179 (CC)

<sup>15</sup> At para 93

[55] I have given consideration to the applicant's requests for personal and punitive costs award. While some of the criticisms advanced by the applicant are indeed persuasive, having considered all the circumstances, I do not consider that an order for personal or punitive costs should be made.

## **ORDER**

[56] I therefore make the following order:

1. The decision of the second respondent, the Council of the City of Johannesburg Metropolitan Municipality ("the Council"), on 22 February 2023 to:

- a. rescind the prior decision to readvertise the position of the City Manager; and
- b. authorise the Executive Mayor to apply "corrective measures pertaining to the recruitment process of the City Manager, Mr Floyd Brink, as a matter of urgency",

is declared unconstitutional, unlawful and invalid.

2. The decision of the Council on 23 February 2023 to

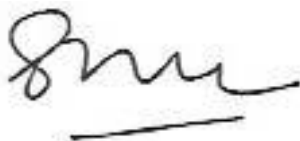
- a. approve the appointment of the fourth respondent, Mr Floyd Brink ("Mr Brink"), as City Manager;
- b. authorise the Executive Mayor to offer Mr Brink a 5-year fixed term

employment contract; and

- c. authorise the Executive Mayor or his nominee to negotiate and finalise the “terms of conditions” of the fixed term employment contract, remuneration, performance contract and security clearance of Mr Brink,

is declared unconstitutional, unlawful and invalid.

3. Any employment contract and/or performance contract any of the respondents may have concluded with Mr Brink pursuant to the decisions in paragraph 1 and/or 2 above are declared unconstitutional, unlawful and invalid.
4. The orders in paragraphs 1 to 3 are suspended for ten court days from the date of this order to allow for the appointment of an Acting City Manager.
5. Decisions taken, and acts performed, by Mr Brink in his official capacity will not be invalid by reason only of the declarations of invalidity contained in paragraphs 1 to 3.
6. The applicant’s costs shall be paid by the first, second, third, fifth and sixth respondents, jointly and severally, including the costs of two counsel.



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S BUDLENDER  
ACTING JUDGE OF THE HIGH COURT

DATE OF JUDGMENT

7 November 2023