




IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 27925/2019

<b>DELETE WHICHEVER IS NOT APPLICABLE</b>	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
<u>23/08/2019</u>	
DATE	SIGNATURE

In the matter between:

**MACINGWANE, S V**

Applicant

and

**MASEKWAMENG, I N  
SIKHOSANA, S S  
MOSENA, S G  
LETSOELA, T E  
MATLALA, M R D  
PERSONS APPEARING ON ANNEXURE SMV1  
NATIONAL AFRICAN FEDERATED CHAMBER OF  
COMMERCE AND INDUSTRY**

First Respondent  
Second Respondent  
Third Respondent  
Fourth Respondent  
Fifth Respondent  
Sixth Respondent  
Seventh Respondent

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**JUDGMENT**

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**YACOUB J:**

1. The applicant seeks urgent relief to declare invalid a meeting of the seventh respondent, the National African Federated Chamber of Commerce and Industry

(NAFCOC), and to declare the resolutions that were taken at that meeting invalid and of no force and effect. The relevant resolutions were to remove the applicant as President of NAFCOC, and the applicant also seeks orders which have the result of permitting him to resume his office as President.

2. The applicant also seeks a declaration that the respondents are in contempt of an order of Wanless AJ granted on 26 June 2019, directing, *inter alia*, that a meeting planned for 31 July 2019 would take place and that a meeting planned for 27 July 2019 would not.

### **BACKGROUND FACTS**

3. The applicant was (or is) the president of NAFCOC. A meeting was called for 27 July 2019 at which a motion to remove him as president was to be considered. There was also a scheduled meeting for 31 July 2019, which had been scheduled in a calendar adopted for 2019 by the NAFCOC Executive on 5 December 2018.
4. The applicant brought an urgent application aimed at stopping the meeting of 27 July 2019, and an order was made by agreement that there would be no meeting on 27 July, that the meeting planned for 31 July would take place, that anyone could add to the agenda of the 31 July any item that may have been on the agenda for the 27 July meeting, and that all the parties would act in terms of the NAFCOC Constitution.
5. The third respondent then issued a notice of a meeting on 31 July 2019, on 5 July 2019, at the NAFCOC head office, while the applicant on 22 July 2019 issued a notice convening a meeting on 31 July 2019 at Emperor's Palace. Two purported meetings took place, and at the one held at the NAFCOC head office, a resolution was passed removing the applicant as president.

6. The applicant contends that the NAFCOC constitution permits only the President to convene a meeting, and that anyone else may only do so if the President is unable to or refuses to do so. He contends that the Head Office meeting was therefore not consistent with the NAFCOC constitution and as a result in contempt of the court order. I pause to note that no copy of the court order was in the file, only a draft was annexed to the founding affidavit, but it was common cause between the parties that the terms were correctly reflected.
7. The applicant contends that the respondents' motive in removing him was that he had found out that some of the respondents were misappropriating funds of a company of which NAFCOC is a 25% shareholder. The applicant does not do more than make the allegations in the founding affidavit. There is no evidence annexed to the affidavit of these allegations, which are, of course, denied in the answering affidavit.

## **URGENCY**

8. The applicant received a letter dated 2 August 2019 which listed the alleged reasons for which he had been removed as President, and informed him that he was removed. He caused his legal representatives to send the respondents a letter on 7 August 2019, informing them that in his view the meeting had been unlawful, and requesting the withdrawal of the letter, failing which he would approach court.
9. The application was issued on 7 August 2019 (although the Notice of Motion is dated 8 August 2019). The respondents were called upon to file their answering affidavit by 13h00 on 13 August 2019. The matter was set down in the urgent court on 20 August 2019.

16. It is not sufficient for the applicant to allege, as he has done, that he would not be able to obtain substantial redress in the ordinary course. He must allege sufficient facts to support that legal conclusion. In my view he has not done so.

## **CONCLUSION**

17. For these reasons I find that the applicant has not established that the matter is urgent and make the following order:

The application is struck from the roll with costs.

  
S. YACOOB  
JUDGE OF THE HIGH COURT  
GAUTENG LOCAL DIVISION, JOHANNESBURG

## **Appearances**

Counsel for Applicant	: DC Mpofu SC, Ms K Pillay and Mr EM Masombuka
Instructing Attorneys	: Knowles Husain Lindsay Inc
Counsel for the Respondent	: Mr CAC Korf
Instructing Attorneys	: VFV Attorneys c/o Wright Rose-Innes Inc
Date of hearing	: 20 August 2019
Date of judgment	: 23 August 2019

10. In my view, the applicant acted with sufficient alacrity, if the matter was urgent.
11. It is trite that an applicant approaching the court on an urgent basis must also establish that he cannot obtain substantial redress at a hearing in due course. The applicant must show that he will be prejudiced if the matter is not determined now.
12. The applicant alleges that he suffers prejudice because his personal right to carry on being President of NAFCOC is impinged. He suggests that if he waits for a hearing in due course it may be after the end of his five year term. He does not disclose when his five year term began.
13. It was also submitted on his behalf that if the matter is not heard urgently it would permit an illegality to continue. In addition the applicant's dignity is infringed. There was also a passing reference to NAFCOC being important to black small businesses and that the destabilization would be prejudicial.
14. I am not convinced that the personal prejudice allegedly suffered by the applicant is sufficient to warrant the applicant not waiting to be heard in the ordinary course. If it were, every allegation of a breach of a personal right, or of a breach of dignity, would found urgency. In my view the applicant has not established any particular prejudice to him.
15. Nor is there sufficient information regarding the alleged destabilization or prejudice to NAFCOC and its members. In any event, on the facts currently before the Court, the reinstatement of the applicant would equally have a destabilizing effect because of the disputes between the parties. The applicant in any event does not put forward facts which show the impact of the alleged destabilization.