



MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

MASHAMAITE & OTHERS V MOGALAKWENA LOCAL MUNICIPALITY & OTHERS CASE NO 548 & 523/2016

From: The Registrar, Supreme Court of Appeal
Date: 29 March 2017
Status: Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

The Supreme Court of Appeal (SCA) today upheld an appeal by the appellants, setting aside the order of the Gauteng Division of the High Court, Pretoria and dismissing the application in the court a quo.

This appeal concerns the affairs of the Mogalakwena Local Municipality, Limpopo (first respondent) and its councillors and the municipal manager. Mr Kekana, (Kekana) (second respondent) was previously the municipal manager of the municipality and the subject of this appeal was an urgent application launched in December 2014 by Kekana, with the municipality against the appellants. During the course of 2014 and 2015, Kekana brought multiple applications on behalf of the first respondent, against various council members, including the appellants. The issues that arose in this appeal were as follows: was the court a quo precluded from granting the relief of reinstatement on the basis of *res judicata*; did Kekana have the authority to institute proceedings on behalf of the first respondent; are some of the orders appealed against moot; was it established that the non-compliance of the Member of Executive Council of the Limpopo Province (MEC) with the order granted by the court a quo, was wilful and mala fide and whether the court a quo was justified in directing that the appellants pay the reserved costs of 23 December 2014.

The SCA held that the court a quo erred in granting a substantive order of reinstatement for two reasons. First, it was precluded, by virtue of the doctrine of *res judicata*, from pronouncing on this matter as it had already been adjudicated upon. Second, Kekana had not made out a case for the grant of such relief. The court also held that: Kekana was on suspension at the time proceedings were instituted and as a result he could not act on behalf of the municipality; paragraphs 6 and 7 of the order granted by the court a quo will have no practical effect or result and that, that part of the judgment has become moot; all requirements for the grant of a contempt order against the MEC was not met and should not have been granted and there was no reasonable basis for the court a quo to have granted an order directing costs that the costs reserved on 23 December 2014 be paid by the appellants.