



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA  
NORTHERN CAPE DIVISION, KIMBERLEY**

Case No: **1929/2023**  
Heard: **08/11/2023**

**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date for hand down is deemed to be 20 November 2023 at 12h00.

In the matter between:

<b>ROLF WALTON MONDREY CHRISTIE</b>	First Applicant
<b>KOOS ESAU</b>	Second Applicant
<b>JURGENS JOOSTE</b>	Third Applicant
<b>PAUL VRIES</b>	Fourth Applicant
<b>MERVIN MALGAS</b>	Fifth Applicant

and

<b>ACTING MUNICIPAL MANAGER OF THE !KHEIS LOCAL MUNICIPALITY</b>	First Respondent
<b>JOHN BALIES</b>	Second Respondent
<b>DAVY JACOBS</b>	Third Respondent
<b>KAREL SHAUN BOER</b>	Fourth Respondent
<b>JESSICA LODEWYK</b>	Fifth Respondent
<b>HENDRIK PHILLIPUS VAN WYK</b>	Sixth Respondent
<b>ANISIA JACOBA LUDICK</b>	Seventh Respondent
<b>COUNCIL OF THE !KHEIS LOCAL MUNICIPALITY</b>	Eighth Respondent
<b>!KHEIS LOCAL MUNICIPALITY</b>	Ninth Respondent
<b>MEC FOR COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, NORTHERN CAPE</b>	Tenth Respondent

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**JUDGMENT**

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**Mamosebo J**

[1] In Part A of the application, brought on an urgent basis by the Democratic Alliance (DA), Congress of the People (COPE) and the Independent Councillors, the applicants are seeking interdictory and/or declaratory relief restoring the status *quo* in the following terms:

"2. *That, pending the determination of the review envisaged in Part B of this application –*

2.1 *the respondents are interdicted from taking any decisions or undertaking any actions pursuant to the decisions taken on 14 September 2023 after the meeting of the eighth respondent, the Council of !Kheis Local Municipality (the council), had been adjourned by the second applicant, Koos Esau, including the decisions to:*

2.1.1 *remove the first applicant, Rolf Walton Mondrey Christie, as the Mayor of the !Kheis Local Municipality ("the Mayor");*

2.1.2 *remove the second applicant, Koos Esau, as the Speaker of the !Kheis Local Municipality ("the Speaker");*

2.1.3 *elect the third respondent, Davy Jacobs, as the Mayor of !Kheis Local Municipality;*

2.1.4 *elect the second respondent, John Balies, as the Speaker of the !Kheis Local Municipality;*

*(collectively "the impugned decision")*

2.2 *Without limiting the generality of the interdict in paragraph 2.1 above, the third respondent, Davy Jacobs, is prohibited from acting as the Mayor and second respondent, John Balies, is prohibited from acting as the Speaker of !Kheis Local Municipality;*

2.3 *the impugned decisions are suspended and Rolf Walton Mondrey Christie is the Mayor – and Koos Esau the Speaker of the !Kheis Local Municipality."*

- [2] The respondents instituted a counter-application in which they sought a declarator that the special council meeting convened on 14 September 2023 (the second or re-constituted meeting) and its resultant resolutions be declared lawful and valid. Further, that the removal of the first and second applicants (Christie and Esau), pursuant to a motion of no confidence tabled, debated and voted for at a special council meeting on 14 September 2023 be declared lawful and [valid]. Alternatively, that the decision to adjourn the special meeting on 14 September 2023 was unlawful and invalid and the court should direct that the special council meeting be reconvened within five days to complete its business as specified on the agenda.
- [3] The respondents did not state, in the counter-application, that they intended for it to be enrolled for hearing or to be argued simultaneously with the application for interdictory relief. There is also no condonation application for the non-compliance with the applicable timeframes. The applicants therefore accepted that the counter-application will be argued with the review in Part B. The applicants are opposing the counter-application. Mr Mthombeni, counsel for the respondents, did not make any submissions pertaining to the counter-application and I therefore do not wish to say anything further in that regard.
- [4] The first respondent, the Acting Municipal Manager, !Kheis Local Municipality, Desmond Dolopi; the second respondent, John Balies; the third respondent, Davy Jacobs; the eighth respondent, Council of !Kheis Local Municipality and the ninth respondent, !Kheis Local Municipality (the respondents) opposed this application. The fourth, fifth, sixth, and seventh respondents, Karel Shaun Boer, Jessica Lodewyk, Hendrik Phillipus Van Wyk, Anisia Jacoba Ludick, respectively, did not participate in this application. The tenth

respondent, MEC: Cooperative Governance and Traditional Affairs, Northern Cape, has elected to abide the decision of this Court.

[5] These are the common cause facts. On 23 August 2023 the African National Congress (the ANC) and the Economic Freedom Fighters (the EFF) councillors addressed a letter in which they raised a motion of no confidence to the Speaker, the second applicant. A list containing names and signatures of six ANC and EFF councillors who requested the meeting was attached to the letter. The motion was scheduled for 30 August 2023 but was not moved based on two reasons: first, the time period was too short and contrary to the provisions of Rule 21.5 of the Council Standing Rules and Orders, and, secondly, because, he, Esau (the Speaker), was awaiting a legal opinion on the matter.

[6] Esau received a written request in terms of s 29(1) of the Local Government Act: Municipal Structures Act, 117 of 1998 (MSA) read with Clause 8.3 of the Standing Rules of Order<sup>1</sup> from the majority of the councillors on 31 August 2023, Annexure "FA7" to the papers, requesting a Special Council Meeting to be scheduled for 14 September 2023 at 10:00 (the first meeting). Esau obliged as reflected on Annexure "FA9" by issuing a notice, inviting the councillors, prescribed officer and administrative invitees to the Special council Meeting. The said notice was countersigned by Esau and Dolopi. The purpose of the meeting was to debate a motion of no confidence against both the Mayor (Christie) and Speaker (Esau).

[7] According to Esau, he informed the councillors about the legal opinion received; he also raised concerns whether the motion of no

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<sup>1</sup> Clause 8.3 stipulates: The Speaker must, upon written request of a majority of the Councillors of the Municipality, call a special meeting of the Council, at a time set out in the request, provided that no such special meeting shall take place unless all Councillors were given at least 48 hours' notice of such meeting.

confidence was valid and whether Jacobs (the third respondent) and Balies (the second respondent) could vote as contemplated in Rule 14 of the Council Standing Rules and Orders<sup>2</sup>. After much deliberations, but before any conclusion was reached, he adjourned the meeting following which the applicants left the Council Chamber.

[8] Despite this adjournment, and an hour after the first meeting was adjourned, it is not in dispute that the second to seventh respondents (ANC and EFF Councillors) reconvened the second meeting in which the applicants were not in attendance. The acting Municipal Manager, Mr Dolopi, acted as the chairperson for purposes of appointing an interim Speaker, counsellor K Boer, where after Boer proceeded to chair the meeting for the nomination of a permanent speaker, councillor Balies, who subsequently chaired the meeting for the nomination of the mayor, councillor Jacobs. Resultantly, the Mayor (Christie) and Speaker (Esau) were removed and replaced with Davy Jacobs as the Mayor and John Balies as the Speaker. Notice had not been given for this second meeting.

[9] Essentially, the applicants challenge this reconvened meeting and refuse to accept the outcome thereof contending that the meeting was not lawfully constituted after its adjournment by the Speaker

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<sup>2</sup> Rule 14 Disclosure of financial interest

14.1 A Councillor is obliged to disclose any direct personal or private business interest that the Counsellor, or the spouse, partner or business associate of that Councillor may have in any matter before the Council or any Committee.

14.2 A Councillor or municipal official may not participate in the proceedings of a meeting, if such a Councillor or municipal official is conflicted on any item/s on the agenda

14.2.1...;

14.2.2

14.3 A Councillor who, or whose spouse, partner or business associate or close family member, acquires or stands to acquire any direct benefit from a contract concluded with the Municipality, must disclose full particulars of the benefit of which the Councillor is aware of, at the first meeting of the Council or Committee of the Council at which it is possible for the Councillor to make a disclosure.

14.4 This provision does not apply to an interest or benefit which a Councillor, or a spouse, partner or business associate or close family members, has or acquired in common with other residents and ratepayers of the Municipality.

(Esau). On the contrary, the ANC and EFF, argued that the meeting was properly constituted and its outcome is binding on the applicants.

[10] Mr Mthombeni argued that there is a material dispute of fact not soluble on the papers which the applicants ought to have foreseen. The dispute pertains to what led to the applicants' departure from the chamber. While the applicants maintain that the meeting was adjourned by the speaker, the respondents contend that the applicants staged a walkout and that the majority of the councillors proceeded with the meeting where the motion was carried. I will return to this aspect later.

### **Urgency**

[11] Rule 6(12)(b) stipulates:

*"In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course."*

[12] Mr Mthombeni's submission was that I should hear the argument on urgency first as it may be dispositive of the matter. Ms Erasmus, for the applicants, countered that the issues are so intertwined that it would be preferable to hear the entire application.

[13] The respondents contend that the cause of action arose on 14 September 2023 whereas the application was launched on 12 October 2023, almost a month later. They argued that the inordinate delay in bringing the application militated against the urgency. Alternatively, should the Court find that the application is indeed urgent then the urgency is self-created and thus they urged that the matter be struck from the roll.

- [14] The explanation furnished by the applicants, is that Christie and Esau are the lawfully elected Mayor and Speaker who are prevented from performing their duties and from taking informed and crucial decisions for the proper running of the Municipality. Jacobs and Balies continue to take decisions which may ultimately be set aside by the Court. In addition, they submit that their decisions may cause uncertainty to those affected by them, including members of the public. The applicants contended that an abuse of public power implicating the rule of law renders the application urgent.
- [15] The delay in launching the application, it was argued, was further exacerbated by the fact that a request to be furnished with the records of the meeting of 14 September 2023 was complied with on 31 October 2023, after the application had already been launched.
- [16] Part A of the application was fully ventilated. I could perceive of no prejudice to either party to hear the merits whereas striking the matter from the roll would needlessly cause a delay, settle another judge with the application and duplicate costs. I find the matter to be urgent based on the irregularities that occurred pertaining to the convening of the second meeting and notice to councillors in respect of the reconvened meeting which I will deal with in the paragraphs that follow. The interests of justice would require that the application be heard instead of striking it off the roll.

### **The merits**

- [17] It is common cause that the speaker, Esau, convened a meeting on 14 September 2023 at 10:00 to debate the motion of no confidence. Recorded on the belatedly filed minutes by the respondents in Annexure "AA9" under the subject Council RESOLVED and APPROVE:

*"The speaker adjourns the meeting at 10:40 without voting process of all parties.  
No voting as meeting was adjourned before resolution."*

[18] In the last column of the said minutes the following is recorded:

*"The speaker opened the debate for the motion where all parties were requested to give input on the motion. Speaker Esau informed the meeting all present must declare their interest and must leave the meeting if anyone declares interest. Councillor Jacobs proposed the motion to be open for voting and was seconded by Councillor Balies. Mayor Christie requests for a caucus break. Mayor Christie quoted article 21.1<sup>3</sup> of the standing rules of order for councillors. The article states that a motion that seeks to rescind a council decision in the preceding months is not valid. Councillor Jooste said all councillors must be afforded an opportunity to debate the motion before a voting procedure. Speaker Esau reads a memo from a legal representative on the validity of the motion. Item 46.1 and 46.2 of the standing rules of council<sup>4</sup>. The meeting is adjourned by the Speaker at 10:45."*

[19] Section 29(1) of the of the MSA provides:

*"The speaker of a municipal council decides when and where the council meets..., but if a majority of the councillors requests the speaker in writing to convene a council meeting, the speaker must convene a meeting at a time set out in the request."*

[20] Clause 8.3 of the Standing Rules stipulates:

*"the Speaker must, upon written request of a majority of the Councillors of the Municipality, call a special meeting of the Council, at a time set out in the request, provided that no such special meeting shall take place unless all Councillors were given at least 48 hours' notice of such meeting."*

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<sup>3</sup> 21.1 No matter shall be brought before the Council or a Committee by any member of the Council except upon a notice of motion, which shall be in writing and signed by the member giving the notice as well as the member seconding it: Provided that a person who has a personal electronic mail address from where he or she can be identified by the Municipal Manager, can submit such motion by electronic mail.

<sup>4</sup> 46.1 The Speaker shall be entitled to refer any matter pertaining to the Council and its proceedings, for legal opinion to the Municipal Manager.



- [21] It is common cause that !Kheis Local Municipality had, as envisaged in s 160(6) of the Constitution<sup>5</sup> adopted the Standard Rules of Order for Council and its Committees as per Annexure "FA5". From a proper reading of these rules and s 29(1) of the MSA, the statutory power to convene a meeting lies with the speaker. The submission made on behalf of the applicants and captured in AA9 is that the speaker adjourned the meeting. Mr Mthombeni submitted that I should disregard Annexure AA9 (the Minutes) and further argued that it cannot be accepted that the speaker adjourned the meeting if the period regarding when the meeting resumed was not specified. It is incomprehensible and untenable for the minutes to be disregarded. This is so because Rule 26.1 stipulates that when a meeting is adjourned, notice of the adjourned meeting shall be sent out to each member of the Council or Committee, specifying the time, date and place of such adjourned meeting. This provision makes plain how the subsequent communication shall be made.
- [22] The parties agreed that a council meeting was scheduled by Esau on 14 September 2023. However, there is a discrepancy as to how the meeting ended. As already discussed the applicants maintain that the Speaker, Esau, adjourned the meeting, whilst the respondents are adamant that the applicants staged a walkout and the majority of the councillors remaining reconvened the meeting. Mr Mthombeni submitted that this is a clear dispute of fact which the applicants ought to have been aware of.

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<sup>5</sup> The Constitution of the Republic of South Africa, 108 of 1996, which provides:

A Municipal Council may make by-laws which prescribe rules and orders for –

- (a) Its internal arrangements;
- (b) The business and proceedings; and
- (c) The establishment, composition, procedures, powers and functions of its committees.

[23] In my view, it is apparent from the respondents' own version and supported by the AA9 minutes that the meeting was adjourned. There is therefore no basis for finding that the applicants staged a walkout. The version of the applicants is not far-fetched or untenable and is consistent with probabilities and in my view, should prevail.

[24] The argument submitted on behalf of the ANC and EFF, was that they were present at the chamber and were left with no option but to proceed with the meeting because they were in the majority. The sole item on the agenda was to debate the motion of no confidence. Section 58 of the MSA stipulates:

*"A municipal council, by resolution may remove its executive mayor or deputy executive mayor from office. Prior notice of an intention to move a motion for the removal of the executive mayor or deputy executive mayor must be given."*

[25] It is common cause that in that second meeting, the reconvened meeting that took place after the adjournment by the speaker, several decisions were taken. Despite the fact that the speaker was still available, the acting Municipal Manager chaired the reconvened meeting to enable those present to vote for an interim speaker, permanent speaker and mayor. This was not part of the agenda.

[26] Esau expressed a concern that the motion of no confidence did not contain purported grounds upon which the ANC and the EFF relied on and hence he and Christie were not afforded a hearing. In *Heatherdale Farms (Pty) Ltd and Others v Deputy Minister of Agriculture and Another* 1970 (1) SA 487 (T) it was held at 486D – G:

*"a person who is entitled to the benefit of the audi alteram partem rule... must be given a reasonable time in which to assemble the*

*relevant information and to prepare and put forward his representations; secondly he must be put in possession of such information as will render his right to make representations a real, and not an illusory one."*

[27] After the adjournment of the meeting by Esau, if the respondents intended to call another meeting, a proper notice compliant with the Rules of Order was crucial. There is no evidence that the applicants, more particularly, Christie and Esau, were made aware that the meeting would proceed and there would be decisions taken that adversely affected them. In my view, it remains speculative that the applicants were aware of the meeting that commenced after the adjournment. There is no mention of the exact issues or the grounds that informed the motion in the papers. I am not persuaded that the affected parties were aware of the exact contents of the proposed motion.

[28] Tlaletsi JP et Olivier ADJP made these insightful remarks pertaining to national legislation in this regard in *Democratic Alliance v Matika and Others* 2019 (1) SA 214 (NCK) at para 43:

*"[43] As far as national legislation is concerned, we are of the view that the provisions of s 58 of the MSA are indeed intended to facilitate and achieve the objects of the Constitution, for the simple reason that the democratic right to participate, as intended in the Constitution, cannot be exercised by a member or councillor if he/she is unaware of the fact that the meeting is going to take place."*

The learned Judges continued at para 49 and said:

*"[49] On this line of reasoning a group of councillors could hold a meeting without having given any notice thereof to the remaining councillors, as long as they constitute a majority of councillors. They could then even, if this argument is drawn to its logical conclusion, at such a 'meeting' take a decision that directly affects a co-councillor and member, like removing him/her from a position like that of Speaker or*

*Mayor, without prior notice to the specific member. Surely the legislature could never have intended such a situation. The word 'meeting' in s 30(3) of the MSA must surely have been intended to refer to a properly convened meeting, which in turn would necessarily imply that all councillors had received a proper notice."*

[29] It is significant that Council must elect a member of the Executive Committee as the Mayor as contemplated in s 48(1) of the MSA.<sup>6</sup> Jacobs was not a member of the Executive Committee so his appointment is non-compliant. Mr Moeketsi Dichaba, an acting Municipal Manager, deposed to an answering affidavit, instead of responding to the non-compliance with this legislative requirement as contemplated in s 48(1) of the MSA. The response is silent on whether or not Jacobs was a member of the Executive Council.

[30] Christie made this important averment in the founding affidavit:

*"24.3 Councillor Esau, acting on the advice provided in terms of the legal opinion which the Municipal Manager had obtained, adjourned the lawful 14 September 2023 Special Council meeting to address the alleged conflict concerning Rule 14 of the Council Standing Rules and Orders. Councillor Esau's decision (in his capacity as Speaker) to adjourn the 14 September 2023 lawful council meeting is final and binding and stands until set aside by a Court of law ("the adjournment decision").*

Except to raise bare denials the answering affidavit did not respond to para 24.3 above.

[31] In as far as the removal of the Speaker is concerned, s 40 of the MSA stipulates:

*"Removal from office*

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<sup>6</sup> Sec 48(1) The municipal council must elect a member of its executive committee as the mayor and, if the MEC for local government in the province so approves, another member of the executive committee as the deputy mayor, of the municipality.

*A municipal council by resolution may remove its speaker from office. Prior notice of an intention to move a motion for the removal of the speaker must be given."*

I have already found that there was no proper notice issued to the Mayor and Speaker informing them of the intention to remove them should the motion be carried. The process of deliberating on the motion was interrupted when the Speaker adjourned the meeting as recorded in "AA9".

[32] Cameron J, writing for the majority in *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd* 2014 (3) SA 481 (CC) at para 103 sounded this caution:

*"[103] The fundamental notion — that official conduct that is vulnerable to challenge may have legal consequences and may not be ignored until properly set aside — springs deeply from the rule of law. The courts alone, and not public officials, are the arbiters of legality. As Khampepe J stated in Welkom —*

*'(t)he rule of law does not permit an organ of state to reach what may turn out to be a correct outcome by any means. On the contrary, the rule of law obliges an organ of state to use the correct legal process.'*

*For a public official to ignore irregular administrative action on the basis that it is a nullity amounts to self-help. And it invites a vortex of uncertainty, unpredictability and irrationality. The clarity and certainty of governmental conduct, on which we all rely in organising our lives, would be imperilled if irregular or invalid administrative acts could be ignored because officials consider them invalid."*

Certainly, proceeding to reconvene the second meeting after the adjournment, removing both the Mayor and the Speaker amounts to nothing but self-help. It is on this basis that the decisions that followed the adjournment cannot be lawful or valid.

[33] This brings me to consider whether the applicants have met the requirements, which are settled, for an interim interdict. The applicant need only show a *prima facie right* even though open to some doubt. The applicants had a right not to be removed from their positions without having been heard. Since AA9 confirms that the meeting called by the Speaker was adjourned it was within his rights to issue notices of the adjourned meeting to each member of the Council or Committee specifying the time, date and place of such adjourned meeting.

[34] In *Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA) at para 26, Howie P et Nugent JA pronounced:

*"...Our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside."*

Whether the adjournment of a meeting by the Speaker was correct or not, his decision to adjourn it stands until set aside by a court. The Constitutional Court per Cameron J in *Merafong City v AngloGold Ashanti Ltd* 2017 (2) SA 211 (CC) at para 41 remarked:

*"[41] The import of Oudekraal and Kirland was that government cannot simply ignore an apparently binding ruling or decision on the basis that it is invalid. The validity of the decision has to be tested in appropriate proceedings. And the sole power to pronounce that the decision is defective, and therefore invalid, lies with the courts. Government itself has no authority to invalidate or ignore the decision. It remains legally effective until properly set aside."*

### **Irreparable harm**

[35] The applicants argue that if the interim relief is denied, Jacobs and Balie will continue to take unlawful decisions in their capacities as Mayor and Speaker. Over and above the decisions to remove Christie and Esau as mayor and speaker respectively, they have also

removed the Chief Whip. Their decisions may continue to cause irreparable harm more especially if taken outside the legislative framework purely on the basis that they are in the majority.

### **Balance of convenience**

[36] Does the balance of convenience favour the granting of the interim interdict or not? This Court must weigh the prejudice that the applicant stands to suffer if the interim relief is withheld against the prejudice to the Respondent if it is granted. I am persuaded that the balance of convenience favours the granting of the interim relief.

### **Alternative remedy**

[37] Mr Mthombeni argued that the applicants have an alternative remedy in a form of the pending review application. This submission is problematic and fails to have regard to the impugned decisions that may follow and continue to be implemented including the effect thereof. The date when the review will be heard is also unknown and may take some time. I am satisfied that the applicants have made out a case for the interim relief.

[38] What is left is the question of costs. Costs are generally within the discretion of the court. Ms Erasmus asked for a punitive cost order against the first, second and third respondents. According to her, they harbour a personal agenda. They persisted with the delay to file minutes and have still not furnished a full and proper record. Their persistent conduct is wilful and mala fide. The respondents countered that the application be dismissed with costs.

[39] There is no reason why costs should not follow the result. However, a punitive cost order would not be justified as I remain unpersuaded that the respondents were wilful or malicious. I am also of the view that it would not be equitable for the Municipality or the Council to

be mulcted in costs. Costs in respect of Part A of the application are to be borne by the first, second and third respondents on a party and party scale.

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

1. The applicants' non-compliance with the Uniform Rules of Court relating to forms, service and time periods is condoned, and this application is dealt with as one of urgency under Uniform Rule 6(12).
2. Pending the final adjudication of the relief that will be sought in Part B, of this application:
  - 2.1 The respondents are interdicted from taking any decisions or undertaking any actions pursuant to the decisions taken on 14 September 2023 after the meeting of the Eighth Respondent, the Council of !Kheis Local Municipality ("the Council"), had been adjourned by the Second Applicant, Koos Esau (as Speaker of the Council), including the decisions to:
    - 2.1.1 remove the First Applicant, Rolf Walton Mondrey Christie, as the Mayor of !Kheis Local Municipality ("the Mayor");
    - 2.1.2 remove the Second Applicant, Koos Esau, as the Speaker of !Kheis Local Municipality ("the Speaker");
    - 2.1.3 elect the Third Respondent, Davy Jacobs, as Mayor of !Kheis Local Municipality;
    - 2.1.4 elect the Second Respondent, John Balies, as the Speaker of the !Kheis Local Municipality;



(collectively, "the impugned decision")

- 2.2 Without limiting the generality of the interdict in paragraph 2.1 above, the Third Respondent, Davy Jacobs, is prohibited from acting as the Mayor and Second Respondent, John Balies, is prohibited from acting as the Speaker of !Kheis Local Municipality;
  - 2.3 the impugned decisions are suspended and Rolf Walton Mondrey Christie is the Mayor – and Koos Esau the Speaker of !Kheis Local Municipality.
3. Part B of this application will be conducted according to the following expedited timetable:
    - 3.1 the Council and the Acting Municipal Manager of !Kheis Local Municipality are required – and shall, within 5 (FIVE) days dispatch to the Registrar of this Court – the record of proceedings sought to be reviewed and set aside (including all plans, correspondence, reports, memoranda, documents, electronic records, evidence and other information which were before the First- and Eighth respondents at the time when the decisions in question were made), together with such reasons as the First- and Eighth respondents at the time when the decisions in question were made), together with such reasons as the First and Eighth respondents are by law required to give or desire to make, and to notify the applicants that they have done so;
    - 3.2 within 4 (FOUR) days of receipt of the record from the Registrar, the applicants may, by delivery of a notice and

accompanying affidavit, amend, add to- or vary the terms of their notice of motion and supplement their founding affidavit in terms of Rule 53(4) of the Uniform Rules of Court.

3.3 If any of the respondents intend to oppose Part B of this application, they are required:

3.3.1 within 2 days after receipt of this notice of motion or any amendment thereof, to deliver notice to the applicants that they intend to oppose, and in such notice to appoint an address within fifteen kilometres of the office of the Registrar at which they will accept notice and service of all process in these proceedings; and

3.3.2 within 10 (TEN) days after the expiry of the time referred to in paragraph 3.3.1 above, deliver any affidavit they may desire in answer to the allegations made by the applicant.

3.4 The hearing of Part B of this application will be on an expedited date as directed by the Judge President or Deputy Judge President.

4. The costs of Part A of this application are to be paid on a party and party scale by the First, Second and Third respondents in their personal capacity jointly and severally, the one paying the other to be absolved.



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**M.C. MAMOSEBO**  
**JUDGE OF THE HIGH COURT**  
**NORTHERN CAPE DIVISION**

For the Applicants:  
Instructed by:

Adv SL Erasmus  
AB Horwitz & Associates

For the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> 8<sup>th</sup> Respondents:  
Instructed by:

Adv P Mthombeni  
Motlhamme Pino Attorneys