**IN THE HIGH COURT OF SOUTH AFRICA**

**(NORTH WEST DIVISION, MAHIKENG)**

RECORDS OFFICE
NORTH WEST HIGH COURT
PRIVATE BAG X2010 MMABATHO 2735
2022 -05- 12
COUNTER NO.7
REPUBLIC OF SOUTH AFRICA

CASE NO.: M311/2021

In the application between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
| **THE MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: COOPERATIVE GOVERNANCE, HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS** | 1st Respondent |
| **THE MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: FINANCE** | 2nd Respondent |
| **THE MINISTER: NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** | 3rd Respondent |
| **THE MINISTER OF FINANCE** | 4th Respondent |
| **DITSOBOTLA LOCAL MUNICIPALITY** | 5th Respondent |
| **NALEDI LOCAL MUNICIPALITY** | 6th Respondent |
| **THE PREMIER: NORTH WEST PROVINCE** | 7th Respondent |
| **ESKOM SOC LIMITED** | 8th Respondent |
| **MAGALIES WATER BOARD** | 9th Respondent |
| **SEDIBENG WATER BOARD** | 10th Respondent |

DOCUMENTS FILED BY:
GEYER LABUSCHAGNE
Tel: 018 381 6828
Cell: 083 256 6313

**FILING NOTICE**

**DOCUMENT TO BE FILED:**

- **APPLICANT'S SUPPLEMENTARY AFFIDAIVT PURSUANT TO THE AMENDED NOTICE OF MOTION**

**FILED BY:** **KRIEK WASSENAAR & VENTER INC. ATTORNEYS**
Applicant's Attorneys
Tel.: 012 756 7566
Fax: 086 596 8799
Email: peter@kriekprok.co.za
Ref.: PJ Wassenaar/es/QB0616
**C/O LABUSCHANGE ATTORNEYS**
19 Constantia Drive
Riviera Park
Mahikeng
Tel: 018 381 6828
Fax: 018 381 2420
E-mail: litigation2@labuschagneatt.co.za
REF: Mr Labuschagne/GW1671

TO: **THE REGISTRAR OF THE HIGH COURT MAHIKENG**

AND TO: **THE STATE ATTORNEY, MMABATHO**
1st – 3rd and 7th Respondents' Attorneys
1st Floor, East Gallery
Mega City Complex
Corner Sekame Road & Dr James Moroka Drive
Mmabatho
Ref.: N Mekgwe/0955/21/P3
Email: NMekgwe@justice.gov.za

LEFAPHA LA BOBJAMISI
DEPARTMENT OF JUSTICE
DEPARTEMENT VAN JUSTISIE
KGETSANAPOSO / P. BAG / P. SAK X51,
MMABATHO, 2745
2022 -05- 12
REPUBLIC OF SOUTH AFRICA
ID: 33

**ELECTRONIC SERVICE VIA EMAIL IN TERMS OF RULE 4A(1)(c)**

AND TO: **THE STATE ATTORNEY, PRETORIA**
4th Respondents' Attorneys
40 Church Square
2nd Floor, Old Reserve Bank Building
Pretoria CBD
Email: zzenani@justice.gov.za
**c/o THE STATE ATTORNEY, MMABATHO**
Email: NMekgwe@justice.gov.za

LEFAPHA LA BOIPHAROLO
DEPARTMENT OF JUSTICE
DEPARTEMENT VAN JUSTISIE
KGETSANAFOSO / P. BAG / P. SAK X51,
MMABATHO, 2745
2022 -05- 12
REPUBLIC OF SOUTH AFRICA
MMABATHO LAW BUREAU / STATE ATTORNEY
STAATSPROKUREUR
10:33

**ELECTRONIC SERVICE VIA EMAIL**
**IN TERMS OF RULE 4A(1)(c)**

AND TO: **TIRO ATTORNEYS**
5th Respondents' Attorneys
43 Shippard Street
Office no. 06. Shasons Center
Tel: 018 381 0119
Fax: 086 460 7839
Ref: Mr Molefe/D0012
Email: mmolefe94@gmail.com

Pienaar 12/05/22
**TIRO ATTORNEYS INC**
43 SHIPPARD STREET
OFFICE NO. 06
SHASONS CENTRE
MAHIKENG, 2745
TEL: 018 381 0119 / FAX: 086 460 7893
09:39

**ELECTRONIC SERVICE VIA EMAIL**
**IN TERMS OF RULE 4A(1)(c)**

AND TO: **MODIBOA ATTORNEYS INC.**
6th Respondents' Attorneys
No. 107 Readman Street
Wilkoppies, Klerksdorp
Tel.: 018 468 1970 / 1725
Fax: 018 468 1531 / 086 228 0747
Email: info@modiboaattorneys.co.za
Ref.: Mr L Modiboa/00519/nlm/CIV
**c/o MOTSHABI & ASSOCIATES**
12 Havenga Street
Golf View, Mahikeng
Tel.: 018 381 8187 / 8909
Fax: 018 381 8131
Ref.: Mr P Molelekeng/T01378/CIV

MOTSHABI & ASSOCIATES
INCORPORATED
*12 Havenga Street, Golf View*
*Mahikeng, 2745*
*Tell: (018) 381 8187 / (018) 381 8909*
*Fax: (018) 381 8131*
*Email: pvmotshabi@gmail.com*
12/05/2022 09:56

**ELECTRONIC SERVICE VIA EMAIL**
**IN TERMS OF RULE 4A(1)(c)**

AND TO: **MKHABELA HUNTLEY ATTORNEYS INC.**
8th Respondents' Attorneys
Block C
7 Eton Road
Tel.: 011 783 8020
Email: wendel@mhalaw.co.za
Ref.: ESK3/0008/W Bloem

COPY RECEIVED WITHOUT PREJUDICE
Date: 12/05/22
Time: 10H10
Signed by:
M.E. Tlou Attorneys & Associates

**c/o ME TLOU ASSOCIATES ATTORNEYS**
43 Corner Baden Powell & Visser Streets
Golfview, Mahikeng
Tel.: 018 011 0036
Email: naledi@tlouattorneys.co.za

**ELECTRONIC SERVICE VIA EMAIL**
**IN TERMS OF RULE 4A(1)(c)**

AND TO: **MAENETJA ATTORNEYS**
8th Respondents' Attorneys
65 & 74 Rigel Avenue North
Waterkloof, Pretoria
Tel: 012 327 4480
Cell: 071 418 0396
Ref.: Mr Walter Mashapa/TJM/ESKOM/001
Email: walter@maenetjaattorneys.co.za

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M.E. Tlou Attorneys & Associates

**c/o ME TLOU ASSOCIATES ATTORNEYS**
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Golfview, Mahikeng
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Email: naledi@tlouattorneys.co.za

**ELECTRONIC SERVICE VIA EMAIL**
**IN TERMS OF RULE 4A(1)(c)**

**IN THE HIGH COURT OF SOUTH AFRICA**

**(NORTHWEST DIVISION, MAHIKENG)**

**CASE NO.: M311/2021**

In the matter between:

| | |
|---|---|
| **SAKELIGA NPC** | Applicant |
| and | |
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| **ESKOM SOC LIMITED** | 8th Respondent |
| **MAGALIES WATER BOARD** | 9th Respondent |
| **SEDIBENG WATER BOARD** | 10th Respondent |

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**APPLICANT'S SUPPLEMENTARY AFFIDAVIT PURSUANT TO THE AMENDED NOTICE OF MOTION**

---

I, the undersigned,

**PIETER JACOBUS LE ROUX**

do hereby make oath and state the following:

1. I am an adult male and I am the chief executive officer of Sakeliga NPC, which has its offices at Building A, 5th Floor, Loftus Park, 402 Kirkness Street, Arcadia, Pretoria, Gauteng Province.

2. As indicated in the founding affidavit already, the applicant duly resolved to launch this application and has authorized its attorney of record to prosecute this application.

3. The facts set out herein fall within my personal knowledge, unless the contrary appears from the context hereof, and are both true and correct.

4. The applicant delivered a notice of intention to amend its notice of motion. A copy of the notice of intention to amend is attached hereto and marked **Annexure** "SA1". The proof of service upon the respondents of the notice of intention to amend is attached hereto and marked **Annexure** "SA2".

5. No opposition has been received to the proposed amendment and, as a result, the applicant delivered the amended notice of motion on 7 March 2022. A copy of the amended notice of motion is attached hereto and marked **Annexure** "SA3". Proof

of service of the amended pages is attached hereto and marked **Annexure "SA4"**. As such, the amendment is effective.

6. Several respondents have delivered, at different times, answering affidavits to the application that was launched by the applicant under this case number.

7. In many of the affidavits filed by the respondents (and more particularly the affidavit filed by the first, second, third and seventh respondents), the respondents have limited their responses to legal issues. I deem it apposite to mention at the outset that to address the serious nature of the complaints raised by the applicant in its founding affidavit by mainly reverting with legal contentions, is disappointing to say the least. The respondents are all bestowed with serious and important constitutional obligations and ought to deal compassionately with the merits of the issues raised by the applicant.

8. If the respondents, on the available evidence, agree that the situation within the first and second respondents' municipalities is dire, then it should engage in telling the court that:

8.1. they have considered the application of the applicant seriously, concede the issues raised and that the executive has decided to commence with mandatory interventions; or

8.2. they have engaged seriously and propose a remedy that will effectively assist the communities that suffer due to the collapse of local government.

9. It will be submitted at the hearing of this matter that it is irresponsible for an organ of state to simply take the armchair approach and seek to get rid of this important case by raising legal issues alone.

10. Be that as it may, the applicant, on the other hand, has seriously considered the legal issues raised by the respondents. This is done since the applicant, in the interest of the community involved, wishes to prosecute its case, and wants to prevent another delay which may be occasioned by all sorts of postponements if it did not deal with the legal contentions. As such, the applicant concedes that some of the points taken (although technical in nature) are good and decided to amend its notice of motion to address the delays it could face.

11. The amendment is self-explanatory and has been attached. The most prominent feature of the amendment is that the seventh respondent is now pertinently before Court in his capacity as the head of the Executive Council of the North-West Province. This is so, because the legislature (and this will be dealt with during argument) requires the Executive Council to intervene in the affairs of the fifth and sixth respondents, once the factual basis for a persistent financial crisis in its financial affairs and a persistent material breach of its obligations to provide basic services and to meet its financial commitments exist. It is the executive that then must implement a mandatory intervention.

12. Although the first respondent is in fact part of the executive council and is tasked with dealing with local government affairs (from a provincial perspective), it will be argued that it is so that the seventh respondent, the Premier, represents the provincial council, in that the Premier is the head of the provincial council (the executive).

13. Having said this, the amendment entails that paragraph 21 of the founding affidavit ought now to be read as follows:

> "21. *The seventh respondent is the premier of the North-West Province, who is cited herein in his representative capacity as the head of the executive council of the North-West Province. The seventh respondent's address is situated at Garona Building, 2nd Floor, East Wing, Corner James Moroka & University Drive, Mmabatho, North-West Province and is represented by the State Attorney."*

14. Direct relief is sought against the seventh respondent.

15. Paragraph 38 of the founding affidavit ought to be read as follows:

> "38. *In the premises, the purpose of this application is to seek this court's assistance in compelling, so to say, all spheres of government to comply with their constitutional duties. The applicant seeks a structured interdict in accordance with the relief as set out in the amended notice of motion attached hereto as Annexure "SA3"."*

16. The amended notice of motion is structured in such a fashion that, if this court concludes that there is a serious non-compliance with the Constitutional duties of the relevant parties, it can, if not satisfied with the applicant's proposal, craft its own just and equitable remedy that brings relief to the communities residing in and businesses trading within the jurisdictional areas of the fifth and sixth respondents.

17. The applicant will therefore argue that relief ought to be granted to the applicant as envisaged in the amended notice of motion.

**PIETER JACOBUS LE ROUX**

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED:

(a) he knows and understands the contents of this affidavit.

(b) he has no objection to taking an oath.

(c) he considers the oath to be binding on his conscience.

THUS signed and sworn before me, at Pretoria on this the 6th day **MAY 2022**, the Regulations contained in Government Notice No. R1648 of 19 August 1977 (as amended) having been fully complied with.

**COMMISSIONER OF OATHS**

FULL NAMES:

BUSINESS ADDRESS:

DESIGNATION:

AREA / OFFICE:

JOHANNES JACOBUS VAN DER MERWE
Commissioner of Oaths
HB Forum
13 Stamvrug Street
Val De Grace
Ex Officio Practising Attorney
Republic of South Africa

**IN THE HIGH COURT OF SOUTH AFRICA**

**(NORTH WEST DIVISION, MAHIKENG)**

**CASE NO.: M311/2021**

In the matter between:

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| **MAGALIES WATER BOARD** | 9th Respondent |
| **SEDIBENG WATER BOARD** | 10th Respondent |

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**APPLICANT'S NOTICE OF INTENTION TO AMEND**

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**TAKE NOTICE** that the applicant intends to amend the prayers in its existing notice of motion by substituting it with the following prayers 1 to 17:

1. *That the fifth and sixth respondent municipalities be found, in terms of Section 139 (5) of the Constitution, read with Sections 136 (4), 139 and 140 of the Local Government: Municipal Finance Management Act, No. 56 of 2003 ("MFMA"), to be in serious and persistent material breach of their obligations to provide basic services and to meet their financial commitments.*

2. *That the first, second and seventh respondent's failure to implement mandatory interventions in respect of or within the fifth and sixth respondent municipalities, in terms of Section 139 (5) read with Sections 136 (4), 139 and 140 of the MFMA, be found to be inconsistent with Sections 2, 10, 24, 139 (5), 195 and 237 of the Constitution.*

3. *That the seventh respondent, in the capacity as the head of the executive council of the Northwest province, be directed to forthwith implement a mandatory intervention as envisaged in Sections 139 (5) of the Constitution and Section 139 (5) of the MFMA and to comply with the provisions of the said legislation.*

4. *That the intervention referred to in prayer 3 supra be a mandatory intervention, as envisaged in Section 139 of the MFMA and that, should the fifth and sixth respondent municipalities, its administration and/or its respective councils resist such intervention, directing the seventh respondent, in his capacity as the head of*

*the executive council of the Northwest province to dissolve each of the councils of the affected municipalities and that administrators be appointed to take over the control of the affected municipalities.*

5. *That on the implementation of the mandatory interventions as referred in parayer 3 the third and fourth respondents be directed to forthwith, alternatively that the seventh respondent, in his capacity as the head of the executive council of the Northwest province be directed to request the third and fourth respondents to fortwith:*

   5.1. *determine the reasons for the crisis in each of the affected municipalities' financial affairs;*

   5.2. *assess each of the municipalities' financial status;*

   5.3. *instruct the Municipal Finance Recovery Service of the fourth respondent to prepare a recovery plan for the affected municipalities;*

   5.4. *recommend appropriate changes to the municipalities' budgets and revenue raising measures that will give effect to a recovery plan, as developed;*

   5.5. *submit to the second respondent the determination and assessment, referred to in prayers 5.1 and 5.2 supra, together with the recovery plan and recommendations, referred to in prayers 5.3 and 5.4 supra.*

6. *That the first respondent be directed to prepare a report to be filed on the court file in this case, every 60 (sixty) days (or two calendar months) after the date of this court order, setting out the steps taken by the respondents, as the case may be, in recovering the fifth and sixth respondent municipalities, which report shall provide updates on the implementation of the developed financial recovery plan.*

7. *The first to fourth respondents are directed to provide copies of all reports and recovery plans prepared with reference to the recovery of the fifth and sixth respondent municipalities, to the applicant.*

8. *That, pending the proper implementation of the financial recovery plan, Advoca Auditors, Lynnwood, Pretoria, Gauteng Province, or such other expert or expert entity/firm as this Court may deem fit, be appointed as a so-called special master in respect of the fifth and sixth respondents, with the following duties:*

   8.1. *collecting and overseeing the ringfencing in separate municipal bank accounts all municipal income generated from the sale of electricity and the sale of water;*

   8.2. *effecting the distribution of the municipal income received and ringfenced in terms of prayer 8.1 above, to:*

      8.2.1. *the monthly running account of Eskom and/or any other supplier of bulk electricity to the municipality on receiving a proper invoice from the supplier; and*

8.2.2. *the monthly running account of Magalies Water and/or any supplier of bulk water service to the municipality on receiving a proper invoice from the supplier;*

8.2.3. *paying contractors required to conduct emergency maintenance to the sanitation, storm water, electricity and water reticulation networks within the municipalities;*

8.2.4. *transferring the balance available for distribution after the payment of the suppliers, mentioned in prayers 8.2.1, 8.2.2 and 8.2.3 above, to the municipality in question.*

8.3. *provide, within 14 (fourteen) days after each month-end, a proper account in respect of all money received or collected in respect of electricity and/or water from the community within the municipal area of the relevant municipality and all money paid out in accordance with prayers 8.2.1 up to 8.2.4 above.*

9. *That the special master shall have, in addition, the powers as set out in the schedule attached to this notice of motion and marked as* ***Annexure "Z"****, alternatively such powers as this Court may deem fit and appropriate.*

10. *That the special master shall compile and provide a report to this Court, the applicants, the first to fourth respondents and the fifth to sixth respondent municipalities, on each municipality's compliance and enforcement of Section 32*

*of the MFMA for the financial years ending 2017, 2018, 2019, 2020 and 2021, which report must:*

*10.1. specify every incident of unauthorised, irregular or fruitless and wasteful spending and the person/s liable for that expenditure;*

*10.2. specify every resolution passed and/or further action taken by each of the municipalities, as is required by Sections 32(2), 32(3), 32(4), 32(5) and 32(6) of the MFMA, in relation to each incident of unauthorised, irregular or fruitless and wasteful spending;*

*10.3. specify every incident of non-compliance with Sections 32(2), 32(3), 32(4), 32(5) and 32(6) of the MFMA.*

*11. That the special master shall compile and provide a report to this Court, the applicants, the first to fourth respondents and the fifth to sixth respondent municipalities involved, in respect of the accounting systems, practices and failures of each municipality, specifically insofar as it relates to the prevention, management and recovery of unauthorized, irregular or fruitless or wasteful spending and the fifth and sixth respondent's failures to address issues raised by the Auditor-General as required by Section 131(1) of the MFMA.*

*12. The respondents are directed to co-operate with the special master in the preparation and execution of the special master's duties in terms of the order, and shall ensure that:*

12.1. *the special master is provided with all documents and requested required and requested by the special master;*

12.2. *that officials of the fifth and sixth respondents are reasonably available to meet with the special master if so requested and provide the special master with such information as may reasonably be requested;*

12.3. *that all requests of the special master be timeously responded to.*

13. *That the Court determine the remuneration of the special master and give any further directions regarding the terms of the appointment of the special master as the Court deems necessary.*

14. *Once the reports envisaged in these orders have been received, alternatively if any of the respondents fails to comply with the provisions of this order, the applicant shall be entitled to supplement these papers, amend its notice of motion and seek such further relief as may be necessary to give effect to this order.*

15. *In the alternative to all the above, and should this Court find that any of the respondents' conduct is inconsistent with the Constitution as envisaged in prayer 2 supra, but that the remedies sought by the applicant are for some reason not found to be appropriate, the applicant requests this Court to make an order that is just and equitable as envisaged in section 172 of the Constitution which will have a remedial effect in the sense that it alleviates the Constitutional infringements complained about.*

16. *That the first to sixth respondents be ordered to pay the costs of this application on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved. Costs against the seventh to ninth respondents will only be sought in the event of them electing to oppose the application.*

17. *Further and/or alternative relief."*

**TAKE NOTICE FURTHER** that unless written objection to the proposed amendment is delivered within 10 (ten) days after delivery of this notice, the amendment will be effected.

Dated at **MAHIKENG** on **17 FEBRUARY 2022.**

**KRIEK WASSENAAR & VENTER INC. ATTORNEYS**
Applicant's Attorneys
Tel.: 012 756 7566
Fax: 086 596 8799
Email: peter@kriekprok.co.za
Ref.: PJ Wassenaar/es/QB0616
**c/o SMIT STANTON INCORPORATED**
29 Warren Street
Golf View
Mahikeng
Tel.: 018 381 0180
Fax: 086 274 6253
E-mail: litigation1@smitstanton.co.za
Ref.: KRI19/00002/21

TO: **THE REGISTRAR OF THE HIGH COURT**
**MAHIKENG**

AND TO: **THE STATE ATTORNEY, MMABATHO**
1st - 4th and 7th Respondents' Attorneys
1st Floor, East Gallery
Mega City Complex
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AND TO: **THE STATE ATTORNEY, PRETORIA**
4th Respondents' Attorneys
40 Church Square
2nd Floor, Old Reserve Bank Building
Pretoria CBD
Email: zzenani@justice.gov.za
**c/o THE STATE ATTORNEY, MMABATHO**
Email: NMekgwe@justice.gov.za

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AND TO: **TIRO ATTORNEYS**
5th Respondents' Attorneys
43 Shippard Street
Office no. 06. Shasons Center
Tel: 018 381 0119
Fax: 086 460 7839
Ref: Mr Molefe/D0012
Email: mmolefe94@gmail.com

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6th Respondents' Attorneys
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Fax: 018 468 1531 / 086 228 0747
Email: info@modiboaattorneys.co.za
Ref.: Mr L Modiboa/00519/nlm/CIV
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Ref.: Mr P Molelekeng/T01378/CIV

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7 Eton Road
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Email: wendel@mhalaw.co.za
Ref.: ESK3/0008/W Bloem
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8th Respondents' Attorneys
65 & 74 Rigel Avenue North
Waterkloof, Pretoria
Tel: 012 327 4480
Cell: 071 418 0396
Ref.: Mr Walter Mashapa/TJM/ESKOM/001
Email: walter@maenetjaattorneys.co.za
**c/o ME TLOU ASSOCIATES ATTORNEYS**
43 Corner Baden Powell & Visser Streets
Golfview, Mahikeng
Tel.: 018 011 0036
Email: naledi@tlouattorneys.co.za

**ELECTRONIC SERVICE VIA EMAIL**
**IN TERMS OF RULE 4A(1)(c)**

SA2

**Melissa Jansen van Vuuren**

| | |
|---|---|
| **From:** | Melissa Jansen van Vuuren |
| **Sent:** | Thursday, 17 February 2022 09:51 |
| **To:** | Mekgwe Nthabiseng; ZZenani@justice.gov.za; Mekgwe Nthabiseng; mmolefe94@gmail.com; info@modiboaattorneys.co.za; wendel@mhalaw.co.za; naledi@tlouattorneys.co.za; walter@maenetjaattorneys.co.za; naledi@tlouattorneys.co.za |
| **Cc:** | NJ Nel; Nicolene Neethling |
| **Subject:** | Sakeliga NPC / MEC for Cooperative Governance and Traditional Affairs & Other |
| **Attachments:** | Applicant's notice of intention to amend - 20220217.pdf |

Good day

We refer to the above matter and herewith serve the following to you:

1. Applicant's notice of intention to amend

Kindly acknowledge receipt of same in writing.

Yours faithfully,

Melissa Jansen van Vuuren

Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 3de Vloer / 3rd Floor, HB Forum Gebou / Buidling, Stamvrugstraat 13 Stamvrug Street, Val de Grace, Pretoria, 0184

• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21

Hierdie e-pos is onderhewig aan voorwaardes. Kliek hier vir meer besonderhede.

*This e-mail is subject to certain conditions. Click here for more information.*

SA3



**IN THE HIGH COURT OF SOUTH AFRICA**

**(NORTH WEST DIVISION, MAHIKENG)**

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| **SEDIBENG WATER BOARD** | 10th Respondent |

## NOTICE OF MOTION

**TAKE NOTICE** that the applicant intends making application to this Court for an order in the following terms:

1. That the fifth and sixth respondent municipalities be found, in terms of Section 139 (5) of the Constitution, read with Sections 136 (4), 139 and 140 of the Local Government: Municipal Finance Management Act, No. 56 of 2003 ("MFMA"), to be in serious and persistent material breach of their obligations to provide basic services and to meet their financial commitments.

2. That the first, second and seventh respondent's failure to implement mandatory interventions in respect of or within the fifth and sixth respondent municipalities, in terms of Section 139 (5) read with Sections 136 (4), 139 and 140 of the MFMA, be found to be inconsistent with Sections 2, 10, 24, 139 (5), 195 and 237 of the Constitution.

3. That the seventh respondent, in the capacity as the head of the executive council of the Northwest province, be directed to forthwith implement a mandatory intervention as envisaged in Sections 139 (5) of the Constitution and Section 139 (5) of the MFMA and to comply with the provisions of the said legislation.

4. That the intervention referred to in prayer 3 *supra* be a mandatory intervention, as envisaged in Section 139 of the MFMA and that, should the fifth and sixth

respondent municipalities, its administration and/or its respective councils resist such intervention, directing the seventh respondent, in his capacity as the head of the executive council of the Northwest province to dissolve each of the councils of the affected municipalities and that administrators be appointed to take over the control of the affected municipalities.

5. That on the implementation of the mandatory interventions as referred in prayer 3 the third and fourth respondents be directed to forthwith, alternatively that the seventh respondent, in his capacity as the head of the executive council of the Northwest province be directed to request the third and fourth respondents to forthwith:

5.1. determine the reasons for the crisis in each of the affected municipalities' financial affairs;

5.2. assess each of the municipalities' financial status;

5.3. instruct the Municipal Finance Recovery Service of the fourth respondent to prepare a recovery plan for the affected municipalities;

5.4. recommend appropriate changes to the municipalities' budgets and revenue raising measures that will give effect to a recovery plan, as developed;

5.5. submit to the second respondent the determination and assessment, referred to in prayers 5.1 and 5.2 *supra*, together with the recovery plan and recommendations, referred to in prayers 5.3 and 5.4 *supra*.

6. That the first respondent be directed to prepare a report to be filed on the court file in this case, every 60 (sixty) days (or two calendar months) after the date of this court order, setting out the steps taken by the respondents, as the case may be, in recovering the fifth and sixth respondent municipalities, which report shall provide updates on the implementation of the developed financial recovery plan.

7. The first to fourth respondents are directed to provide copies of all reports and recovery plans prepared with reference to the recovery of the fifth and sixth respondent municipalities, to the applicant.

8. That, pending the proper implementation of the financial recovery plan, Advoca Auditors, Lynnwood, Pretoria, Gauteng Province, or such other expert or expert entity/firm as this Court may deem fit, be appointed as a so-called special master in respect of the fifth and sixth respondents, with the following duties:

8.1. collecting and overseeing the ringfencing in separate municipal bank accounts all municipal income generated from the sale of electricity and the sale of water;

8.2. effecting the distribution of the municipal income received and ringfenced in terms of prayer 8.1 above, to:

8.2.1. the monthly running account of Eskom and/or any other supplier of bulk electricity to the municipality on receiving a proper invoice from the supplier; and

8.2.2. the monthly running account of Magalies Water and/or any supplier of bulk water service to the municipality on receiving a proper invoice from the supplier;

8.2.3. paying contractors required to conduct emergency maintenance to the sanitation, storm water, electricity and water reticulation networks within the municipalities;

8.2.4. transferring the balance available for distribution after the payment of the suppliers, mentioned in prayers 8.2.1, 8.2.2 and 8.2.3 above, to the municipality in question.

8.3. provide, within 14 (fourteen) days after each month-end, a proper account in respect of all money received or collected in respect of electricity and/or water from the community within the municipal area of the relevant municipality and all money paid out in accordance with prayers 8.2.1 up to 8.2.4 above.

9. That the special master shall have, in addition, the powers as set out in the schedule attached to this notice of motion and marked as **Annexure "Z"**, alternatively such powers as this Court may deem fit and appropriate.

10. That the special master shall compile and provide a report to this Court, the applicants, the first to fourth respondents and the fifth to sixth respondent municipalities, on each municipality's compliance and enforcement of Section 32 of the MFMA for the financial years ending 2017, 2018, 2019, 2020 and 2021, which report must:

    10.1. specify every incident of unauthorised, irregular or fruitless and wasteful spending and the person/s liable for that expenditure;

    10.2. specify every resolution passed and/or further action taken by each of the municipalities, as is required by Sections 32(2), 32(3), 32(4), 32(5) and 32(6) of the MFMA, in relation to each incident of unauthorised, irregular or fruitless and wasteful spending;

    10.3. specify every incident of non-compliance with Sections 32(2), 32(3), 32(4), 32(5) and 32(6) of the MFMA.

11. That the special master shall compile and provide a report to this Court, the applicants, the first to fourth respondents and the fifth to sixth respondent municipalities involved, in respect of the accounting systems, practices and failures of each municipality, specifically insofar as it relates to the prevention, management and recovery of unauthorized, irregular or fruitless or wasteful spending and the fifth and sixth respondent's failures to address issues raised by the Auditor-General as required by Section 131(1) of the MFMA.

12. The respondents are directed to co-operate with the special master in the preparation and execution of the special master's duties in terms of the order, and shall ensure that:

12.1. the special master is provided with all documents and requested required and requested by the special master;

12.2. that officials of the fifth and sixth respondents are reasonably available to meet with the special master if so requested and provide the special master with such information as may reasonably be requested;

12.3. that all requests of the special master be timeously responded to.

13. That the Court determine the remuneration of the special master and give any further directions regarding the terms of the appointment of the special master as the Court deems necessary.

14. Once the reports envisaged in these orders have been received, alternatively if any of the respondents fails to comply with the provisions of this order, the applicant shall be entitled to supplement these papers, amend its notice of motion and seek such further relief as may be necessary to give effect to this order.

15. In the alternative to all the above, and should this Court find that any of the respondents' conduct is inconsistent with the Constitution as envisaged in prayer 2 *supra,* but that the remedies sought by the applicant are for some reason not found to be appropriate, the applicant requests this Court to make an order that is just and equitable as envisaged in section 172 of the Constitution which will have a

remedial effect in the sense that it alleviates the Constitutional infringements complained about.

16. That the first to sixth respondents be ordered to pay the costs of this application on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved. Costs against the seventh to ninth respondents will only be sought in the event of them electing to oppose the application.

17. Further and/or alternative relief.

Dated at **MAHIKENG** on this the **26th** day of May **2021**.

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TO: **THE REGISTRAR OF THE HIGH COURT**
**MAHIKENG**

AND TO: **THE STATE ATTORNEY, MMABATHO**
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IN TERMS OF RULE 4A(1)(c)**

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**ELECTRONIC SERVICE VIA EMAIL**
**IN TERMS OF RULE 4A(1)(c)**

SA4

**Melissa Jansen van Vuuren**

| | |
|---|---|
| **From:** | Melissa Jansen van Vuuren |
| **Sent:** | Monday, 07 March 2022 08:40 |
| **To:** | Mekgwe Nthabiseng; ZZenani@justice.gov.za; mmolefe94@gmail.com; info@modiboaattorneys.co.za; wendel@mhalaw.co.za; naledi@tlouattorneys.co.za; walter@maenetjaattorneys.co.za; naledi@tlouattorneys.co.za; Mekgwe Nthabiseng |
| **Cc:** | Elbie Swanepoel; Nicolene Neethling; NJ Nel |
| **Subject:** | Sakeliga NPC / MEC for Cooperative Governance and Traditional Affairs & Other |
| **Attachments:** | Filing notice - Notice of motion - Amended 20220304.pdf |

Good day

We refer to the above matter and herewith electronically file and serve the following to your offices:

1. Notice of motion – Amended

Kindly acknowledge receipt of same in writing.

Yours faithfully,

Melissa Jansen van Vuuren

Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

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