



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 323/2024

In the matter between:

KING SABATA DALINDYEBO

LOCAL MUNICIPALITY

FIRST APPELLANT

THE MUNICIPAL MANAGER:

KING SABATA DALINDYEBO

LOCAL MUNICIPALITY

SECOND APPELLANT

THE CHIEF FINANCIAL OFFICER:

KING SABATA DALINDYEBO

LOCAL MUNICIPALITY

THIRD APPELLANT

and

FIKILE VINCENT HINTSA AND THE

PERSONS LISTED IN ANNEXURE “A”

RESPONDENTS

Neutral citation: *King Sabata Dalindyebo Local Municipality & Others v Hintsa and Others* (323/2024) [2025] ZASCA 165 (31 October 2025)

Coram: MOKGOHLOA and SMITH JJA and HENNEY, MODIBA and MOLITSOANE AJJA

Heard: 23 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website, and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 31 October 2025.

Summary: Interpretation of the resolution – whether the resolution taken by the municipality's council applied to the respondents - whether the respondents had legal standing to institute proceedings to compel the municipality to comply with the resolutions of its council – whether the high court exercised its discretion to grant declaratory relief and, if so, whether it should have exercised that discretion.

ORDER

On appeal from: Eastern Cape Division of the High Court, Mthatha (Malusi J sitting as court of first instance):

The appeal is dismissed with costs, including costs of two counsel where so employed.

JUDGMENT

Mokgohloa JA (Smith JA and Henney, Modiba and Molitsoane AJJA concurring):

Introduction

[1] Central to this appeal is the interpretation of the resolution adopted by the council of the first appellant, King Sabata Dalindyebo Local Municipality (the municipality), which, inter alia, approved full payment of the back-pay monies to all affected employees of the municipality. And whether the words 'all affected employees' in the resolution included those respondents who were previously employed by the municipality between 2003 and 2017.

The facts

[2] Since 2003, municipalities across the country have collaborated to establish a standardised compensation system for employees performing work of equal or similar value. To this end, the municipal employees' organisation, the South African Municipal Workers Union (SAMWU); the employers' organisation, the South African Local Government Association (SALGA); and the Independent Municipal and Allied workers Union (IMATU), were consulted. This consultation resulted in the conclusion of a bargaining agreement known as the Task Job Evaluation Collective Agreement

(TASK), which was signed by all the organisations on 5 November 2003. The purpose of TASK was to make provision for job evaluation and create pay structures that were fair, equitable, and consistent for all employees.

[3] On 27 June 2012, the municipality addressed a letter to the employees explaining their placement on the new Staff Placement Policy and how they would be affected by TASK and the uniform Wage Curve Agreement (another collective agreement which never existed). On 8 August 2012, the municipality suspended the placement and benchmarking exercise. The 27 June 2012 letter was subsequently withdrawn, and the municipality informed the employees that the placement process had been placed on hold.

[4] On 24 May 2018, the municipality's Executive Mayor (the mayor) prepared a memorandum which was served before the municipality's council meeting. The memorandum recorded that there was a substantial 'staff attrition' of 23% and that this was 'subtracted from the total figure, but only for immediate implementation purposes as the stage will come for the payment of the figure...'. The memorandum proposed that the council approve the normalisation of all salary grades to be aligned to the new scales in terms of TASK with effect from 1 June 2018. Further, that the council approves back-pay to 'all affected employees' in accordance with a proposed schedule.

[5] In the memorandum, the mayor identified three categories of employees: (a) those who had left the services of the municipality in July 2010, and did not form part of the implementation of job evaluation when it commenced; (b) those who were in service in July 2012 and were part of the job evaluation but have left service in the intervening period; and (c) those permanent and contract employees who were still in the employ of the municipality. The respondents fell under the second category. In respect of this second category, the mayor proposed that although they are included in the process and for purposes of ease of implementation, 'it is proposed that these employees form a separate group after permanent and contract employees have been dealt with to finality'.

[6] On 29 May 2018, the council adopted a resolution (the 2018 resolution) in which it: (a) noted the report on implementation of TASK; (b) approved the normalisation of all salary grades to the TASK grade scale with effect from 1 June 2018; (c) implored the Acting Municipal Manager and Chief Financial Officer, to source funds where available 'for the payment of the municipal employees within the next 24 hours'; and (d) approved full payment of back-pay to all affected employees.

[7] On 11 June 2018, the municipality met with the respondents' delegation to update them on the implementation of the resolution. At this meeting, the municipality informed the respondents that 'as the internal situation of current employees was somewhat abnormal, they deemed it prudent to pay them first so as to save the institution' and that the 'ex-employees would be attended to in July 2018 and completed in September 2018'.

[8] On 6 November 2018, the acting Municipal Manager wrote a letter to the respondents informing them, *inter alia*, that he was updating them on the progress towards TASK payment in respect of ex-employees; and that the number of ex-employees who were on permanent employment, affected by TASK, was 420. His letter also indicated that calculations had been completed in respect of 330 employees. This letter did not yield any results.

In the high court

[9] It was on this basis that the respondents launched an application in the Eastern Cape Division of the High Court, Mthatha (the high court) seeking an order: (a) to declare the municipality's failure to implement and give effect to its resolution adopted in the meeting of 29 May 2018, unlawful; and (b) to direct the municipality to give effect to its resolution by making payment of back-pay to 'all qualifying former employees who were in service in July 2012 and who actually formed part of the TASK schedules that were submitted to the [budget treasury office of the municipality] BTO in 2012 but who have since left the service of the first respondent'.

[10] The municipality opposed the application and argued that the resolution was intended to include only the existing employees and not the respondents. According to the municipality, the memorandum stated that payment was for existing employees, as staff attrition, referring to former employees, would be considered later. Therefore, contended the municipality, the respondents had no locus standi to bring this application as they had no cause of action.

[11] In granting the order in favour of the respondents, the high court held that the resolution approved full payment of back-pay to all affected employees, even though it failed to describe who those affected employees were. It found that a description of such employees was in the mayor's memorandum, which classified the respondents as falling within the second category. The high court concluded that the respondents were affected employees who had a legal standing to bring this application.

In this Court

[12] Before us, the same arguments raised in the high court were reiterated on behalf of the municipality and the respondents. The parties persist in the relief they sought in the high court, with the municipality seeking an order that the appeal be upheld in its favour, while the respondents seek an order that the appeal be dismissed.

[13] In addition, the municipality submitted that the respondents had no legal standing to bring this application as they failed to establish that they have a direct and substantial interest in the matter. It contended that the only persons who have an interest in the council's affairs, such as councillors, political parties, etc, have legal standing to compel officials of the council to implement its resolutions. Employees and former employees, according to the municipality, do not have that standing. The municipality submitted further that the respondents are not entitled to any payment since they are not included in the 2018 resolution; that the respondents failed to meet the requirements of s 21(1)(c) of the Superior Court's Act 10 of 2013 that empowers the high court to exercise its discretion to grant the declaratory relief; and that the respondents are not interested parties and have no legal standing to demand payment from the municipality as they are not included in the category 'all affected employees'.

[14] Accordingly, the issues for determination are whether:

- (a) the 29 May 2018 resolution applied to the respondents;
- (b) the high court exercised its discretion to grant the declaratory relief and, if so, whether it should have exercised that discretion; and
- (c) the respondents had legal standing to institute the proceedings to compel the municipality to comply with the resolution of its council.

The 2018 resolution

[15] The question whether the resolution applies to the respondents depends on its interpretation. If it does apply to the respondents, then locus standi would have been established.

[16] The basic principles applicable to statutory interpretation also apply to the interpretation of a document, in this matter, the 2018 resolution. Regard must be had to the language used, the context in which the resolution appears, the apparent purpose to which it is directed, and the material known to those responsible for its production. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the resolution.¹

[17] The purpose of the resolution was to adopt the memorandum prepared by the mayor in respect of the implementation of the new salary scales for the municipality's employees. The mayor classified the respondents under the second category as 'those employees who were in service in July 2012 and who actually formed part of the TASK schedules that were submitted to BTO in 2012 but who have left the service in the intervening period'. These employees, who are the respondents in this matter, according to the memorandum, 'are included in the process'. This is what the council approved on 29 May 2018 when it resolved that 'Council approves the normalization of all salary grades to the TASK Grade Scale with effect from 1 June 2018'; and that

¹ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13 ; 2012 (4) SA 593 (SCA); [2012] 2 All SA 262 (SCA) para 18.

‘Council approves full payment of back-pay to all affected employees’. Consequently, in a follow-up meeting between the respondents and the management committee of the municipality on 11 June 2018, the management informed the respondents that they ‘would be attended to in July 2018 and completed in September 2018’. The only inescapable conclusion of this was that the respondents are affected employees as envisaged in the mayor’s memorandum and would receive their back-pay between July 2018 and September 2018 as per the 2018 resolution. This, in my view, is the only sensible meaning of the 2018 resolution.

[18] The municipality’s conduct after the resolution was taken is equally important. On 12 December 2018, the respondents’ attorney wrote a letter to the municipality demanding full payment of the respondents’ salaries with interest. The municipality’s response was that:

‘[The] matter was on the agenda of the Council meeting.... However, the matter was withdrawn because Council required more information....This information will be submitted and tabled before the next Council meeting....In the light of the above, in the meantime, please advise your clients to exercise patience with the Municipality as the matter is being dealt with.’

Again, on 20 February 2019, the municipality wrote another letter to the respondents’ attorney stating:

‘We trust you will see that there is no need to approach Court as the matter is being dealt with; rather advise your clients to wait for the finalisation of the process outlined above.’

[19] It must be noted that at no stage did the municipality inform the respondents that they were not included in the resolution approving ‘full payment of back-pay to all affected employees’. Instead, the respondents were informed that they would be attended to in July 2018 and that process would be completed in September 2018, and that they should exercise patience.

[20] In my view, the text and context of the 2018 resolution revealed its purpose as being to approve full payment of back-pay to all affected employees, with the respondents included in the process. Put differently, the municipality resolved to

implement the terms of the TASK. These were, however, not implemented. The respondents were prompted to institute these proceedings to declare the municipality's failure to implement and give effect to its resolution unlawful.

The high court's discretion to grant the declaratory relief

[21] The municipality contended that the respondents failed to meet the requirements of s 21(1)(c) of the Superior Court's Act 10 of 2013, which empowers the high court to exercise its discretion to grant the declaratory relief. It argued that the respondents are not interested parties and have no legal standing to demand payment from the municipality as they are not included in the 'all affected employees'.

[22] Section 21 (1)(c) confers upon the high court the power 'in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination'.

[23] In *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd*², this Court, dealing with s 19(1)(a)(iii) of the Supreme Court Act 59 of 1959 (the predecessor to s 21(1)(a)), stated that:

'Although the existence of a dispute between the parties is not a prerequisite for the exercise of the power conferred upon the High Court by the subsection, at least there must be interested parties on whom the declaratory order would be binding. The applicant in a case such as the present must satisfy the court that he/she is a person interested in an "existing, future or contingent right or obligation" and nothing more is required (*Shoba v Officer Commanding, Temporary Police Camp, Wagendrif Dam, and Another; Maphanga v Officer Commanding, South African Police Murder and Robbery Unit, Pietermaritzburg, and Others* 1995 (4) SA 1 (A) at 14F). In *Durban City Council v Association of Building Societies* 1942 AD 27 Watermeyer JA, with reference to a section worded in identical terms, said at 32:

"The question whether or not an order should be made under this section has to be examined in two stages. First the court must be satisfied that the applicant is a person interested in an

² *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* [2005] ZASCA 50; 2005 (6) SA 205 SCA; [2006]1 All SA 103 (SCA) paras 16-17.

‘existing, future or contingent right or obligation’, and then, if satisfied on that point, the Court must decide whether the case is a proper one for the exercise of the discretion conferred on it.

It seems to me that once the applicant has satisfied the Court that he/she is interested in an “existing, future or contingent right or obligation”, the Court is obliged by the subsection to exercise its discretion. This does not, however, mean that the Court is bound to grant a declarator, but that it must consider and decide whether it should refuse or grant the order, following an examination of all relevant factors. In my view, the statement in the above dictum, to the effect that, once satisfied that the applicant is an interested person, “the Court must decide whether the case is a proper one for the exercise of the discretion” should be read in its proper context. Watermeyer JA could not have meant that in spite of the applicant establishing, to the satisfaction of the Court, the prerequisite factors for the exercise of the discretion, the Court could still be required to determine whether it was competent to exercise it. What the learned Judge meant is further clarified by the opening words in the dictum which indicate clearly that the enquiry was directed at determining whether to grant a declaratory order or not, something which would constitute the exercise of a discretion as envisaged in the subsection (cf *Reinecke v Incorporated General Insurances Ltd* 1974 (2) SA 84 (A) at 93A-E).’

[24] As alluded to earlier in this judgment, the resolution approved the normalization of all salary grades to the TASK Grade Scale with effect from 1 June 2018, and payment of back-pay to all affected employees. The affected employees are those employees classified as the second category in the mayoral memorandum, the respondents herein, and the third category, those who were still in the employment of the municipality. This is confirmed further by the meeting of 11 June 2018, where the respondents were informed that the municipality deemed it prudent to pay the third category of employees first and that the respondents will be ‘attended to’ in July 2018 and the process completed in September 2018. This made the respondents interested persons in an ‘existing, future, or contingent right or obligation’. Therefore, the high court was correct and competent, after examining all the facts in this matter, to exercise its discretion and grant the declaration as it did.

[25] In conclusion, I find that the council resolved to adopt the mayoral memorandum, which classified the respondents as falling under the second category

of the employees affected and included in the process of the implementation of TASK. The council resolved that the payment of the back-pay will be made to the respondents between July 2018 and completed in September 2018. This resolution is binding on the municipality and cannot be ignored. The municipality's failure to implement this resolution gave the respondents the legal right and standing to seek a declaration that such failure is unlawful.

[26] In the circumstance, the following shall issue:

The appeal is dismissed with costs, including costs of two counsel where so employed.

F E MOKGOHLOA
JUDGE OF APPEAL

Appearances

For the appellants: G I Hulley SC with L S Ntikinca and N Mtshizana

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For the respondents: A M Bodlani SC with Z Nxazonke-Mashiya

Instructed by: Keightley Sigadla Inc, Mthatha
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