



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: 10 June 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

Ingquza Hill Local Municipality & Another v Jongintaba Mdingi (1110/2019) [2021] ZASCA 75 (10 June 2021)

The Supreme Court of Appeal (SCA) today dismissed an appeal brought by the Ingquza Hill Local Municipality and another appellant against the decision of the Eastern Cape Division of the High Court, Mthatha (the high court) with costs, including costs occasioned by the employment of two counsel.

The appeal concerned the removal of the respondent, Mr Jongintaba Mdingi (Mr Mdingi), who was a member of the executive committee of the first appellant, Ingquza Hill Local Municipality (the Municipality), as its mayor pursuant to a resolution adopted by the Municipal Council ostensibly acting in terms of s 53(1) of the Local Government: Municipal Structures Act 117 of 1998 (the Act) on 23 January 2019. The second appellant, Mr Bambezakhe Goya (Mr Goya), who is now deceased, was elected to be the mayor in place of Mr Mdingi in terms of s 48(2) of the Act.

The issue before the SCA was whether the high court erred in its decision to review and set aside the Municipality's decisions to remove Mr Mdingi and the subsequent decision to elect Mr Goya as his replacement.

The facts of the matter were briefly as follows. Mr Mdingi was elected as the mayor on 3 August 2016. On 14 December 2018, the Municipality convened an emergency council meeting to deal with various issues, wherein Mr Simthembile Mtshazo (Mr Mtshazo) intervened on a point of exigency stating that he wanted to introduce the issue of Mr Mdingi's removal as the mayor, for the reason of his alleged failure to implement the resolution of the Municipality, relating to the conduct of the municipal manager. Thereafter, Mr Mdingi was removed from his position following a resolution taken by the Council on 23 January 2019.

Aggrieved by what transpired at the meeting of 23 January 2019, Mr Mdingi took the Municipality's decision on review to the high court by way of an urgent application. His grounds for review were that no investigation was undertaken by the Municipality of the allegations of misconduct against him, no charges were put to him, and he was neither informed of his rights nor given an opportunity to make a presentation of his case, let alone an adequate opportunity to do so. The Municipality submitted that it relied on s 53(1) of the Act as well as Rule 25.1 of its Standing Orders and Rules. The SCA noted that the reference to s 53(1) was inserted in the typed motion in handwriting. In reaction to the Municipality's reliance on s 53(1), Mr Mdingi alleged that he had not been served with any notice to remove him as a member of the executive committee, nor was any sent to the councillors. He further stated that evidence

showed that he in fact had implemented the decision of the Council that he was accused of having defied.

The SCA held that the high court was correct and that the order that it had granted was unassailable. It found that requisite prior notice was not given to Mr Mdingi and the other councillors, prior to the resolution being taken. It further found that the Municipality had admitted that Mr Mdingi was not given notice in compliance with Mr Mtshazo's proposed motion; accepting the Municipality's submission that the actual notice was inconsequential as long as a member was aware of the intended motion to remove him or her, would frustrate the objects and purpose of s 53(1) of the Act read with s 160(8) of the Constitution, as all the councillors must be given an opportunity to participate in council meetings. The SCA further found that the appellants erred in another respect, namely that the motion was said to have been moved in terms of s 53(1) when it was not couched as a motion to remove Mr Mdingi as a member of the executive committee, but as the mayor. Lastly, the SCA found that it was not necessary to enter into a debate as to whether or not the grounds for removal were established, or whether a court could interfere with a municipal council's decision on the basis of irrationality.