

Disruptive (party) politics and the constitutional environmental mandate: The case of South African municipalities*

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1. *Introduction and methodology*

The history of South African local government is amply discussed in literature¹. Before 1994, South Africa was governed through apartheid, a system that essentially legalised depriving most people access to much-needed resources, including cultivatable land, water, and sanitation services². In terms of its governing structures, power was vested in national and provincial governments, and municipalities were considered “administrative wings” of the national and provincial governments³. This meant that municipalities had little to no powers and functions, including the right to govern the environment⁴. The environment was governed at a national level in a somewhat uncoordinated and reactive manner. Kidd states, for instance, that although the national government enacted a plethora of legislation on environmental conservation, this was incidental to their primary objective, which was to protect natural resources for the use and enjoyment of the privileged people⁵.

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¹ See article A par. 1 of the White Paper on Local Government (9 March 1998); L. Kaywood, *Exploring the History and Development of the Local Government System in South Africa*, in *African Journal of Public Affairs*, 2021, p. 43 ff.

² O. Fuo, *Local Government’s Role in the Pursuit of the Transformative Constitutional Mandate of Social Justice in South Africa*, PhD-dissertation North-West University, 2014, p. 78.

³ *City of Cape Town and Another v Robertson and Another* 2005 (2) SA 323 (CC) at par. 53.

⁴ L. Kaywood, *Exploring the History and Development of the Local Government System in South Africa*, cit., p. 43 ff.

⁵ M. Kidd, *Environmental Law*, 2nd ed., Cape Town, 2011, p. 12.

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The Constitution of the Republic of South Africa, 1996 (the Constitution) has firstly transformed governance in South Africa by decentralising some powers and functions from the federal government to the subnational government, including the powers of local government in relation to environmental governance⁶. Secondly, the Constitution has secured political representation by placing politically elected persons as councillors and the highest decision-makers in municipalities. At the core of this restructuring was the need to create non-racial municipal institutions tasked with integrating previously racially and economically divided societies, among other things⁷. Local government's constitutional environmental mandate is designed to firstly protect the environment for its sake and secondly, safeguard the right of people to an environment that is good for their health and well-being.

Firstly, every organ of the state has a constitutional mandate to ensure that the environment is not harmful to the health or well-being of everyone and; to protect the environment for the benefit of current and future generations by taking reasonable legislative and other measures that— (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development⁸. This makes local government a critical role player in the realisation of the constitutional environmental right. Secondly, municipalities have a right to govern, on their own initiative, local government affairs of their community⁹. Thirdly, a municipality's legislative and executive authority is vested in its Municipal Council, which consists of electorally elected members of political parties¹⁰. As a result, politics has permeated into the governing structures of a municipality and impacts decision-making on environmental governance.

While politics is generally an indispensable feature of South Africa's constitutional democracy¹¹, the actions of political party parties or their leaders can disrupt the environmental governance efforts of a municipality. These disruptions are described as “oppressive politics”. That is, using what can be seen as “political

⁶ The transformation of governance systems in South Africa to constitutional supremacy can be found in various literature on “transformative constitutionalism”. This article does not discuss transformative constitutionalism any further. See further K. Klare, *Legal Culture and Transformative Constitutionalism*, in *South African Journal of Human Rights*, 1998 p. 146 ff.; P. Langa *Transformative Constitutionalism*, in *Stellenbosch Law Review*, 2006, p. 351 ff.; O. Fuo, *The Transformative Potential of the Constitutional Environmental Right Overlooked*, in *Grootboom in Obiter*, 2013, p. 77 ff.

⁷ N. Steytler - J. De Visser, *Local Government Law of South Africa*, 2nd ed., Durban, 2018, p.10.

⁸ Article 24 of the Constitution of the Republic of South Africa, 1996 (the Constitution).

⁹ Article 151(3) of the Constitution.

¹⁰ Article 151(2) of the Constitution.

¹¹ Constitutional democracy is a system of governance where the power of political authority is defined and regulated by the constitution. See S. Vohito-Anyanwa, *Promoting Constitutional Democracy: Regulating Political Parties in the Central African Republic and Senegal*, in *Potchefstroom Electronic Law Journal*, 2020, p. 3 ff.

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tactics¹² to oppose or hinder environmental governance efforts. Oppressive politics speaks to the various political parties opposing views on how to govern a municipality and includes actions or acts of sabotage within a municipal council. Some of these politics which will be discussed in this article include differences in ideological beliefs in the case of coalition governments, the undue influence of national and provincial structures of a party in matters of a municipal council, and the self-enrichment tendencies of some councillors, amongst other things.

The assumption is that, if left unchecked, these political tactics within a municipality will collapse municipal efforts to govern the environment effectively. This summary is divided into four sections mainly aimed at depicting how politics can disrupt an organ of state governed by the Constitution and legislative framework. The aim is not to label politics as a disruptive feature of local government. The argument is that unless political office bearers are inclined to govern the environment effectively, their powers can be disruptive to the environment and their communities.

2. The Status of Local Government in South Africa

In terms of article 151(1) of the *Constitution*, the local sphere of government consists of municipalities, which must be established for the whole territory of the Republic. Political office bearers are the highest authority in municipalities. Secondly, a municipality's executive and legislative authority is vested in its Municipal Council. This council comprises councillors who are members of political parties, duly elected to office to represent their local communities. This council makes decisions concerning the exercise of all powers and the performance of all functions of a municipality. Thirdly, as the highest authority in municipalities, Municipal Councils have a right to govern, on their own initiative, the local government matters of their municipalities, subject to national and provincial legislation. Lastly, national and provincial governments may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions. Municipal Councils are expected to (a) provide democratic and accountable government for local communities; (b) to ensure the provision of services to communities in a sustainable manner; (c) to promote social and economic development; (d) to promote a safe and healthy environment and (e) to

¹² Political tactics can be loosely defined as involving formal and informal strategies and behaviours in order to advance personal agendas or to gain an advantage. See GeeksforGeeks, *Organisational Politics: Political Strategies and Tactics*, available at <<https://www.geeksforgeeks.org/organisational-politics-political-strategies-and-tactics/,2023>> (accessed 20 May 2024).

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encourage the involvement of communities and community organisations in matters of local government¹³. In fulfilling their mandate, councils work hand-in-hand with the administration of a municipality. The administration consists of officials who are employed by the municipal council. The function of the administration is to deliver services to local communities and execute policies made by the municipal council.

Since the municipal council employs the administration, the structure can become vulnerable to undue influence from members of the municipal council¹⁴. In an ideal municipality, municipal administrations are governed by the basic values and principles of public administration, which include maintaining and promoting a high standard of professional ethics, promoting efficient, economical and effective use of resources and providing services impartially, fairly, equitably and without bias¹⁵.

In addition to the Constitution, there are various national laws that determine the powers, functions and duties of municipal councils. These laws are broadly categorised as local government legislative framework. The framework legislation guides the conduct of councillors. For instance, the Code of Conduct for Councillors sets out that councillors must perform the functions of office in good faith, honestly and in a transparent manner¹⁶. Councillors are expected to act in the municipality's best interest and in such a manner that the credibility and integrity of the municipality are not compromised¹⁷. Opposition parties must especially tolerate one another in council meetings; as such, the Code of Conduct also sets out that councillors are expected to maintain good and orderly behaviour during meetings¹⁸. Councillors are not expected to act unruly, assault or threaten a municipal official or any other person present in a council sitting¹⁹. This is important given that a political tactic within municipal councils

¹³ Article 152 of the Constitution.

¹⁴ Political interferences in administrative matters and strained relations between municipal officials and political office bearers are everyday occurrences in municipalities. See J. De Visser, *The Political-administrative interface in South African municipalities: Assessing the quality of local democracies*, in *Commonwealth Journal of Local Governance*, 2010, p. 86 ff and S. Mngomezulu, *Political Interference in the Administration of Service Delivery in UMLALAZI Local Municipality of KwaZulu-Natal, South Africa*, in *Journal of Economics and Behavioral Studies*, 2020, p. 39 ff.

¹⁵ See article 195 of the Constitution.

¹⁶ Article 3(1)(a) Schedule 1 of the Local Government: Municipal Systems Act 32 of 2000 (Municipal Systems Act).

¹⁷ Article 3 (1)(b) of the Municipal Systems Act.

¹⁸ Article 3(1)(c) of the Municipal Systems Act.

¹⁹ Article 3(2) of the Municipal Systems Act.

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may come from the sudden upsurge in political discord and municipal infightings across the Country²⁰.

3. *The Constitutional Environmental Mandate of Local Government*

The Constitution is the cornerstone of the Country's environmental law framework from which the relevant duties, powers and responsibilities of local government and other spheres flow²¹. This means that various aspects or provisions of the Constitution are important for environmental governance in the local government sphere.

The first provision is article 24 of the Constitution, which guarantees everyone the right to an environment that is not harmful to their health or well-being²². A joint reading of article 24(a), read with 7(2) and 8(1) of the Constitution, creates an obligation on municipalities to respect, protect, promote, and fulfil the constitutional right. Although not expressly duplicated, article 24(a) is reiterated in article 152(1)(d) of the Constitution, which arguably emphasises the local government's role in realising constitutional environmental rights.

Article 24(b) of the Constitution creates a mandate that local government must protect the environment for "the environment's sake". This anthropocentric mandate is aimed at allowing current and future generations to benefit from the environment. Municipal Councils must use their legislative and executive powers to regulate human activities in and around their jurisdictions in order to protect the environment. Protection of the environment means that municipalities should (i) prevent pollution and ecological degradation, (ii) promote conservation, and (iii) secure ecologically sustainable development and the use of natural resources while promoting justifiable economic and social development²³.

The constitutional environmental mandate of local government further extends to Schedules 4B and 5B of the Constitution. These schedules set out the functional

²⁰ See Mail and Guardian, *Ramaphosa calls for end in infighting in local government*, available at <<https://mg.co.za/politics/2022-09-28-ramaphosa-calls-for-end-to-infighting-in-local-governments/>>, 2007(accessed 20 May 2023).

²¹ Some of the relevant legislation includes the National Environmental Management Act 107 of 1998 (NEMA), the National Water Act 36 of 1998 and the Water Services Act 108 of 1997.

²² Article 24(a) of the Constitution.

²³ Article 24 (b) of the Constitution.

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areas where local government has a right to administer bylaws for their effective functioning²⁴. The legislative functions relevant to environmental governance for municipalities include air pollution, municipal health services, stormwater management systems in built-up areas, water and sanitation services limited to portable water supply systems and domestic water waste and sewage disposal systems, amongst other functions. Local government also has the right to legislate on matters that are incidental to their environmental governance functions if doing so will ensure the effective administration of the environment²⁵.

4. *Oppressive Politics Stemming from Political Tactics*

4.1. *Lack of political responsiveness to matters of the environment*

The first step in understanding the role of local government with regard to the environment is for municipal councillors to embrace article 24 of the Constitution and its features as imposing binding legal duties on all municipal structures. The role of municipal councils to realise the constitutional environmental right was recently reiterated in *Trustees for the time being of Groundwork Trust v Minister of Environmental Affairs*²⁶. In this case, the applicant sought declaratory and mandatory relief concerning the extent of government's obligation regarding air pollution in the Highveld Priority Areas²⁷. The applicant's cause of action was that the state had violated article 24(a) of the Constitution in so far as the provision affords everyone the right to an environment that is not harmful to their health and well-being²⁸. The applicant argued that not all air pollution violates the right to a healthy environment; however, if air quality does not meet the National Ambient Air Quality Standard, it is *prima facie* a violation of the

²⁴ Article 156 (1)(a) of the Constitution.

²⁵ Article 156 (5) of the Constitution.

²⁶ *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and Others* (39724/2019) 2022 ZAGPPHC 208.

²⁷ *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and Others* at par. 1. In terms of article 18(1) of the *National Environmental Management Act: Air Quality Act* 39 of 2004, the Minister or MEC may, by notice in the Gazette, declare an area as a priority area if the Minister or MEC reasonably believes that ambient air quality standards are being, or may be, exceeded in the area, or (a) any other situation exists which is causing, or may cause, a significant negative impact on air quality in the area; and (b) the area requires specific air quality management action to rectify the situation.

²⁸ *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and Others* at par. 8.

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right²⁹. The area in question covers some of the most heavily polluted towns in the country, including Middelburg, Emalahleni, Secunda, Standerton, Benoni, and Boksburg. The area has twelve of Eskom's³⁰ coal-fired power stations and Sasol's³¹ coal-to-liquid fuels refinery. Therefore, due to its concentration of industrial pollution sources, residents experience poor and dangerous air quality³².

The Court held that the poor air quality in the Highveld Priority Area is in breach of article 24(a) of the Constitution and that this right, like the right to basic education, is immediately realisable³³.

The immediate realisation of article 24(a) regarding the air quality in Highveld rests with local government. Collis J explained in this regard that the realisable nature of article 24(a) of the Constitution is confirmed in article 4 of the *Municipal Systems Act* where local government exercises legislative and executive authority to promote a safe and healthy environment and the duty to promote a safe and healthy environment³⁴.

The pronouncement by the Court that article 24(a) of the Constitution is immediately realisable may very well lead to academic and judicial scrutiny as some scholars hold the view that the constitutional environmental right is not a socio-economic right³⁵. Kotzé has pointed out that article 24 reflects characteristics of both a classical fundamental right and a socio-economic right³⁶. According to Werner and De Waal, this judgement should be lauded because it clarifies the state's duty regarding

²⁹ *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and Others* at par. 10.

³⁰ Eskom is a state-owned company and South Africa's primary electricity supplier, generating approximately 90% of the electricity used in South Africa and approximately 30% of the electricity generated on the African continent. See National Government of South Africa, *Eskom Holdings SOC Ltd*, year unknown, available at <<https://bit.ly/3IHn6YY>> (accessed 22 May 2024).

³¹ A global chemical and energy company listed on the Johannesburg Stock Exchange (JSE) and the New York Stock. See Sasol *Who are we*, 2022, available at <<https://www.sasol.com/who-we-are/about-us>> (accessed 22 May 2024).

³² *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and Others* at par. 17.

³³ *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and Others* at par. 163.

³⁴ See article 4(2)(i) and (ii) of the *Municipal Systems Act*. Also see *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and Others* at par. 117.

³⁵ See generally M. Trilsch *What's the use of socio-economic rights in a constitution? – Taking a look at the South African experience*, in *Verfassung und Recht in Übersee*, 2009, p. 552 ff.; O. Fuo, *The Transformative Potential of the Constitutional Environmental Right Overlooked*, cit., p. 91; L. Feris, *Constitutional Environmental Rights: An Under-Utilised Resource*, in *South African Journal of Human Rights*, 2008, p. 29 ff.

³⁶ L. Kotzé, *The application of just administrative action in the South African environmental governance sphere: An analysis of some contemporary thoughts and recent jurisprudence*, in *Potchefstroom Electronic Law Journal*, 2004 p. 60 ff.

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article 24(a) and puts pressure on government to combat poor air quality³⁷. The case illustrates how municipal political office bearers' lack of an immediate and meaningful response to matters of environmental governance can lead to the violation of the constitutional environmental right and disregard for the environment.

4.2. *Varied ideological beliefs in coalition governments*

Municipal infighting or opposition politics is fast becoming a norm for many South African municipalities, and although debates and fall-offs might be a regular occurrence in municipal council meetings, these might look different in the case of a coalition or hung council³⁸. Coalition governments in local government are formed when different political parties choose to cooperate in the administration and regulation of a municipality, where there is no outright winner in local elections³⁹. Where no single political party gains a clear majority, it is standard practice for competing parties to negotiate to work together⁴⁰. Coalition or hung councils have made debates or squabbles less about how to better govern their municipalities and more about pursuing political parties to maintain dominance and retain or regain power over other political parties represented in municipal councils⁴¹.

Coalition governments exercise executive and legislative authority over their municipalities⁴². This means that it requires close cooperation between coalition partners to ensure that the council's responsibilities are carried out effectively. However, the history of coalition governments in South Africa's local government

³⁷ M. Werner – L. De Waal, "The Deadly Air Case: How the High Court confirmed the right to a healthy environment" (2022) a <<https://www.cliffedekkerhofmeyr.com/>> (accessed 22 May 2024).

³⁸ K. L. Nelson - G.T. Gabris - T.J. Davis, *What Makes Municipal Councils Effective? An Empirical Analysis of How Council Members Perceive Their Group Interactions and Processes*, in *State of Local Government Review*, 2011 p. 4 ff.; D. Bronstein - D. Glaser, *Interventions in South African Municipalities: Dangers and Remedies*, in *The South African Law Journal*, 2023, p. 117 ff.

³⁹ W. Oyugi, *Coalition Politics and Coalition Governments in Africa*, in *Journal of Contemporary African Studies*, 2006, p. 53 ff.; D. Kadima, *An Introduction to the Politics of Party Alliances and Coalitions in Socially-divided Africa*, in *Journal of African Elections*, 2014, p. 2 ff. Also see generally P. De Vos, *The constitutional-legal dimensions of coalition politics and government in South Africa*, in S. Booysen (ed), *Marriages of Inconvenience: The Politics of Coalitions in South Africa*, Johannesburg, 2021, p. 235 ff.

⁴⁰ Britannica, "The context of international relations" (year unknown), available at <[Britannica.com/topic/ideology-society/The-context-of-international-relations](https://www.britannica.com/topic/ideology-society/The-context-of-international-relations)> (accessed 21 May 2024).

⁴¹ S. Booysen, *Multiparty democracy is in trouble in South Africa – collapsing coalitions are a sure sign*, in *The Conversation*, 27.10.2022, available at <<https://theconversation.com/multiparty-democracy-is-in-trouble-in-south-africa-collapsing-coalitions-are-a-sure-sign-192966>>(accessed 21 May 2024).

⁴² D. Kadima, *An Introduction to the Politics of Party Alliances and Coalitions in Socially-divided Africa*, in *Journal of African Elections*, 2014, p. 2 ff.

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shows that such governments are unstable, and almost all get terminated before the end of a council term.

A prime example is the instability in the City of Johannesburg municipal council in 2022. In this case, Mpho Phalatse was ousted as the executive mayor of the City of Johannesburg in an extraordinary sitting of the council⁴³. The events that preceded this seating included coalition partners betraying each other. The Speaker of the council stated in this regard that the downfall of the DA-led coalition was due to “a concerted campaign of subterfuge, which ultimately backfired”⁴⁴. Phalatse was later reinstated through a court order. The Johannesburg High Court declared the extraordinary sitting and motion of no confidence against the executive mayor unlawful, unconstitutional, and invalid⁴⁵.

Different political ideologies and interests within a municipal council affect the daily operations of a municipal council, especially in so far as it relates to the development of municipal policies relating to environmental governance. This often is the case with coalition governments. Mawere and Matoane argue, for instance, that if political parties’ policy agendas and governing principles are opposed, they could hamper service delivery⁴⁶. Therefore, it is always necessary for coalition partners to understand each other’s policy interests and ascertain if compromises may be reached.

4.3. *Undue influence of national and provincial government or structures of political parties*

While there is a constitutional and legislative framework that outlines the powers and functions of municipal councils, politics within and among political parties often find a way to seep into the governance of municipalities. It seems to have become the norm for national and provincial structures of a party to interfere in matters of municipal councils, sometimes by trying to pressure national and provincial structures of government to place certain municipalities under administration in terms of article 139 of the Constitution⁴⁷. It is even more unpleasant when provincial or national

⁴³ *Phalatse and Another v Speaker of the City of Johannesburg and Others* 2022/26790 at par. 8.

⁴⁴ Ivi, at par. 4.

⁴⁵ Ivi, at par. 105. Mayor Mpho Phalatse has been ousted again as the Mayor of the City of Johannesburg following a motion of no confidence on the 26th of January 2023. See Sowetan Live, *JUST IN: Mpho Phalatse ousted as Joburg mayor again*, in *Sowetan Live*, 26 01 2023, <<https://www.sowetanlive.co.za/news/south-africa/2023-01-26-just-in-mpho-phalatse-ousted-as-joburg-mayor-again/>> (accessed 14 May 2024).

⁴⁶ J. Mawewe - T. Matoane, *Coalition Governance and Service Delivery in South Africa: A Case of Tshwane, Johannesburg and Ekurhuleni Metropolitan Municipality*, in *Journal of Public Administration*, 2022, p. 272 ff.

⁴⁷ See Parliamentary Monitoring Group (PMG) *Workshop on Section 139 Interventions in Municipalities and general observations*, 2019, available at <pmg.org.za/committee-meeting/29249/>

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government apply ‘double standards’ in enforcing article 139 intervention on a municipality led by a different political party⁴⁸. It is common knowledge in democratic states that elected government powers should prevail over non-elected ones. However, the actions of intervention by the provincial executive are to ensure that interruption of the delivery of services is kept to a minimum or even avoided, thus maintaining the minimum standards of service rendering⁴⁹. An unjust enforcement of article 139 of the Constitution not only blurs political and state lines, but it threatens constitutional legality and the rule of law⁵⁰. Moreover, a biased and unjust use of article 139 may threaten the stability of a municipality⁵¹. It unjustly restricts the powers and functions of a democratically elected structure of a municipality, thus hindering the ability of the

(accessed 14 May 2024); M. Makoti - O. Odeku, *Intervention into Municipal Affairs in South Africa and Its Impact on Municipal Basic Services*, in *African Journal of Public Affairs*, 2018, p. 72 ff.; M. Mathenjwa, *Contemporary trends in provincial government supervision of local government in South Africa*, in *Law Democracy and Development*, 2014, p. 178 ff. Also see *Premier, Gauteng and Others v Democratic Alliance and Others*; *All Tshwane Councillors who are Members of the Economic Freedom Fighters and Another v Democratic Alliance and Others*; *African National Congress v Democratic Alliance and Others* 2021 (12) BCLR 1406 (CC) at par. 2, where the DA argued that the dissolution of the ANC-led provincial government was politically motivated. Also see *MEC for the Department of Co-operative Governance and Traditional Affairs v Nkandla Local Municipality and Others* 2007 (3) SA 436 (N), where the MEC in KwaZulu-Natal suspended three members of a hung council from an opposition Party, effectively placing members of his Party as the majority members of the municipal council.

⁴⁸ This was the case in UMvoti Local Municipality (an IFP-led municipality) and UMgungundlovu District Municipality (an ANC-led Municipality), where the MEC of (ANC) instituted a legal claim to dismiss an MM from the former municipality for his failure to meet the employment requirements but ignored claims that the MM of the later ANC-led municipality also did not meet the requirements for employment. See *MEC KwaZulu-Natal for Local Government, Housing and Traditional Affairs v Yengwa and Others* 2010 (5) SA 494 (SCA) and M. Mathenjwa *Contemporary trends in provincial government supervision of local government in South Africa*, in *Law Democracy and Development*, 2014, p. 189 ff. Also see generally *Premier, Gauteng and Others v Democratic Alliance and Others*; *All Tshwane Councillors who are Members of the Economic Freedom Fighters and Another v Democratic Alliance and Others*; *African National Congress v Democratic Alliance and Others* 2022 (1) SA 16 (CC) and *Unemployed Peoples Movement v Premier for the Province of the Eastern Cape and Others* 2020 (3) SA 562 (ECG).

⁴⁹ O. Madumo, *An evaluation of the functioning of metropolitan municipal councils in Gauteng, South Africa*, Doctor of Administration Thesis, University of Pretoria, 2017, p. 163.

⁵⁰ The rule of law is an evolving constitutional principle enforceable by courts and closely related to the principle of legality, which, at a minimum, requires the legislative and executive in every sphere to exercise power and perform functions if authorised to do so by law and only in a rational manner. De P. Vos - W. Freedman, *Basic Concepts of Constitutional Law*, in Id. (eds), *South African Constitutional Law in Context*, Durban, 2014, p. 38 ff. Also see Kampepe J’s discussion on the rule of law for the majority judgement in *Secretary of the Judicial Commission of Inquiry into Allegation of State Capture, Corruption and Fraud in the Public Sector Including Organ of State v Jacob Gedleyihlekisa Zuma* 2021 (9) BCLR 992 (CC) at par. 97.

⁵¹ Parliamentary Monitoring Group (PMG) *Workshop on Section 139 Interventions in Municipalities and general observations*, 2019, available at < pmg.org.za/committee-meeting/29249/ > (accessed 14 May 2024).

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municipality to its cardinal function to local communities, namely, to sustainably provide municipal services⁵².

4.4. *Political interference in administrative matters*

Political interference⁵³ in the administration of a municipality is a critical issue affecting how municipal officials carry out their daily functions. Municipal councils work hand-in-hand with the administration of a municipality⁵⁴. However, both structures have different powers, duties and functions, and no one structure should unduly interfere in the day-to-day running of the other⁵⁵. Inappropriate political interference in administrative matters and strained relations between key political and administrative officials are everyday occurrences in municipalities⁵⁶. While legislative and other measures might be put in place to remedy this problem, De Visser correctly states that behavioural change by political office bearers is more important than legislative intervention⁵⁷. This means that the administrative and political leadership and structure surrounding a municipality should be acutely aware of the consequences that inappropriate political leadership and intervention have on the functioning of a municipality and, therefore, on environmental governance⁵⁸.

4.5. *Infighting in Municipal Councils*

Fight breakouts are fast becoming a trend in Municipal Council sittings. A recent event was when a council sitting disintegrated into chaos following a call for the Mayor to step down⁵⁹. Another incident was in August 2023, when chaos broke out at the City of Tshwane's council sitting when councillors from a certain political party led a

⁵² See generally M. Makoti - O. Odeku *Intervention into Municipal Affairs in South Africa and its Impact on Municipal Basic Services*, in *African Journal of Public Affairs*, 2018, p. 68 ff.

⁵³ Interference in the context of this article includes the unsolicited and inappropriate involvement of councillors in the work of municipal officials and *vice versa*.

⁵⁴ See par. 2, *supra*.

⁵⁵ Schedule 5, article 11 of the *Municipal Structures Act* and Schedule 1, article 11 of the *Municipal Systems Act*.

⁵⁶ S. Mngomezulu, cit., p. 39 f.; J. De Visser, cit., 2010, p. 86 ff.

⁵⁷ J. De Visser, cit., p. 101 ff.

⁵⁸ *Ibid*.

⁵⁹ Germiston City News *WATCH: Calls for Ekurhuleni mayor to step down lead to council brawl*, 2024, available at <https://www.citizen.co.za/germiston-city-news/news-headlines/local-news/2024/02/29/calls-for-ekurhuleni-mayor-to-step-down-lead-to-council-brawl/> (accessed 14 May 2024).

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protest against Mayor Cillier Brink, vowing that the Mayor would not address the sitting in the wake of the dismissal of 122 municipal workers⁶⁰. Propelled by the conduct of councillors during council sittings, the Minister of Cooperative Governance and Traditional Affairs (Cogta), Thembu Nkandimeng, recently issued regulations on the Code of Conduct for Councillors⁶¹. According to the regulations, if a councillor's behaviour is unruly, including when such councillor assaults or threatens to assault an official or another councillor or another person present at the council meeting – such councillor must be ordered to leave the meeting immediately⁶². If the councillor fails to obey the order, the chairperson of the council meeting may request a law enforcement official employed by the municipality to remove the councillor from the meeting⁶³.

The regulations further state that where a councillor is known to or has been seen to have orchestrated with a group of members of the public or municipal staff to engage in violent protests or labour unrest, similar to those described in the incident at the City of Tshwane, against the municipality – the council must discipline such a councillor, and criminal charges must be laid with the South African Police Services (SAPS). Any loss or damage to infrastructure suffered by the municipality as a result of such protest must be recovered from the councillor⁶⁴.

While the aim of the regulations is to deter councillors from having physical altercations in municipal council sittings, political killings remain unresolved. Since July 2018, a total of 321 cases linked to politics have been reported and investigated in Kwa-Zulu Natal (KZN) predominately. These cases include 155 cases of murder, 51 cases of attempted murder, 77 for intimidation and 12 cases of conspiracy to commit murder. Police Minister Bheki Cele also confirmed that the majority of political killings were on councillors of municipalities⁶⁵. Unsurprisingly, the majority of the cases occurred in eThekweni Metropolitan Municipality as it is the largest municipality in KZN.

⁶⁰ IOL “EFF causes chaos at Tshwane council sitting due to dispute over fired municipal workers” (2023) <<https://bitly.ws/3hMgN>> (accessed 14 May 2024).

⁶¹ Government Gazette 48786 in Government Notice 3538 of 14 June 2023 (Code of Conduct for Councillors Regulations).

⁶² Schedule 1- article 1(2)(a) of the Government Gazette 48786 in Government Notice 3538 of 14 June 2023.

⁶³ Schedule 1 – article 1(2) (b) of the Government Gazette 48786 in Government Notice 3538 of 14 June 2023.

⁶⁴ Schedule 1 – article 1(3)(a) and (b) of the Government Gazette 48786 in Government Notice 3538 of 14 June 2023.

⁶⁵ South African Government News Agency *Cele briefs on KZN political killings*, 2023, available at <<https://www.sanews.gov.za/>> (accessed 21 May 2024).

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5. *Conclusion and Remarks*

The governing systems in South Africa have always determined how governments react to or deal with environmental issues. While the environment was apolitical to the apartheid government, it became a focus of the constitutional democratic government post-1994 when it was crystallised as a constitutional environmental right. With this, it becomes quite clear that politics was meant to be an indispensable feature of the Constitution. This would essentially make the Constitution a political tool.

However, it could not have been envisaged that some political activities or actions could disrupt environmental governance. Should South Africa reconsider the role of politics in local government? Should local government only focus on providing municipal services to the exclusion of socio-political development? More drastically, should local government be privatised to exclude political office bearers and with that politics? These are some of the questions that could be asked at the height of environmental turmoil.

This article does not aim to obliterate the role of political office-bearers in local governance. However, it demonstrates how disruptive politics can be in the functions of a municipal council. It has also been seen from this discussion that courts deem municipal councils responsible for the current state of affairs in municipalities. Literature has also alluded to the expectations of political leadership in local government regarding the environment. For this reason, the actions, and behaviours of some of these key decision-makers should be placed under scrutiny, and perhaps a greater sanction is warranted where blatant political tactics are used to oppress governance within municipalities.

Abstract: Politics in South Africa is complex, especially in the local government sphere. Such politics have permeated the governing structures of municipalities and often make sound decision-making incredibly difficult. It becomes even more difficult when politics affect local communities' environmental health and well-being. The Constitution of the Republic of South Africa, 1996, mandates local government to protect the environment for the benefit of current and future generations. This sphere

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must use legislative and other measures to prevent pollution and ecological degradation and promote conservation, amongst other things. This duty is reiterated in section 152(1)(d) of the Constitution for municipalities. While the Constitution, coupled with local government and environmental law legislation, is quite clear on the duty of municipal councils in environmental governance, the political landscape in the Country does present some challenges, including the unstable governance of coalitions, the influence of national and provincial government in municipal matters, unsolicited intrusion of national structures of political parties in municipal governance matters and the ever-increasing infighting within municipal council meetings. This is a summary of an article submitted for publication in a South African-based legal journal. Its contribution to the Special Issue on “The Political and Legal Status of Opposition in Europe, the Western Balkans, and Beyond” is to describe political trends that compromise environmental governance in South African municipalities.

Keywords: Local government - constitutional environmental right -municipal councils - party politics - South Africa.

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