



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 130/2025

In the matter between:

BREEDE VALLEY ONAFHANKLIK

APPELLANT

and

SPEAKER OF THE BREEDE VALLEY MUNICIPALITY

FIRST RESPONDENT

EXECUTIVE MAYOR OF THE BREEDE

VALLEY MUNICIPALITY

SECOND RESPONDENT

MUNICIPAL MANAGER OF THE BREEDE

VALLEY MUNICIPALITY

THIRD RESPONDENT

BREEDE VALLEY MUNICIPALITY

FOURTH RESPONDENT

Neutral citation: *Breede Valley Onafhanklik v Speaker of the Breede Valley Municipality and Others* (130/2025) [2026] ZASCA 130 (29 September 2026)

Coram: SCHIPPERS, HUGHES, MEYER AND VALLY JJA AND REINDERS AJA

Heard: 10 September 2026

Delivered: 29 September 2026

Summary: Local government — appointment of councillors to committees established in terms of s 80 read with s 79 of the Local Government: Municipal Structures Act 117 of 1998 — power of municipal council to appoint members to s 80 committees — duty of elected councillors to serve on municipal structures — decision to appoint councillors where party refuses to nominate councillors – not *ultra vires* nor irrational — executive action reviewable under the principle of legality.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Montzinger AJ, sitting as court of first instance):

The appeal is dismissed with costs, including those of two counsel.

JUDGMENT

Meyer JA (Schippers, Hughes and Vally JJA and Reinders AJA concurring)

[1] This appeal concerns the competence of a municipal council to appoint councillors to its committees established in terms s 80,¹ read with s 79,² of the Local Government: Municipal Structures Act 117 of 1998 (Structures Act), to assist its Executive Committee and Executive Mayor. It is against the order of the Western Cape Division of the High Court, per Montzinger AJ (the high court), granted on 1 November 2025. The high court dismissed with costs an application for judicial review of the decision of the fourth respondent, the Breede Valley Municipality (the Municipality),³ to appoint members of the appellant, the Breede Valley Onafhanklik (BVO),⁴ to committees established in terms of s 80 of the Structures Act, per resolution C114/2021. These members were nominated by the Council to serve on the committees, but refused to do so. The appeal is with the leave of the high court. The

¹ Section 80(1) of the Structures Act reads thus:

‘If a municipal council has an executive committee or executive mayor, it may appoint in terms of section 79, committees of councillors to assist the executive committee or executive mayor.’

² Section 79(1) of the Structures Act reads thus:

‘(1) A municipal council may-

(a) establish one or more committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers;

(b) appoint the members of such a committee from among its members; and

(c) dissolve a committee at any time.’

³ A local authority and organ of state established in terms of s 12 of the Structures Act, read with s 151 of the Constitution of the Republic of South Africa 108 of 1996 (the Constitution).

⁴ A registered political party in terms of the Electoral Commission Act 51 of 1996, represented in the local sphere of government.

first respondent is the Speaker of the Municipality.⁵ The second respondent is its Executive Mayor,⁶ and the third respondent is its Municipal Manager.⁷

[2] On 1 December 2021, at a special meeting of the Municipal Council (the Council) for the 2021/2022 financial year, it resolved to establish s 80 committees, appoint committee members, and authorise the Executive Mayor to appoint a chairperson for each committee. The Council adopted resolution C114/2021, which provided that each political party represented on the Council would nominate one councillor to serve on these committees and submit the nominee's details to the Speaker's office on or before 10 December 2021 (the 2021 resolution).

[3] Despite this resolution, BVO declined to nominate councillors to serve on the s 80 committees. As a direct consequence of BVO's refusal to participate, the notice of the second council meeting for the 2022/2023 financial year, scheduled for 23 August 2022, included Item 9.3. The purpose of this item was to obtain a resolution to nominate councillors from BVO to serve on the established s 80 committees. The notice contained a recommendation that Councillor C F Wilskut be nominated to the Public and Community Services Committee; Councillor M Swartz, to the Strategic Services Committee; Councillor N J Wullschleger, to the Finance Services Committee; and Councillor C Ismail, to the Engineering Services Committee.

[4] On 22 August 2022, in response, BVO addressed a letter to the Municipal Manager, expressing concerns about the upcoming council meeting. It asserted that the Municipality was attempting to unlawfully intervene in the party's internal affairs, noting that the 2021 resolution clearly required political parties, rather than the Municipality, to nominate their representatives. The letter emphasised that the 2021 resolution did not empower the Municipality to act on the party's behalf, and that, even if such authority existed, the deadline for nominations had expired on 10 December 2021. Consequently, BVO argued that Item 9.3 could not lawfully be achieved under the 2021 resolution without its consent or authority; and that the municipality was acting beyond the scope of its powers.

⁵ Appointed as such in terms of s 36(1) of the Structures Act.

⁶ Appointed as such in terms of s 48 of the Structures Act as the political head of the municipal council.

⁷ Appointed as such in terms of s 54A read with s 57 of the Local Government: Municipal Systems Act 32 of 2000.

[5] Despite these objections, Item 9.3 was placed before the Council on 23 August 2022. The Council noted BVO's prior refusal to participate and, by unanimous resolution C100/2022, established the s 80 committees and nominated the specified BVO councillors (the 2022 resolution). Pursuant to this resolution, the Council formally confirmed and appointed the members of each committee. BVO was notified of the adoption of the 2022 resolution on 30 August 2022, thereby concluding the appointment process.

[6] Subsequently, one of the BVO councillors appointed to the s 80 Finance Services Committee, Councillor Wullschleger, received an invitation to attend a committee meeting on 10 October 2022. BVO responded that he would not attend because it was in the process of challenging the appointment of the BVO councillors to the s 80 committees. The 2022 resolution provided that those BVO councillors risked being removed from office as councillors if they failed to attend s 80 committee meetings. Thereafter, on 14 February 2023, BVO instituted an application for judicial review in the high court.

[7] In its founding papers, BVO launched a multi-pronged attack on the appointment decision, primarily relying on the grounds set out in s 6(2) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). Alternatively, it contended that the decision was reviewable and should be set aside under the constitutional principle of legality. The gravamen of BVO's challenge was that the Council had acted *ultra vires* (beyond its powers), breached the 2021 resolution, acted procedurally unfairly, and made an irrational and unreasonable decision by appointing councillors to serve on committees without their consent.

[8] The high court dismissed the application with costs. Its judgment may be summarised as follows:

(a) The appointment decision was executive rather than administrative action, as it concerned the Council's internal structure and political functioning under s 160(1)(c) of the Constitution. Consequently, PAJA was inapplicable, and the decision was subject to the principle of legality.

(b) Section 80, read with s 79, of the Structures Act clearly authorises a municipal council to appoint its councillors to serve on s 80 committees, and nothing in the 2021 resolution restricted or precluded the Council from exercising that statutory power.

(c) The nomination period under the 2021 resolution lapsed on 10 December 2021, and a mere council resolution could not, in law, circumscribe or override the express statutory powers conferred by national legislation.

(d) The decision survived rationality scrutiny under the principle of legality. The court emphasised that elected councillors have a public and statutory duty to serve the municipality. Allowing individual councillors or minority parties to 'opt out' of committee work would subvert the operational model established by the Structures Act and undermine the constitutional obligation to ensure inclusive, effective local governance.

[9] On appeal, BVO's grounds of challenge – although framed around multiple statutory and constitutional provisions – ultimately reduce to three core contentions. These are that the high court erred in finding that: (a) the impugned decision constituted executive action subject only to the principle of legality, rather than administrative action reviewable under PAJA; (b) the Council acted within its statutory powers (*intra vires*); and (c) the appointment decision was rational.

[10] BVO contends that the Council acted *ultra vires* by failing to follow the party-nomination process mandated by the 2021 resolution, arrogating to itself the power to nominate party representatives without consent, and violating s 160(8) of the Constitution by translating a councillor's 'entitlement' to participate into a compulsory obligation.⁸

BVO argues that forcing councillors to serve on committees against their will is inimical to democratic principles and fails the standard of rationality.

[11] The municipal respondents contend that the high court was correct. They submit that whether the review is adjudicated under PAJA or the principle of legality is

⁸ Section 160(8) of the Constitution provides thus:

'Members of a Municipal Council are entitled to participate in its proceedings and those of its committees in a manner that-

- (a) allows parties and interests reflected within the Council to be fairly represented;
- (b) is consistent with democracy; and
- (c) may be regulated by national legislation.'

ultimately academic, as both review regimes encompass the grounds of lawfulness and rationality, both of which BVO has failed to establish. On the merits, they submit that ss 79 and 80 of the Structures Act grant the Council plenary authority to appoint councillors to s 80 committees; that council resolutions cannot fetter national statutes; and that councillors who voluntarily stand for public office are required to carry out the statutory duties imposed upon them, including serving on municipal committees to ensure fair political representation as mandated by s 160(8) of the Constitution.

[12] It is well established that statutes must be interpreted by application of the triad text, context and purpose. Interpretation requires an objective, unified process considering text, context, and purpose simultaneously. Furthermore, statutory provisions must be interpreted in light of the Constitution. Provisions must be construed purposively to give effect to constitutional rights and foundational values.⁹ Where statutory provisions regulate municipal structures, they must be interpreted to promote democratic, accountable, and functional local government. In *Democratic Alliance and Another v Masondo NO and Another*,¹⁰ the Constitutional Court directly considered the interplay between s 160(8) of the Constitution and Chapter 4 of the Structures Act. The Constitutional Court affirmed that statutory provisions governing municipal committees must be construed to give practical effect to the constitutional mandate of broad political representation and deliberative democracy.

[13] BVO devotes significant attention to arguing that the high court erred in characterising the adoption of the 2022 resolution as executive action. It contends that the decision directly affected the rights of individual councillors and political parties, thereby constituting administrative action under PAJA. In my view, the high court was correct in concluding that the decision constituted executive action reviewable under the principle of legality. The distinction between administrative and executive action is well established. Administrative action generally involves the implementation of legislative frameworks by the bureaucracy in relation to individual members of the

⁹ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) para 18; *Cool Ideas 1186 CC v Hubbard & Another* [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) para 28; *Road Traffic Management Corporation v Waymark Infotech (Pty) Ltd* [2019] ZACC 12; 2019 (6) BCLR 749 (CC); 2019 (5) SA 29 (CC) paras 31-32.

¹⁰ *Democratic Alliance and Another v Masondo NO and Another* 2003 (2) BCLR 128; 2003 (2) SA 413 (CC) para 12.

public. By contrast, executive action encompasses political policy formulation and the internal structural decisions of legislative and executive bodies.¹¹

[14] The appointment of councillors to s 80 committees concerns the internal organisational structure of the Council. The Council's power derives directly from s 160(1)(c) of the Constitution, which empowers a council to elect an executive committee and other committees, subject to national legislation. That legislation is the Structures Act, more specifically, ss 79 and 80. Section 80 committees play a vital role in the proper functioning of the Municipality. Their recommendations are tabled at meetings of the Executive Mayoral Committee, after which the recommendations of both committees are placed before the Council. This system ensures that the Municipality renders efficient services and promotes social and economic development. The s 80 Committees also assist the Executive Mayor and Executive Council in formulating municipal policy, budget priorities, and service-delivery strategies. Establishing these committees is a core political function of the Council.

[15] As the municipal respondents correctly pointed out, the debate over whether PAJA or the principle of legality applies is of no practical consequence to the outcome of this appeal. The grounds of review relied on by BVO – namely lack of authority (*ultra vires*) and irrationality – are foundational to both PAJA and the constitutional principle of legality. As this court reaffirmed in *Premier, Gauteng and Others v Democratic Alliance and Others*,¹² the principle of legality has expanded to encompass review grounds such as lack of statutory power, jurisdictional error, abuse of power, and irrationality. An action that is statutorily authorised and rational under the principle of legality cannot simultaneously be *ultra vires* or irrational under PAJA. If the decision were unlawful or irrational, it would fail under either standard. Accordingly, nothing turns on this distinction, and I proceed to evaluate the substantive grounds of review.

[16] BVO's primary substantive challenge is that the Council acted *ultra vires* in adopting the 2022 resolution. This challenge rests on two grounds: first, that the

¹¹ *Minister of Defence and Military Veterans v Motau and Others* [2014] ZACC 18; 2014 (5) SA 69 (CC).

¹² *Premier, Gauteng and Others v Democratic Alliance and Others* (394/2020) [2020] ZASCA 136; [2021] 1 All SA 60 (SCA) (27 October 2020).

Council breached its own procedural rule, as set out in the 2021 resolution, by appointing BVO councillors without party nomination; and, second, that the enabling legislation (ss 79 and 80 of the Structures Act, read with s 160(8) of the Constitution) does not permit a municipal council to compel councillors to serve on committees against their will. It is an elementary principle of public law that an organ of state must act within the powers lawfully conferred upon it.¹³

[17] BVO argues that because the 2021 resolution invited political parties to nominate candidates by 10 December 2021, the Council was bound by that nomination mechanism. By appointing BVO councillors in August 2022 without BVO's nominations, the Council impermissibly arrogated to itself a nomination power it did not possess. This argument is untenable for several reasons.

[18] First, the Council's power to appoint members of s 80 committees derives from s 80(1), read with s 79(1)(b) of the Structures Act. Section 79(1)(b) states unequivocally that a municipal council may 'appoint the members of such a committee from among its members'. The statute confers the appointing authority directly on the municipal council as a collective body. The statute does not make party nominations a mandatory jurisdictional prerequisite for council appointments.

[19] Second, a municipal council's resolution cannot circumscribe, override, or fetter a statutory power conferred by an Act of Parliament. To the extent that the 2021 resolution created a procedural mechanism inviting party nominations, that mechanism could not permanently divest the Council of, or fetter the Council's statutory power under ss 79 and 80 to appoint committee members.

[20] Third, as the high court correctly observed, the nomination window created under the 2021 resolution expired on 10 December 2021. BVO itself took the firm position that the nomination period had lapsed. Once that period had lapsed without nominations from BVO, the Council was not rendered powerless to constitute its

¹³ *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC); 1998 (12) BCLR 1458 (CC) para 56; *Affordable Medicines Trust and Others v Minister of Health and Another* 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) para 49.

committees. The 2021 resolution did not provide that, if a political party refused to nominate representatives, the Council was precluded from exercising its statutory power under s 80. To hold otherwise would mean that a recalcitrant minority party could effectively hold a municipal council hostage and paralyse its statutory committee system simply by refusing to submit nominations. Such a result is absurd and legally unsupportable. In adopting the 2022 resolution, the Council was not ‘acting on behalf of’ or ‘nominating for’ BVO in a private law sense. Rather, the Council was exercising its primary statutory power under s 80(1), read with s 79(1)(b), of the Structures Act to appoint councillors from among its elected members to serve on established committees.

[21] BVO further argues that s 160(8) of the Constitution frames participation in council committees as an ‘entitlement’. It contends that an entitlement is a right that a councillor or political party may freely waive, and that forcing councillors to serve on committees against their will violates their freedom of choice. This argument misunderstands both the nature of constitutional entitlements under s 160(8) and the statutory duties of elected public officials. Section 160(8) states that members of a municipal council are entitled to participate in committee proceedings to ensure that parties represented on the Council are fairly represented, consistent with the principles of democracy.

[22] As the Constitutional Court observed in *Democratic Alliance v Masondo NO*:¹⁴ ‘The requirement of fair representation emphasises that the Constitution does not envisage a mathematical form of democracy, where the winner-takes-all ... Rather, it contemplates a pluralistic democracy in which continuous respect is given to the rights of all to be heard and to have their views considered ... In the end, the endeavours of both majority and minority parties should be directed not to exercising (or blocking the exercise of) power for its own sake, but to achieving a just society...’.

[23] The fair representation principle enshrined in s 160(8) is designed to protect minority parties from exclusion by the majority. It ensures that municipal decision-making is inclusive and deliberative. However, this constitutional right to fair

¹⁴ *Democratic Alliance and Another v Masondo NO and Another* [2002] ZACC 28; 2003 (2) BCLR 128; 2003 (2) SA 413 (CC) paras 42-43.

representation carries a corresponding public duty on elected councillors to perform their legislative and oversight functions. When individuals stand for public office and are elected as municipal councillors, they accept the statutory rights, duties, and obligations attached to that office. They do not hold office as mere private individuals; rather, they are public functionaries funded by the public purse.

[24] It appears that the BVO councillors do not appreciate their role in the Municipality. The founding affidavit states that they ‘have employment beyond being councillors’ and that for this reason, it was important for them to know ‘whether or not participation in the Section 80 Committees would be meaningful’. This attitude is inconsistent with the mandatory nature of a councillor’s public duty, as stated by the Constitutional Court in *Kham v Electoral Commission*:¹⁵

‘Councillors are elected to undertake the work of the council on behalf of the whole citizenry. Sometimes the tides of politics will place one party in the majority and sometimes another. But it remains the duty of all councillors to facilitate and not obstruct the workings of the council. For councillors to continue to draw their salaries, while refusing to attend meetings and seeking thereby to stultify the working of a council would be a breach of their obligations as councillors.’

[25] This principle is reinforced by the municipality’s s 53 Manual, which explicitly binds all councillors and requires them to participate in council business and in the structures on which they serve. A councillor cannot receive a public salary while cherry-picking which statutory duties to perform. Serving on portfolio committees appointed by the Council to oversee municipal directorates is an integral component of municipal governance. Allowing opposition councillors or minority parties to ‘opt out’ of committee work at will would subvert the structural governance model established by the Structures Act, undermine multi-party oversight, and frustrate service delivery. Consequently, the Council acted entirely within its statutory powers (*intra vires*) under ss 79 and 80 of the Structures Act when it adopted the 2022 resolution.

[26] BVO’s final ground of appeal is that the appointment decision was irrational. It asserts that forcing councillors to serve on committees without their consent is

¹⁵ *Kham and Others v Electoral Commission and Another* [2015] ZACC 37; 2016 (2) BCLR 157 (CC); 2016 (2) SA 338 (CC) para 122.

inimical to democratic governance and cannot be rationally connected to any legitimate governmental purpose. The standard for rationality review is well settled. In *Democratic Alliance v President of the Republic of South Africa and Others*,¹⁶ the Constitutional Court affirmed that rationality requires an evaluation of the relationship between the means employed and the end sought to be achieved. Both the process by which a decision is made and the decision itself must be rationally related to a legitimate public purpose.

[27] Applying these principles to the present facts, the Council's decision is unassailable: First, the Council sought to ensure that its five s 80 Committees were fully constituted, operational, and representative of all political parties represented in the Council, in compliance with s 160(8) of the Constitution and the Structures Act. The s 80 committees cover vital municipal directorates namely Finance, Engineering, Public Services, Strategic Support, and Community Services – all of which are essential to service delivery and economic development.

[28] Second, the means employed – namely appointing elected BVO councillors to serve on these specific committees by a majority vote – were directly and logically connected to achieving that purpose. BVO was represented on the Council, and assigning its councillors to portfolio committees ensured that opposition voices were integrated into the Council's executive advisory structures.

[29] Third, the selection of committee members by majority vote of the Council is entirely consistent with democratic practice. As this Court held in *MEC of Local Government, Housing and Traditional Affairs, KwaZulu-Natal v Amajuba District Municipality*,¹⁷ the ultimate choice of who serves on municipal structures vests in the municipal council as a collective body, acting by majority vote, and not in individual minority political parties.

¹⁶ *Democratic Alliance v President of the Republic of South Africa and Others* [2012] ZACC 24; 2012 (12) BCLR 1297 (CC); 2013 (1) SA 248 (CC) paras 34-39.

¹⁷ *MEC of KwaZulu-Natal for Local Government, Housing and Traditional Affairs v Amajuba District Municipality and Others* [2010] ZASCA 111; [2011] 1 All SA 401 (SCA) paras 23-24.

[30] BVO did not advance any cogent argument that the appointed BVO councillors lacked the basic competence or skills to sit on these committees. Nor did it demonstrate any procedural flaw in the Council's consideration of item 9.3 on 23 August 2022. Its argument rests entirely on the subjective unwillingness of its councillors to serve. A councillor's personal inconvenience or political reluctance to participate in municipal structures does not render an otherwise lawful and structured council resolution irrational. The decision to adopt the 2022 resolution met the required threshold of rationality in all respects.

[31] In summary, all three grounds of appeal raised by BVO are without merit. The municipal council had the statutory authority under ss 79 and 80 of the Structures Act to appoint BVO councillors to its s 80 committees. The 2021 resolution did not fetter that statutory authority. Elected councillors owe a public duty to serve on municipal governance structures, and the decision to appoint them was lawful and rational.

[32] Finally, as regards costs, there is no reason to depart from the general rule that costs follow the result. The municipal respondents retained two counsel, which was entirely justified given the foundational constitutional and local government principles at issue in this matter.

[33] In the result, the following order is made:

The appeal is dismissed with costs, including those of two counsel.

P A MEYER
JUDGE OF APPEAL

Appearances

For appellant: D C Joubert SC

Instructed by: Chris Fick & Associates, Cape Town
Rosendorff Reitz Barry, Bloemfontein

For respondents: K Pillay SC with T Sarkas

Instructed by: Fairbridges Wertheim Becker, Cape Town
McIntyre van der Post, Bloemfontein.