



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 22 February 2024

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*Ronald Februarie and Others v Andrew Phillips and Others* (009/2023EC) [2024] ZAEC 02 (22 February 2024)

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Today, the Electoral Court of South Africa, Bloemfontein, dismissed an application pertaining to the leadership dispute of the Siyathemba Community Movement (SCM), a political party in the Pixley ka Seme District Municipality. The issue was whether the resolutions and decisions taken at the meeting held on 7 to 20 November 2021 were in accordance with the constitution of SCM.

The SCM was founded, and its constitution formally adopted at a meeting held at the Broadwaters Resort on Sunday, 27 June 2021. At this meeting, a 'District Management' structure (DM), as contemplated by the constitution as its highest decision-making body between general meetings, was constituted. The DM consisted of thirteen members, with Mr Phillips as the Chairperson and Mr Olyn as the Secretary General. The other office bearers of the DM were as follows: the second respondent (Ms Chumisa Mooi) – as Deputy Chairperson; one Pamela – as Deputy Secretary General; the third respondent (Ms Sylvia Mooi) – as Treasurer; and eight other 'additional members'.

On 1 November 2021, the SCM participated in the local government elections, resulting in it being elected to the following legislative bodies: (a) The Siyathemba Municipal Council – one Ward (Ward 2) and three PR seats; (b) Thembelihle Municipal Council – one PR seat; (c) The Pixley Ka Sema District Council – one direct seat. These positions were filled by the first DM in accordance with their list of candidates shortly after the elections. Mr Phillips, as the leader of the SCM, would have been at the top of this list, making him eligible for the appointment as mayor of any of the Local Municipalities. It is probably this appointment of Mr Phillips as the mayor of the Siyathemba Local Municipality which lies at the heart of the fight between him and Mr Februarie. After the elections, during the period from about 7 to 20 November 2021, the first applicant and his faction took it upon themselves to arrange and convene meetings at ward level where nominations and elections were held to the Municipal Management (MM) structures as envisaged in the SCM constitution. The constitution provided that the MM was to be constituted of members of the DM. Their understanding was that in terms of the constitution the DM was only intended to be an interim structure and that it would endure only until immediately after the local government elections. As a result, the DM was completely sidelined when important decisions were taken with regards to the filling of MM positions.

The approach adopted by the applicants was misguided. Their interpretation of the relevant provisions of the constitution was wrong and is belied by the express wording of clause 5.4. In convening Siyathemba Ward meetings on 7, 10, 11, 12 and 19 November 2021 and establishing Ward / Town structures in other Local Municipalities in the district, Mr Februarie and his faction were themselves acting in contravention of the SCM constitution, which had granted to the first DM the power to govern the SCM for at least two years after the meeting of 27 June 2021, therefore until June 2023. Thereafter, the DM was empowered to arrange, manage and administer the process in terms of which the second DM and its membership were to be constituted.

It follows that the meetings of 20 and 21 November 2021, convened by Mr Februarie and his cohorts, were unlawful and non-compliant with the SCM constitution. At this meeting, a new DM was purportedly constituted, and Mr Februarie was elected as SCM's mayoral candidate for the SLM. I find that these meetings and the resolutions passed there, as well as the decisions taken pursuant thereto, were

unlawful, invalid and of no force and effect. The same applies to the subsequent meetings held by this faction and the decisions taken and the resolutions passed at all such meetings. In particular, as was found by the Northern Cape Division of the High Court in Kimberley (the High Court) – under case number: 148/2023, in a case brought by Mr Phillips and his associates, their summary expulsion as members of SCM and its DM structure was unlawful, invalid, void and of no force and effect.

In the result, this Court refused the relief sought by the applicants and dismissed the application.

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