THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 218/2024

In the matter between:

N'WAMITWA SOLOMON MKHONTO	**FIRST APPLICANT**
WALTER DANIEL MOKOENA	**SECOND APPLICANT**
ZULU WILLIAS SEERANE	**THIRD APPLICANT**
TSUNDZUKA REMEMBER MAKHUBELA	**FOURTH APPLICANT**
EPHRAIM NKUNA	**FIFTH APPLICANT**
N'WANUNGU SIPHO MLAMBO	**SIXTH APPLICANT**
LAKIOS MOSOMA	**SEVENTH APPLICANT**
FHUMULANI CATHRINE THOVHAKALE	**EIGHTH APPLICANT**
NGUNGUNYANE HENRY MHLABA	**NINTH APPLICANT**

and

BUSHBUCKRIDGE LOCAL MUNICIPALITY **FIRST RESPONDENT**

CYNTHIA AUDREY NKUNA:
MUNICIPAL MANAGER **SECOND RESPONDENT**

SYLVIA KHUMALO: EXECUTIVE MAYOR **THIRD RESPONDENT**

Neutral citation: *Mkhonto and Others v Bushbuckridge Local Municipality and Others* (218/2024) [ZASCA] 111 (23 July 2025)

Coram: MATOJANE, WEINER and KOEN JJA and PHATSHOANE and MOLITSOANE AJA

Heard: 22 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, published on the Supreme Court of Appeal website, and released to SAFLII. The date and time for hand-down are deemed to be 11h00 on 23 July 2025.

Summary: Practice and Procedure – application for reconsideration in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013 – whether the applicant has demonstrated exceptional circumstances. Municipal Law – review – whether the court a quo erred in finding that the resolution taken by the respondents (staff placement policy) complied with the requirements of s 66(1) of the Local Government: Municipal Systems Act 32 of 2000 – no exceptional circumstances found – resolution complied with.

ORDER

On application for reconsideration: referred in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013:

1 The application for reconsideration of the order of this Court granted on 31 January 2024, dismissing the applicants' special leave to appeal, is struck from the roll.

2 The applicants shall pay the costs of the first respondent in the reconsideration application jointly and severally, the one to pay, the others to be absolved.

JUDGMENT

Molitsoane AJA (Matojane, Weiner and Koen JJA and Phatshoane AJA concurring):

[1] This is the reconsideration of an order issued by two judges of this Court, denying the applicants special leave to appeal. The applicants are aggrieved by the dismissal of their review application by the Mpumalanga Division of the High Court, Mbombela (the high court). In reconsideration, the President of this Court, on 19 April 2024, referred the application for special leave to appeal for oral argument in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013 (Superior Courts Act). The parties were warned to be prepared to address the Court on the merits of the appeal, should they be called to do so. Although the municipal manager and the executive mayor of the first respondent, the Bushbuckridge Local Municipality (the municipality), have been cited as second and third respondents in these proceedings, the relief is actually only sought against the municipality.

[2] The municipality is divided into 11 regional offices, in terms of which the regional offices act as sub-municipalities. The applicants are some of the regional office managers

of the municipality, which is responsible for the delivery of water and sanitation in their respective areas. The Bohlabela District Municipality was a water service authority in terms of the Water Services Act 108 of 1997. It was responsible for the supply of bulk water in the Bushbuckridge area and did so through the Bushbuckridge Water Board (BWB). Bohlabela Water Service Authority (BWSA) was subsequently delisted, which led to the municipality inheriting BWSA. The BWB was dissolved on 1 April 2014 by the Minister of Water and Environmental Affairs under Notice 241 in the *Government Gazette* Number 37503. The functions of the BWB were incorporated into the Rand Water Board (RWB) as the bulk supplier of water to the municipal area. It appears that the municipality faced severe financial constraints following the appointment of the RWB. In 2016, in order to address the challenges, the municipality commissioned an investigation into the supply of water in its area.

[3] During June/July 2019 the responsibility for bulk water supply to the Bushbuckridge region as well as the staff that was part of the water supply by the RWB were transferred to the municipality following the termination of its relationship with the BWB. This effectively obliterated the positions of the applicants in the organogram of the municipality as regional managers.

[4] This restructuring process led to various meetings with, inter alia, the applicants who would no longer appear in the organisational structure of the municipality, as regional managers. According to the municipality, it opted to centralise the function of water services delivery, and this had the result of rendering the positions of the regional managers redundant. In their answering affidavit, the municipality asserts, without any denial by the applicants, that the applicants were told and knew that it intended to do away with the positions of regional managers but that such action would not lead to their retrenchment. The gripe of the applicants, however, in this dispute is that in its organisational restructuring, the municipality had no policy framework for its staff establishment approved by its council as required by the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act).

[5] The applicants aver that they became aware on 26 May 2021 that the municipality intended to table the new organisational structure before the municipal council on 27 May 2021 without their input. They then instructed their attorneys to communicate with the municipality. Their attorneys forwarded correspondence to the municipality in which the following was requested:

'1 Copy of the Council Resolution by which the Policy Framework for the staff establishment in terms of section 66(1) of the Systems Act … was approved;

2 Copy of the proposed restructured staff establishment that was determined by the Municipal Manager within the above Policy Frame Work;

3 If the above documents do not exist [the municipal manager is] requested on an urgent basis to correct the procedures that [the municipality] followed to arrive at [the] proposed restructuring.'

This letter was only responded to by the municipality, on 2 June 2021.

[6] On 27 May 2021, the council of the municipality considered the report on the proposed organisational structure and adopted it as its resolution (resolution BLM 205). It is this resolution that the applicants sought to impugn before the high court and ultimately in this Court.

[7] Before the high court and in this Court, the applicants persisted with the arguments that when the municipal council adopted resolution BLM 205, it did not have a policy framework for its staff establishment approved by the municipal council as required by s 66(1) of the Systems Act. They contended that such a policy was mandatory and had to be submitted to all staff for a consultative process as the restructuring might adversely affect the working conditions of certain staff members. For this reason, the applicants submitted that the failure to follow the procedure as set out in s 66(1) of the Systems Act constituted a ground for the review and setting aside of resolution BLM 205.

[8] The applicants also contended that no fair procedures as contemplated in s 3 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) were followed towards the adoption of resolution BLM 205. It was specifically contended that the consultation undertaken was incomplete. The applicants' case is that until the first half of 2020,

consensus on the organisational structure could not be reached with the municipality within the Local Labour Forum.

[9] The municipality opposed the application on the basis that the decision of the municipal council amounted to an exercise of executive power or function. For this reason, it was submitted that such a decision could not be reviewed in terms of PAJA as it did not amount to an administrative decision. The high court did not deal with this issue and same was also not pursued before us. I will accordingly not deal with it, as the appeal can be disposed of, for other reasons.

[10] The municipality alleged that it had a policy framework as contemplated in s 66(1) of the Systems Act. This policy framework, according to the municipality, has been in existence since November 2013. The municipality thus rejected the notion that its impugned decision was taken in the absence of the requisite policy. On the issue of not following the due consultative process, the municipality contends that the said process was embarked upon in July and August 2020.

[11] The issue for determination by this Court is whether the applicants have established exceptional circumstances for the granting of special leave to this Court. The applicants petitioned this Court for special leave to appeal and the application was dismissed by two judges of this Court, on 31 January 2024. The application for reconsideration of that decision was filed on 29 February 2024. On 3 April 2024 s17(2)*(f)* of the Superior Courts Act was amended[1] and accordingly when the reconsideration application was lodged, the amendment had not yet taken effect. It follows therefore that the test that finds application, in this case, is whether the applicant demonstrated the existence of exceptional circumstances that requires referral to this Court for reconsideration of the decision on the petition to refuse special leave.

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[1] The amendment provides: 'The decision of the majority of the judges considering an application referred to in paragraph *(b)*, or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may, in exceptional circumstances, where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute, whether of his or her own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation.'

[12] In *Liesching and Others v S* (*Liesching II*)[2] the Constitutional Court said the following with reference to exceptional circumstances in the context of s17(2*(f)*:

'[138] Without being exhaustive, exceptional circumstances, in the context of section 17(2)*(f)*, and apart from its dictionary meaning, should be linked to either the probability of grave injustice (per *Avnit*)[3] or a situation where, even if grave injustice might not follow, the administration of justice might be brought into disrepute if no reconsideration occurs.

[139] In summary, section 17(2)*(f)* is not intended to afford disappointed litigants a further attempt to procure relief that has already been refused. It is intended to enable the President to deal with a situation where otherwise injustice might result and does not afford litigants a parallel appeal process in order to pursue additional bites at the proverbial appeal cherry.'[4]

[13] Following the judgment of the Constitutional Court in *Liesching and Others v S and Another*[5] (*Liesching I*) the applicants must demonstrate something beyond the requirements of special leave. The Constitutional Court in *Liesching II*[6] referred with approval the following passage in *Liesching I*:

'…[T]he proviso in [s 17(2)*(f)*] is very broad…."It keeps the door of justice ajar in order to cure errors or mistakes and for the consideration of a circumstance, which, if it were known at the time of the consideration of the petition might have yielded a different outcome. It is therefore a means of preventing an injustice. This would include new or further evidence that has come to light or became known after the petition had been considered and determined".'

[14] The principal attack on the judgment of the high court is that it erred in finding that the municipality had complied with the provisions of s 66 of the Systems Act when embarking on its organisational restructuring process, as it had no policy framework as contemplated in the said section. The applicants contended that the document styled

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[2] *Liesching and Others v S* [2018] ZACC 25; 2018 (11) BCLR 1349 (CC); 2019 (1) SACR 178 (CC); 2019 (4) SA 219 (CC) (*Liesching II*).
[3] *Avnit v First Rand Bank Ltd* [2014] ZASCA 132; [2014] JOL 32336 (SCA) (*Avnit*).
[4] *Liesching II* paras 138 and 139. See also *Tarentaal Centre Investments (Pty) Ltd v Beneficio Developments* [2025] ZASCA 38; 2025 JDR 1461 (SCA); [2025] JOL 68842 (SCA) paras 4-7.
[5] *Liesching and Others v S and Another* [2016] ZACC 41; 2017 (4) BCLR 454 (CC); 2017 (2) SACR 193 (CC) (*Liesching I*).
[6] *Liesching II* para 134. See also *Lorenzi v S* [2025] ZASCA 58; 2025 JDR 2015 (SCA) para 10 and *Minister of Police and Another v Ramabanta* [2025] ZASCA 95; [2025] JOL 69177 (SCA) para 14 (*Ramabanta*).

'Bushbuckridge Local Municipality Staff Placement Policy' (Staff Placement Policy), as submitted by the municipality as the policy framework and annexed to the papers, was not a policy framework contemplated in s 66 of the Systems Act. Section 66(1) provides as follows:

'(1) A municipal manager, within a policy framework determined by the municipal council and subject to any applicable legislation, must-

(a) develop a staff establishment for the municipality, and submit the staff establishment to the municipal council for approval;

(b) provide a job description for each post on the staff establishment;

(c) attach to those posts the remuneration and other conditions of service as may be determined in accordance with any applicable labour legislation; and

(d) establish a process or mechanism to regularly evaluate the staff establishment and, if necessary, review the staff establishment and the remuneration and conditions of service.'

[15] The applicants, however, rehashed the argument which was correctly rejected by the high court. The case the municipality was called upon to answer was to the effect that it did not have 'a policy framework for its staff establishment'. Confronted with this allegation, the municipality produced its Staff Placement Policy which had been approved by its council in 2013, a policy, the applicants contended, did not exist. The production of this document led the applicants to change their argument from one of the non-existence of the policy framework, to the contention that the document in issue is not a policy framework contemplated in s 66(1) of the Systems Act. It is trite that the objective of pleadings is to inform the parties of the case they have to meet.[7] It is impermissible when confronted with an answer to the case a party has to meet, to change the goal posts.

[16] The evidence shows that the municipality had a staff placement policy which was referred to the council on 8 November 2013. The said policy deals with, inter alia, contracts of employment of all staff, finalisation of organograms of all departments, placement and procedures of all employees. Section 66 does not prescribe how the policy

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[7] *HT Group (Pty) Ltd v Hazelhurst and Another* [2003] 2 ALL SA 262 (C); 2003 JDR 0233 (C) para 7. See also *Fischer and Another v Ramahlele and Others* [2014] ZASCA 88; 2014 (4) SA 614 (SCA); [2014] 3 All SA 395 (SCA) para 13.

framework is to be worded or framed. Consequently, the policy framework cannot be rejected simply because the applicants do not agree with its wording. Therefore, the high court cannot be faulted for holding that the municipality had a policy framework as envisaged in s 66 of the Systems Act. On this aspect, the reconsideration must fail as the applicants failed to demonstrate exceptional circumstances.

[17] The further attack on the municipality's failure to follow the consultative process is equally without merit. Section 17(2)(*f*) is not intended to afford disappointed litigants a further attempt to procure relief that has already been refused.[8] The record reveals that various meetings were held with the applicants. On 4 August 2020 a consultative meeting was held with some of the applicants. There are minutes of the meeting available and so is the attendance register which was completed. Some of the applicants appear in the register annexed to the minutes. The high court correctly found that various meetings were held. I am satisfied that a consultative process was undertaken and a fair process followed.

[18] The applicants accordingly, have no prospects of success on appeal. I could also not find that refusal of leave would result in a denial of justice which would warrant this Court to reconsider their petition. What the applicants seek to do, is to have a second bite of the cherry and this goes against the intended purpose of s 17(2)*(f)* of the Superior Courts Act. It follows that their application must be dismissed. There is no reason why the costs should not follow the cause. The municipality was successful and is therefore entitled to its costs.

[19] I, accordingly, make the following order:

1 The application for reconsideration of the order of this Court granted on 31 January 2024, dismissing the applicants' special leave to appeal, is struck from the roll.

2 The applicants shall pay the costs of the first respondent in the reconsideration application jointly and severally, the one to pay, the others to be absolved.

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[8] *Avnit* para 6. See also *Liesching II* para 139 and *Ramabanta* para 22.

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P E MOLITSOANE

ACTING JUDGE OF APPEAL

Appearances

For the applicants	JE Boshoff
Instructed by	Marthinus Boshoff Attorneys, Nelspruit
	Diedericks Attorneys Inc, Bloemfontein
For the respondents	V Mabuza with D Gana
Instructed by	Lamula KB Attorneys, Pretoria
	Honey Attorneys, Bloemfontein.