



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: 24 DECEMBER 2021

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

Afriforum NPC v The Premier, Gauteng Province and Others (1000/2020) [2021] ZASCA 185 (24 December 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing, with costs, an appeal against a decision of the Gauteng Division of the High Court, Pretoria (the high court).

The issue before the SCA was whether the administrator appointed in terms of s 139(1)(c) of the Constitution had the power to approve the 2020/21 annual budget of the City of Tshwane Metropolitan Municipality (municipal council). The administrator upon his appointment approved the annual budget of the municipal council

The appellant challenged the legality and constitutionality of the approval of the annual budget by Kebitsamang Nawa NO (the third respondent), the administrator of the City of Tshwane Metropolitan Municipality (the second respondent), for the financial year 2020/2021 and the nature and character of the decision to approve the budget. On or about 5 March 2020, the first respondent (Premier of Gauteng Province) announced a resolution of the Gauteng Executive Council to dissolve the City of Tshwane Metropolitan Municipality Municipal Council (the Council) because it was dysfunctional and placed it under administration in terms of s 139(1)(c) of the Constitution and s 35(1) of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA), with effect from 23 March 2020 until the declaration of a newly elected Municipal Council.

The appellant argued that the approval of the annual budget entails a legislative function which the administrator may not perform. It contended that the Constitution did not intend that an administrator should approve a budget where the council has been dissolved.

The SCA held that s 139(1)(c) of the Constitution imposes no obligation on the provincial executive to pass an interim budget when it dissolves the council. It refers to the dissolution of the council and the appointment of an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step. It is only when there is a failure to approve a budget that it can intervene and adopt an interim budget. Furthermore, the SCA found that the administrator was not appointed as a consequence of a failure to approve a budget but was appointed to act in line with the terms of reference.

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