

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



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

CASE NO: 6503/24

In the matter between:

COUNCILLOR GODSEND MOKGOPE

APPLICANT

and

RATLOU LOCAL MUNICIPALITY

FIRST RESPONDENT

**RATLOU LOCAL MUNICIPALITY
MUNICIPAL COUNCIL**

SECOND RESPONDENT

**RATLOU MUNICIPALITY COUNCILLOR
AND SPEAKER OF THE MUNICIPAL
COUNCIL MS GLORIA LEEPO**

THIRD RESPONDENT

**RATLOU LOCAL MUNICIPALITY
COUNCILLOR AND MAYOR OF
THE MUNICIPAL COUNCIL
MATLHOMOLA JAFTA**

FOURTH RESPONDENT

DATE OF JUDGMENT

13 February 2025

This judgment was handed down electronically by circulation to the parties' representatives *via* email. The date and time for hand-down is deemed to be **13 February 2025 at 16h00.**

ORDER

1. Dispensing with the forms, time limits and such further requirements as may be applicable and prescribe the Rules of this Honourable Court, condoning the Applicant's non-compliance therewith and directing that this matter be heard as a matter of urgency as contemplated in terms of Rule 6(12) of the Uniform Rules of Court.
2. The Special Council Meeting scheduled to be held on Thursday the 12th of December 2024 at the Ratlou Local Municipality Council Chambers, Setlagole at 10h00 is interdicted for non-compliance with Rule 10 and 11 of the Standing Rules of Order of Ratlou Local Municipality.
3. That in terms of Rule 10 and 11 of the Standing Rules of Order of the First and Second Respondent, the Applicant is entitled to a detailed and itemised agenda of the issues or business proposed to be transacted or discussed and voted on at the Special Council meetings at least 48hours prior to the sitting of

the Special Council meeting, that the failure to attach the agenda to the Special Council Meeting notice dated 10 December 2024 renders the council notice invalid and defective.

4. That the failure by the Third Respondent to attach a detailed and itemised agenda to the Special Council Meeting Notice dated 10 December 2024 at least 48 hours before the sitting of the Special Council Meeting scheduled for the 12th December 2024 at 10h00 constitutes a breach of the Applicant's right to meaningfully and effectively prepare and participate on the Special Council Meeting scheduled to take place on the 12th December 2024.
5. That the Respondents be ordered to pay the costs of this application jointly and severally the one paying the other to be absolved.
6. Granting the Applicant further and /or alternative relief.

JUDGMENT

REDDY J

Introduction

- [1] In the early hours of 12 December 2024, the applicant moved an opposed application for final interdictory relief on an extremely urgent basis. After the hearing of the application, the relief claimed

was ordered. As a result of administrative bungling a request for reasons dated 12 December 2024 was served before me on 3 February 2025. What follows is the reasons that underpinned my order.

The Parties

- [2] Given the various parties in this application it is necessary for context to provide a brief description of the parties which would assist to navigate the facts of this application. The applicant is Mr Godsend Mokgope, (Mokgope) a duly elected council member of the second respondent. The first respondent is the Ratlou Local Municipality, a municipality as contemplated in section 2 of the Local Government: Municipal Systems Act No:32 of 2000. The second respondent is the Municipal Council of the first respondent established in terms of section 12 of the Local Government: Municipal Structures Act 117 of 1998. The third respondent is Ms Gloria Seepo, the duly elected Speaker (the Speaker) of the second respondent. The fourth respondent is Mr Matlhomola Jafta the duly elected council member and Mayor of the second respondent.
- [3] On 10 December 2024 at 08h59 am the applicant received a WhatsApp message on a group which the applicant averred was "imposed on me and other councilors(*sic* councillors) know(*sic* known) as" Cllrs Ratlou Local". This message purported to be a Notice of the Special Council Meeting which was intended to take place on 12 December 2024 at 10h00 at the Ratlou Local Municipality's, municipal chambers. The purported Notice did not include the agenda of the motions or items that are points to be

deliberated at the scheduled council meeting. The same was only included on 11 December 2024 at 12:29, less than twenty-four (24) hours prior to the scheduled meeting.

- [4] Preceding the delivery of the agenda of motions to be deliberated on, the applicant avowed that he bore no knowledge of that was to be transacted on. The late delivery of the agenda of motions led to the inevitable consequence of the applicant being unable to fully, properly and meaningfully participate in the meeting.
- [5] Mokgope claimed that he attempted to raise his frustrations on the WhatsApp group but discovered that the group was locked which only allowed administration members to comment. The inability of the council members to comment was equivalent to censorship. Mokgope contended that there was a malicious culture at the Municipal Council of Ratlou Local Municipality created by the Speaker who has a penchant of discussing the council agenda with selected councillors prior to meetings.
- [6] This obstructive practice results in other councillors being ambushed with motions which must be brusquely voted on at the council meetings. The latter practice is not just unlawful but unconstitutional. More appositely, the conduct of the Speaker is in contrast with Rule 10 & 11 of the Standing Rules of Order of the Ratlou Local Municipality.

- [7] Regarding urgency, Mokgope contended that he had met the threshold of urgency in that he would not be afforded substantial redress at a hearing in due course. The fulcrum of his contention ran as follows. If the special council meeting was allowed to take place it could result in irreversible decisions being supported to the prejudice of the Ratlou Local Municipality. Moreover, the special council meeting was not properly constituted as required in Rule 10 & 11 of the Standing Rules of Order.
- [8] It is against this backdrop, Mokgope asserted that the jurisdictional requirements in respect of final interdictory relief had been met.

The version of the respondents

- [9] Usefully summarized, the respondents' version was founded on four pillars. First, the respondents denied that the application was urgent, alternatively dispute the degree of urgency. Resultantly the argument advanced that the application was to be struck from the roll.
- [10] Second, this application amounted to a gross abuse of the court process which warranted a punitive cost order of the highest degree. Third, only if the threshold of urgency being surpassed, the respondents denied that Mokgope had exhausted alternative remedies and/or denied that Mokgope was entitled to the relief sought. Fourth, it was disputed that Mokgope would suffer any harm if the relief was not granted.

Urgency

[11] The fulcrum of an urgent application is that a litigant will not obtain substantial redress at a hearing in due course. This is the core of urgency. Explicit reasons must be advanced by an applicant establishing why substantial redress would not be obtained if the matter is not forthwith dealt with. This does not require an applicant to establish that irreparable harm will eventuate, for substantial redress alludes to something less exacting than that. *P.D and Another v A.R and Another* (D779/2023) [2024] ZAKZDHC 27 (17 May 2024)

[12] In *M M v N M and Others*, (15133/23) [2023] ZAKZPHC 122 para 8. The extract referred to is found in an article written by V de Wit entitled 'The correct approach to determining urgency' (2021) 21(2) *Without Prejudice* 12 at 13, the following was endorsed:

'Harm does not found urgency. Rather, harm is a mere precondition to urgency. Where no harm has, is, or will be suffered, no application may be brought, since there would be no reason for a court to hear the matter. However, where harm is present, an application to address the harm will not necessarily be urgent. It will only be urgent if the applicant cannot obtain redress for that harm in due course. Thus: harm is an antecedent for urgency, but urgency is not a consequence of harm.'

[13] In a constitutional epoch everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum. Section 34 of the Constitution of the Republic.

- [14] In *Chief Lesapo v North West Agricultural Bank and Another*, [1999] ZACC 16; 2000 (1) SA 409 (CC); 1999 (12) BCLR 1420 (CC) para 22, the apex court underscored the importance of access to courts in these terms:

The right of access to court is indeed foundational to the stability of an orderly society. It ensures the peaceful, regulated and institutionalised mechanisms to resolve disputes, without resorting to self help. The right of access to court is a bulwark against vigilantism, and the chaos and anarchy which it causes. Construed in this context of the rule of law and the principle against self help in particular, access to court is indeed of cardinal importance. As a result, very powerful considerations would be required for its limitation to be reasonable and justifiable. (Footnote omitted.)

- [15] Whilst this constitutional injunction remains true, this right does not include the right to choose the method of approaching and placing a dispute before a competent court. Section 173 of the Constitution recognises and preserves the courts' power to determine how disputes are to be placed before them. *Mukaddam v Pioneer Foods (Pty) Ltd and Others* [2013] ZACC 23 at para 2.

- [16] Having considered the allegations in the founding affidavit I held the view that Mokgope would not be afforded substantial redress at a hearing in due course. Accordingly, I found that the application was urgent.

Final relief

- [17] The requirements for a final interdict are (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the lack of an adequate alternative remedy. *Setlogelo v Setlogelo* 1914 AD 221 at 227 *Masstores (Pty) Ltd v Pick n Pay Retailers (Pty) Ltd* 2017 (1) SA 613 (CC) para 8, *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) para 50.
- [18] To succeed in obtaining the remedy of an interdict, the applicant bears the onus to establish a clear right. The applicant must prove on a balance of probability, the right which it seeks to protect. Whether that right is clearly established is a matter of evidence. There was no underscoring that Mokgope as a councillor of the Ratlou Local Municipality was enjoined with a right to debate and participate freely in a properly constituted Special Council Meeting. This right accrued to him in terms of the law of general application and the Standing Rules of Order.
- [19] The failure to have provided the agenda of motions within the timelines as prescribed for the Special Council Meeting as per Standing Rules of Order impeded Mokgope's right to meaningful participation. To this end, there was no opportunity for a timeous and diligent consideration of motions prior to them being tabled in the Special Council Meeting due to the Speaker's unlawful, unfair and unjustified conduct. It was not the respondents' case that was a justifiable exception when negating the application of Rule 10 & 11 of the Standing Rules of Order.

[20] Rule 10 & 11 of the Standing Rules of Order reads as follows:

10. Notice of meeting to be served

At least five (5) days before any ordinary meeting of the council and at least forty eight (48) hours before any special meeting of the council, a notice to attend the meeting, specifying the business proposed and signed by the speaker and shall be left or delivered to an accessible distribution point within the municipality as determined by the councillor.

A notice to councillors will be individually delivered via email, text message, whatsapp message or otherwise (as adopted by council) informing him/her of the intended distribution of a notice to ensure the notice is dully and timeously received them.

10.1 At least two (2) days before any Portfolio Committee meeting, a notice to attend the meeting specifying the business proposed to be transacted there be signed by the Chairperson of the portfolio committee from time to time/sent by hand to an address provided by the councillor as his /her official address.

11. Business limited by notice or agenda of meeting

With the exception of an urgent report of the Mayor or the Municipal Manager, as agreed with the Speaker, business not specified in the notice and the agenda of the meeting shall not be considered at that meeting. The reasons for urgency must be given by the Speaker to Council prior to the discussion of any urgent report.

Business to be conducted at the Special Council meetings shall be limited to what is specified in the Notice or agenda – **Addendums** or tabling of any matter will be allowed only if council is notified before the start of the council meeting of which the Speaker must table to council for councillors to note.

[21] I held the view that Mokgope had proved a clear right which, if not protected by an interdict, irreparable harm would ensue. Furthermore, Mokgope demonstrated that this clear a right was

threatened by an impending or imminent irreparable harm. *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) para 50. In sum all the requirements that govern final interdictory relief had been proved.

[22] In respect of costs there was no basis to deviate from the general rule that costs follow the result.

Order

[23] Consequently I restate the order:

1. Dispensing with the forms, time limits and such further requirements as may be applicable and prescribe the Rules of this Honourable Court, condoning the Applicant's non-compliance therewith and directing that this matter be heard as a matter of urgency as contemplated in terms of Rule 6(12) of the Uniform Rules of Court.
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3. That in terms of Rule 10 and 11 of the Standing Rules of Order of the First and Second Respondent, the Applicant is entitled to a detailed and itemised agenda of the issues or business proposed to be transacted or discussed and voted on at the

Special Council meetings at least 48 hours prior to the sitting of the Special Council meeting, that the failure to attach the agenda to the Special Council Meeting notice dated 10 December 2024 renders the council notice invalid and defective.

4. That the failure by the Third Respondent to attach a detailed and itemised agenda to the Special Council Meeting Notice dated 10 December 2024 at least 48 hours before the sitting of the Special Council Meeting scheduled for the 12th December 2024 at 10h00 constitutes a breach of the Applicant's right to meaningfully and effectively prepare and participate on the Special Council Meeting scheduled to take place on the 12th December 2024.
5. That the Respondents be ordered to pay the costs of this application jointly and severally the one paying the other to be absolved.
6. Granting the Applicant further and /or alternative relief.



A REDDY

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

APPEARANCES

Date of Hearing:	12 December 2024
Date of Judgment:	12 December 2024
Date of request for reasons	12 December 2024
Date request for reasons served before Judge:	3 February 2025
Date judgment handed down:	13 February 2025
Attorney for Applicant	Mr Moribe
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