

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 5028/22

In the matter between

JEFFREY DONSON

FIRST APPLICANT

WERNER MESHOA

SECOND APPLICANT

HYRIAN RUITERS

THIRD APPLICANT

AND

NICKOLAAS VALENTYN

FIRST RESPONDENT

LEONIE STUURMAN

SECOND RESPONDENT

KANNALAND MUNICIPALITY

THIRD RESPONDENT

Heard : 10 March 2022

JUDGMENT delivered on 15 March 2022

THULARE J

[1] This is an opposed application for an order declaring the first and second respondent's continued occupation of the positions of Mayor and Deputy Mayor of the third respondent as unlawful, unconstitutional and null and void and that the first and second respondents be interdicted from occupying or purporting to occupy the said offices.

[2] At the hearing of the matter, as a result of intervening developments, the applicants sought to amend their prayer, which application is opposed, to be for a

declaration that the first and second respondent's continued occupation of the positions of Executive Mayor and Deputy Mayor and as councilors of the third respondent from 30 January 2022 and consequently any decisions taken by the first and second respondent in their capacity as Executive Mayor and Deputy Mayor and councilor of the third respondent with effect from 30 January 2022 were unlawful, unconstitutional and invalid.

[3] The applicants also sought the striking out of paragraphs in the respondents' founding affidavit in a counter-application which affidavit also served as an answering affidavit to the applicants' application. The said paragraphs, (26, 27, 28, 29 and 30) relate to the first and second applicants' previous convictions, the publicity thereon after their election as Mayor and Deputy Mayor of the third respondent respectively and the reaction thereto. For purposes of this judgment, these paragraphs will be dealt with in contextualizing the application and counterapplication.

[4] As a result of intervening developments, the respondents only pursued the ejectment of the applicants from the offices that they occupied as Mayor, Deputy Mayor and Councilor respectively and the return of the keys to the Municipal Manager and to comply with such orders within 24 hours of the granting of such order. The offices are situated at Town Hall, 34 Van Riebeeck Street, Ladismith; Municipal Building, Voortrekker Road, Calitzdorp and Garden Route District Municipality, 58 main Street, Zoar respectively.

[5] The issue is whether Valentyn and Stuurman ceased to be members of the ANC and vacated office during their term as councilors elected from a party list, on 30 January 2022.

CONTEXTUALISING THE APPLICATION

[6] The third respondent (the Municipality) is a category B established in terms of section 12 and its Council consists of seven members in terms of the Act. In the results of the 1 November 2021 local government elections, the Independent Civic Organisation of South Africa (ICOSA) received 45% of the vote, which was the

highest number, but did not have a clear majority to govern the Municipality. It secured three seats in the Municipal Council. The ANC received 21.4% of the vote and secured two seats. The Democratic Alliance (DA) received 21.4% of the vote and secured one seat. The Kannaland Independent Party (KIP) received 7% of the vote and secured one seat.

[7] The first applicant (Donson) is the President of ICOSA and the second respondent (Meshoa) and the third respondent (Ruiters) are its members. ICOSA entered into a coalition agreement with the ANC and at the first meeting of Council on 16 November 2021 office bearers were voted into office according to that coalition agreement. Donson was elected Mayor, Meshoa the Deputy Mayor and Ruiters as the representative of the Municipality on the Garden Route Municipality. The first respondent (Valentyn) was elected Speaker. These five Councilors, which includes the second respondent (Stuurman) played prominent and central roles in the nomination and seconding, one by or in support of the other during these elections to office bearers within the Council. Valentyn and Stuurman were members of the ANC and represented the ANC in the Municipal Council. They were party list Councilors and not Ward Councilors. Steenkamp represented the DA and Albertus represented KIP in the Council.

[8] The election of Donson and Meshoa to their positions as Mayor and Deputy Mayor respectively attracted a negative media coverage for the Municipality and its Council. On 20 November 2021 news24 ran an article with the title "*Kannaland Deputy Mayor was fired as teacher after being found guilty of sexual misconduct with pupil*". On 21 November 2021 the IOL ran an article titled: "*Child activists call on sex offender Jeffrey Donson to step down and hand in his mayoral chain*". On 22 November 2021 Daily Mail ran an article titled: "*Child rapist is elected as MAYOR in South Africa – with convicted fraudster voted in as his deputy*". News24 and IOL are local national publications and Daily Mail is a British international newspaper. The negative media coverage was consequently both national and international. The Commission for Gender Equality announced on 20 November 2021 that it had launched an investigation into Donson's election as it viewed what happened at the Municipal Council as a slap in the face against gender-based violence (GBV) as it

believed that local government institutions should be at the forefront of the campaign against GBV as they were closest to the people.

[9] It was the public national and international outcry that caused Albertus to move a motion of no confidence against the three ICOSA councilors in their respective positions within Council at a meeting of Council on 19 January 2022. The motion was seconded by Stuurman and supported by Valentyn and Steenkamp. Simply put, all four non-ICOSA members of the seven member Council supported the motion. The motion was passed. For the sake of completion, it has to be mentioned that Donson was alleged to have been convicted of the statutory rape of a 15 year old girl child whilst he held office as Mayor of the same Municipality in the previous administration.

[10] Meshoa was alleged to have been convicted of fraud and obstruction of justice and further allegedly fired by the Western Cape Department of Education after being found guilty of the sexual assault and statutory rape of a pupil where he was a teacher and Head of Department. Mr Ruiters was alleged to have failed to act in the best interests of the Municipality or its residents and had made himself guilty of nepotism as well as wasteful and irregular expenditure. In these papers, the response to these serious allegations was that they were irrelevant to the issues in dispute and were vexatiously inserted for the purpose of creating an atmosphere. This stance by the applicants informed their application to strike them out.

THE FACTS

[11] At that meeting of 19 January 2022 the Council conducted further relevant business. After the motion of no confidence in the ICOSA council members, the four non-ICOSA members proceeded to elect new office bearers. Valentyn and Stuurman were elected Mayor and Deputy Mayor respectively, and Albertus was elected speaker whilst Steenkamp was elected the Garden Route representative. Two days before this meeting, on 17 January 2022, the Interim Provincial Committee Co-ordinator (the IPCC) of the ANC had written to the Municipal Manager of the Municipality and informed him that the ANC councilors had no mandate to call for a council meeting and that ANC councilors were to go into the opposition as per the

mandate from national. This meant, according to the IPCC, that Valentyn had to resign as speaker. The Municipal Manager was informed that the Councilors were aware of the position of the ANC.

[12] The day after the elections of office bearers in Council, where Valentyn and Stuurman, members of the ANC, were elected as Mayor and Deputy Mayor respectively, that is 20 January 2022, the IPCC informed them in writing of their suspension from the ANC based on their defiance of the IPC and national decisions to not work with the DA in a coalition. Reference was made to the provisions of the Constitution of the ANC in the letters addressed to them. The last paragraph of the letters read as follows (I quote only from Valentyn's letter):

"In relation to Rule 25.62 'In the case of the suspension of a public representative, the NEC, the NWC, the PEC or the PWC, as the case may be, must also provide for any terms and conditions which will regulate the members participation and conduct as a public representative during the period of suspension' in this regard the Provincial Working Committee resolved that during the period of suspension, Councilor Nickolaas Valentyn may not represent the ANC in any capacity pending disciplinary outcomes."

[13] Valentyn and Stuurman lodged appeals against their suspension with the Office of the Deputy Secretary General of the ANC. It is not clear on what date the electronic letters were sent to Luthuli House in Johannesburg. Well aware that the position of the ANC communicated to them was that they may not represent the ANC in any capacity pending disciplinary procedures, they continued to purport to act as Councilors elected from a party list of the ANC, and arising therefrom, as well as Mayor and Deputy Mayor.

[14] On 28 January 2022 the IPCC wrote to the Municipal Manager and the relevant parts of the letter read:

"Notice of suspension of ANC councilors

This letter serves to inform you of the Suspension of the two ANC councilors Councilor Nickolaas Valentyn and Councilor Leonie Stuurman. These councilors should under no circumstances represent the ANC in any activities which include activities of Council, pending their disciplinary outcome."

[15] The papers suggest that against the clear directive from the ANC, Valentyn and Stuurman continued to participate in the activities of Council, including a meeting of Council on that day, 28 January 2022, purporting to be members of and representing the ANC. In response, the ANC summarily expelled them and informed them and the Municipality accordingly on 30 January 2022. In the expulsion letters addressed to both Valentyn and Stuurman individually, the ANC made reference to their contravention of the conditions set out in the letters of 20 January 2022, which were the letters of suspension. They were further advised that they may not represent the ANC in any capacity pending their disciplinary outcomes. Their attention were also brought to their right to appeal the sanction. In the letter to the Municipality, the ANC went further than just inform the Municipality about their expulsion. It requested the Municipal Manager to declare vacancies in the Municipality with immediate effect. The next day, 31 January 2022, the Municipal Manager duly declared the two vacancies in the Kannaland Council to the Independent Electoral Commission accordingly. Valentyn and Stuurman once more lodged an appeal against the decision to terminate their membership with the Deputy Secretary General of the ANC on 31 January 2022.

[16] The papers showed that there was a Special Council meeting on the 31st January 2022 and the minutes of that meeting indicate that the Municipal Manager advised the Speaker that according to his understanding as Municipal Manager, backed by legal advice obtained, Valentyn and Stuurman were no longer members of Council until their processes were finalized. As Accounting Officer, the Municipal Manager asked to be excused from further participation in the meeting. After some deliberations, Valentyn suggested that the meeting proceed. Valentyn and Stuurman continued to purport to represent the ANC as Councilors, and acted as Mayor and Deputy Mayor of the Municipality. This prompted the applicants to lodge this application on 22 February 2022.

[17] Section 27(c) of the Act reads as follows:

“27. Vacation of office. –

A councilor vacates office during a term of office if that councilor –

(c) was elected from a party list referred to in Schedule 1 or 2 and ceases to be a member of the relevant party;”

[18] The relationship between a member of a political party and that party, including how a member ceases to be one, is governed by the Constitution of that party. In *Ramakatsa and Others v Magashule and Others* (CCT 109/12) [2012] ZACC 31 (18 December 2012) at para 73 and 74 it was said:

“73. Section 19 of the Constitution does not spell out how members of a political party should exercise the right to participate in the activities of their party. For good reason this is left to political parties themselves to regulate. These activities are internal matters of each political party. Therefore, it is these parties which are best placed to determine how members would participate in internal activities. The constitutions of political parties are the instruments which facilitate and regulate participation by members in the activities of a political party.

74. It bears repeating that political parties may not adopt constitutions which are inconsistent with section 19. If they do, their constitutions may be susceptible to a challenge of constitutional invalidity. We point out, however, that the present is not such a case. The validity of the ANC’s constitution is not under attack. What needs to be mentioned for present purposes is that the ANC’s constitution regulates and facilitates how its members may participate in internal activities of the party.”

[19] The relationship between the ANC and its two Councilors in the Municipality, which in my view was a private law relationship, was the basis of the power of the ANC to expel them from the party and to terminate their capacity to represent the ANC at that Council. In my understanding of the ANC Constitution, as regards membership, the relationship entitled a member to a hearing, albeit after the fact, especially as regards acts of misconduct which in the opinion of the ANC called for an immediate suspension or expulsion, and when circumstances so dictated. In my view, there is a considerable difference in the processes as they relate to a public representative of the ANC as opposed to an ordinary member. This is also the position where the decision as regards a public representative of the ANC would have an immediate and direct external legal effect.

[20] This in my view, is clear from the remedies and procedures that the Constitution of the ANC provided which were at the disposal of a member who is also a public representative of the ANC and who was expelled from the party. The Constitution of the ANC provided for inter-party dispute resolution mechanisms and clearly the intention of the ANC was that disputes were to be subjected to the procedures set out and substantive remedies provided for in its Constitution. As I enter into the consideration of the Constitution of the ANC, it has to be noted that I do so without the benefit of having heard the ANC itself on its own Constitution, for the simple reason that it was not a party before me and I did not deem it meet to call upon the ANC to come and interpret to me what it had recorded in writing. It also needs to be stated that this court is not dealing with the procedural fairness, lawfulness or correctness of the decision of the ANC.

[21] The facts sought to be struck out were not only relevant for the purposes of indicating what triggered and informed the disruptions in what appeared to be a harmonious and co-operative relationship between ICOSA and the ANC at the Municipality. They formed the basis for the motion of no confidence which caused the removal of ICOSA councilors from being office bearers and also are the foundation for the conduct of the applicants which necessitated the counterclaim for them to make the office space they still occupied, available. They are also important to help understand the distinction between an ordinary member of the public on one hand, and a member of the ANC on the other, moreso when such member is also a public representative of the ANC in a local council. Ordinary members of the public have the luxury to be informed by the narratives as determined by journalists and editorial teams of newspapers and to make decisions either informed by what they perceive to be common sense or the dictates of their moral watches, their conscience or even the advice of their families, friends and acquaintances or what other institutions say about a matter. This is so simply because they have not bound themselves to any procedures through which to process their thoughts and regulate their conduct.

[22] Members of the ANC, on the other hand, have taken an oath which reads as follows in Rule 4.16 of the Constitution of the ANC:

“I, [...], solemnly declare that I will abide by the aims and objectives of the African National Congress as set out in the Constitution, the Freedom Charter and other duly adopted policy positions, that I am joining the Organisation voluntarily and without motives of material advantages or personal gain, that I agree to respect the Constitution and the structures and to work as a loyal member of the Organisation, that I will place my energies and skills at the disposal of the Organisation and carry out tasks given to me, that I will work towards making the ANC an even more effective instrument of liberation in the hands of the people, and that I will defend the unity and integrity of the Organisation and its principles, and combat any tendency towards disruptions and factionalism.”

[23] Respect for the Constitution and the structures, especially the upper structures of the ANC, working as a loyal member of the ANC, defending its unity and integrity and its principles and combatting any tendency towards disruptions and factionalism are loud and clear calls for members in this oath. These expectations about members become more important and necessary to be observed when the ANC has to weather a political storm and must survive it. The ANC relied on observance of this oath to navigate the storm caused around the ICOSA members in the Kannaland Municipality, a party which the ANC was in a coalition government with, when the obviously unexpected turbulence hit the political rafters of the Municipality. Observance of the ANC Constitution, for instance, protect the ANC from members who work on the basis of only attention-grabbing information that the newspapers find odd and unusual, whilst the correct socio-political construct may demand consideration of some information which was not included in a newspaper article at the instance of decision-makers in newsrooms on what is newsworthy.

[24] Rule 5.4 expressed one of the duties of a member who is a public representative of the ANC as follows:

“5.4 ANC members who hold elective office in any sphere of government at national, provincial or local level are required to be members of the appropriate caucus, to function within its rules and to abide by its decisions under the general provisions of the Constitution and the constitutional structures of the ANC”.

I understand this clause to mean that the rules and decisions of an ANC caucus in a local Municipality, rank at a lower level than the Constitution of the ANC and the

Constitutional structures of the ANC, for its members. An ANC caucus of a local Municipality as a collective, and individual members of the ANC who represent the ANC on that local Municipality, are subject to the political authority of the Constitution of the ANC and the political guidance and supervision of the Provincial Structure of the ANC. This view is fortified by Rule 19.1, 19.9.8 and 19.9.19 which respectively read:

“Authority

19.1 The PEC is the highest organ of the ANC in a Province between Provincial Conferences and has the authority to lead the Organisation in the province, subject to the provisions of this Constitution.

Powers and duties

19.9 The PEC shall:

19.9.8 Supervise and direct the work of the ANC and all its organs in the Province, including the ANC provincial and local government caucuses;

19.9.19 Take all steps necessary or warranted for the due fulfilment of the aims and objectives of the ANC in the Province and the due performance of its duties”.

[25] My reading of the Constitution of the ANC reveals that supporting a political organization or party, other than an organization in alliance with the ANC, in a manner contrary to the aims, objectives and policy of the ANC makes a member ineligible to be or remain a member of the ANC and such member shall be expelled from the ANC [Rule 25.17.13 read with Rule 25.18]. The facts revealed that the ANC was in a coalition government with ICOSA in the Municipality and that Valentyn and Stuurman worked with the DA and KIP to unseat the Mayor and Deputy Mayor and representative for the Garden Route from ICOSA, office bearers who were elected to those offices as a result of the coalition agreement with the ANC. I do not understand the Constitution of the ANC to prevent the ANC from expelling a member without first eliciting the comment or response of such member when justifiable circumstances warrant such a decision.

[26] The Provincial Structure of the ANC communicated the resolution of the ANC to expel Valentyn and Stuurman from the ANC on 30 January 2022, to both the members and to the Municipality. The Constitution of the ANC deals with the status of members in the position of the two in Rules 25.43 to 25.47. The Rules read:

“Status of guilty member, office bearer or public representative

25.43 If a member has appealed against or applied to review a decision of a PDC or the NDC, the sanction imposed by such Disciplinary Committee shall only come into operation after finalization of the appeal or review, as the case may be.

25.44 Where the BDC, RDC, PDC or NDC has found a member guilty and imposed a sanction of suspension or expulsion the Secretary General or Provincial Secretary, acting on the authority of the NEC, NWC, PEC or PWC, as the case may be, may suspend the membership of such member and provide reasons therefor, until the finalization of any appeal or review application instituted by such member.

25.45 During the period of suspension, such member shall be precluded from exercising any right in terms of this Constitution, save to prosecute his or her appeal or review application and be present at any necessary attendance in connection therewith.

25.46 A member affected by such suspension may, within 14 (fourteen days) of being notified of such suspension, apply to the NDCA to set aside such suspension.

25.47 The NDCA may set aside such suspension on good cause shown.”

[27] A simple reading of these Rules indicate, in my view, is that Rule 25.43, standing on its own, is intended for minor acts of misconduct which, according to the ANC, do not warrant harsh sanctions of suspension or expulsion from the ANC. It is in my view serious acts of misconduct, which pose an existential threat to the organization, thwart or undermine the achievement of its aims and objectives or adversely affect the sanctity of its character which would call for a suspension or expulsion from the party. Rules 25.44 to 25.47 are specific provisions to deal with such serious matters. The ANC informed both Valentyn and Stuurman, in their letters of expulsion, that the Provincial Working Committee resolved that they may not represent the ANC in any capacity pending the DC outcomes, whilst the ANC acknowledged their right to appeal the decision. The two were also provided with the reasons for the ANC decision. This was clearly intended to comply with the provisions of Rules 25.44 and 25.45. In my view, the ANC, by framing the Constitution as it did, intended that for serious acts of misconduct the procedure envisaged in Rule 25.43 must be read with and yield to the one envisaged in Rule 25.44 to 25.47.

[28] The internal remedy in the Constitution of the ANC to meet the expulsion and its consequences, which included that the two were removed from the list which entitled them to represent the ANC at the local government, was to file an appeal and then subject themselves to the discipline and authority of the ANC. It seems to me, on a careful reading of Rule 25.44 to 25.47 that once the Provincial Structure advised Valentyn and Stuurman that the ANC suspended them until finalization of their appeal, the two could have applied directly to the National Disciplinary Committee of Appeal (NDCA) which, on good cause shown, may set aside such a suspension. I understand Rule 25.45 to have the effect that once an expelled member of the ANC filed an appeal or review against that decision, such member is treated like a suspended member only to the extent of allowing such member to prosecute their appeal or review and to be present at any necessary attendance in connection with such an appeal or review. The appeal does not undo the expulsion decision.

[29] What Valentyn and Stuurman were not entitled to do, was to disregard the guidance and authority of the Provincial structure of the ANC, ignore their expulsion and bar from representing the ANC, create their own rules and become loose, rebellious and loaded cannons in Kannaland randomly shooting in the name of the ANC. It is clear to me that the ANC did not want to carry the risk of allowing an opportunity for instance for a politically hired gun freely shooting within the Kannaland Municipality in its name, whilst working outside its discipline. It was the ANC that stood to elect to follow its ordinary appeal procedures in processing the appeal or to start it at the highest level of the NDCA.

[30] Valentyn and Stuurman were expelled as members of the ANC and stood to be removed from the list which entitled them to represent the ANC at the Kannaland Municipality on 30 January 2022. They had an option to approach the court to challenge the lawfulness of their expulsion as members of the ANC. That decision of the ANC had valid legal consequences until it was set aside [*Cathcart Residents Association v Municipal Manager Amahtlathi Municipality and Others*, Case No. 3667/2013, Eastern Cape Division, Grahamstown a judgment delivered on 3 April 2014]. The expulsion stands until set aside [*Shunmugam & Others v The Newcastle Local Municipality & Others; The National Democratic Convention v Matthew Shunmugam & Others* [2008] 2 All SA 106 (N) at para 42].

[31] The views of Valentyn, Stuurman and Ian Avontuur (Avontuur) who was appointed the Municipal Manager of Kannaland Municipality in that meeting of 31 January 2022, on the validity of the ANC decision and their resolve to ignore it are of no consequence [*Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA) at para 26]. Avontuur was the Municipal Manager who did not hesitate, without more, to participate in proceedings where his predecessor earlier on the same day informed Council about legal advice which raised concerns about the legitimacy of proceedings with the full participation of Valentyn and Stuurman as Councilors representing the ANC. It is a Municipal Manager who did not find anything wrong with usurping the functions of the leadership of the ANC and personally reviewed the decision and status of Councilors expelled by an ANC Provincial Structure. Avontuur has no understanding of our Constitutional democracy. He is a democratic mess. He seems to believe that a Municipal Manager was a power broker in an ANC with two centers contesting for authority and power.

[32] The amendment sought is granted but limited only to the extent that it deals with the status of the two Councilors. The status of the decisions of the Municipal Council which included persons who by law were not Councilors is a new case which cannot be introduced through the window of an amendment. Valentyn and Stuurman, as councilors elected from a party list, vacated the office of councilor during a term of office in the Kannaland Municipality on 30 January 2022 when they ceased to be members of the ANC, in terms of section 27(c) of the Act, read with Rule 25.43 to 25.47 of the ANC Constitution.

[33] This morning the judgment of Mangcu-Lockwood J delivered yesterday, 14 March 2022, in *Valentyn and Another v The Electoral Commission of South Africa and Others*, case no. 6709/2022 was brought to my attention. I have considered it and, with respect, for the reasons set out in this judgment, I am unable to agree with her.

[34] For these reasons I make the following order:

- (a) The first and second respondent's continued occupation of the positions of Councilor, and also Mayor or Deputy Mayor of the third respondent from 30 January 2022 was unconstitutional, unlawful and invalid.
- (b) The application to strike out the paragraphs related to the previous convictions and improper conduct of the applicants, the publicity thereof and the public outrage thereon is dismissed and the applicants are to pay the costs thereof.
- (c) The ejectment of the applicants from the offices that they respectively occupied as Mayor, Deputy Mayor and Councillor respectively and the return of the office keys to the Municipal Manager, which offices are situated at Town Hall, 34 Van Riebeeck Street, Ladismith; Municipal Building, Voortrekker Road, Calitzdorp and Garden Route District Municipality, 58 Main Street, Zoar respectively.
- (d) The applicants are to comply with the order in (c) within 24 hours of the delivery of this judgment.
- (e) The first and second respondents to pay the costs of the main application, jointly and severally, the one to pay, the other to be absolved.
- (f) The first, second and third applicants to pay the costs of the counter-application, jointly and severally, the one to pay, the other to be absolved.

DM THULARE
JUDGE OF THE HIGH COURT