IN THE HIGH COURT OF SOUTH AFRICA

NORTHWEST DIVISION, MAHIKENG

Case no: UM192/2022

In the matter between:

SAKELIGA NPC	First applicant
CENTRE FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC	Second applicant
BAREND LOURENS SNYMAN	Third applicant

And

DITSOBOTLA LOCAL MUNICIPALITY	First respondent
THE MUNICIPAL MANAGER / ACTING MUNICIPAL MANAGER OF THE DITSOBOTLA LOCAL MUNICIPALITY	Second respondent
PREMIER OF THE NORTH-WEST PROVINCE	Third respondent
PROVINCIAL EXECUTIVE OF THE NORTH-WEST PROVINCE	Fourth respondent
MEMBER OF THE EXECUTIVE COUNCIL: NORTH-WEST PROVINCE: COOPERATIVE GOVERNANCE, HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS	Fifth respondent
MEMBER OF THE EXECUTIVE COUNCIL: NORTH-WEST PROVINCE: FINANCE	Sixth respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Seventh respondent
MINISTER: NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Eighth respondent
MINISTER: NATIONAL DEPARTMENT OF FINANCE	Ninth respondent
MINISTER: WATER AND SANITATION	Tenth respondent
NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY	Eleventh respondent
ESKOM SOC LTD	Twelfth respondent

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MAGALIES WATER BOARD	Thirteenth respondent
THE ADMINISTRATOR: DITSOBOTLA LOCAL MUNICIPALITY	Fourteenth respondent

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NINTH RESPONDENT'S AFFIDAVIT

I the undersigned

SHABEER KHAN

do hereby make oath and state that:

1. I am an adult male and the acting Director-General of the National Treasury, whose Executive Authority is the Minister of Finance, the ninth respondent in this matter.

2. By virtue of my position, I am duly authorised to make this affidavit on behalf of the ninth respondent and to oppose this application on behalf of such respondent.

3. The facts to which I depose are within my own knowledge, or derived from records under my control, and are true and correct. Where I deal with questions of law, I do so on the advice of the ninth respondent's legal representatives.

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4. I have read the supplementary founding affidavit filed on behalf of the applicants in this matter. I shall respond only to the allegations of fact contained in the supplementary founding affidavit insofar as they relate to the ninth respondent.

5. My failure to deal with any allegation in the supplementary founding affidavit should not be construed as an admission thereof. Such an allegation is denied to the extent that it is inconsistent with what is stated in this affidavit.

6. Before responding to the allegations in the supplementary founding affidavit, I set out a brief background to this application.

BACKGROUND OF THE APPLICATION

7. This application seeks the intervention of the National Executive in the affairs of Ditsobotla Local Municipality ("**Ditsobotla**") in terms of section 139(7) of the Constitution, on the basis that the Provincial Executive has allegedly failed to fulfil its obligations under section 139(5) of the Constitution, read with section 150 of the Municipal Finance Management Act, 56 of 2003 ("**MFMA**").

8. In the amended notice of motion, the applicants ask this Honourable Court to find that, despite the order granted on 6 October 2023, no meaningful improvement or progress has occurred in the recovery of the first respondent, Ditsobotla. The applicants further contend that the community's constitutional rights—particularly access to basic municipal services—continue to be violated.

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9. The applicants attribute this alleged failure to the Provincial Executive of the North West Province ("**Provincial Executive**"), claiming that it either could not or did not adequately exercise its powers or perform its functions under section 139(5) of the Constitution. The applicants further assert that the Provincial Executive failed to take responsibility for implementing the Municipal Financial Recovery Plan ("**2023 MFRP**"), which the sixth respondent ("**the Finance MEC**") approved on 12 July 2023, following a notice published by the Provincial Executive on 23 May 2023. Based on these allegations, the applicants seek the following relief, specifically implicating the ninth respondent:

9.1. An order directing the seventh to tenth respondents—or any other respondent the Court deems appropriate—to monitor and report on: (i) the implementation of the [FRP], (ii) the restoration and maintenance of basic services, and (iii) the financial recovery of Ditsobotla ("**the municipal affairs**"). These respondents must report to this Court, on affidavit, within 30 days, setting out all relevant facts concerning the municipal affairs, any challenges, and proposed solutions. Thereafter, they must file monthly affidavit reports on or before the last day of each calendar month and serve these reports on the applicants.

9.2. An order requiring the seventh to tenth respondents—or such respondent(s) as this Court may identify—to engage meaningfully with the applicants and their representatives at least once every three months to discuss the recovery of Ditsobotla and the underlying causes of its financial crisis.

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9.3. An order that all the above relief remain in force until discharged by this Court upon application by one or more respondents, with notice to the applicants, and only once respondents provide proof—satisfactory to this Court—that Ditsobotla's financial crisis has been resolved, and its ability to fulfil its constitutional obligations and financial commitments has been restored.

10. While the ninth respondent does not oppose the application on its merits and abides by this Honourable Court's decision regarding National Executive intervention, the ninth respondent opposes what is, in essence, the structural interdict sought in prayers 6 to 8 of the amended Notice of Motion. In the alternative, and should the Court be inclined to grant such relief, the ninth respondent opposes the applicant's proposed timelines, as they are unrealistic and unachievable within the constitutional and operational framework governing National Executive intervention in municipal affairs.

11. Accordingly, the ninth respondent delivers this affidavit to outline the statutory framework, procedures and constitutional obligations that govern any intervention by the National Executive in municipal affairs. This is essential to enable this Court to craft an appropriate and implementable order that effectively facilitates the recovery of Ditsobotla.

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THE NINTH RESPONDENT OBJECTS TO THE STRUCTURAL INTERDICT SOUGHT IN PRAYERS 6 TO 8 OF THE AMENDED NOTICE OF MOTION

12. The National Executive is actively addressing the challenges in Ditsobotla through lawful processes, including steps toward intervention. There have been ongoing consultative engagements, including with the Minister of Co-operative Governance and Traditional Affairs. These consultative engagements aim to address the challenges facing the municipality.

13. The relief sought in prayers 6 to 8 of the amended notice of motion is a structural interdict- an extraordinary remedy that is unjustified in the present circumstances. Structural interdicts are reserved for recalcitrant litigants who have repeatedly defied court orders and failed to comply with them.

14. The ninth respondent is not a recalcitrant litigant. It is abiding by the Court's decision in respect of the merits of the intervention and has only sought limited opposition in respect of the structural interdict sought against it.

15. To succeed in the structural interdict, the applicants must demonstrate a clear and ongoing failure by the National Executive in addressing the issues in Ditsobotla and show that no adequate alternative remedy exists. They have established neither.

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16. On the contrary, the evidence shows that (i) the National intervention has only been recently introduced, and the National Executive have not been given an opportunity to comply with their constitutional and statutory obligations; (ii) the National COGTA has nonetheless taken tangible steps, including the preparation and submission of a Cabinet memorandum seeking approval for national intervention shortly after the amended notice of motion was served and demonstrate the National Executive's understanding of the seriousness of the matter and their intention to comply with the applicable legal framework.

17. Section 151 of the Constitution mandates respect for the distinct but interdependent spheres of government. Any intervention under section 139 of the Constitution must be exercised with deference to this constitutional architecture. A structural interdict compelling intervention, absent of a demonstrated breakdown in governance and constitutional dereliction as it relates to Ditsobotla by the National Executive, would undermine this balance.

18. The applicants have not identified any constitutional breach or systemic failure by the National Executive that would justify an ongoing judicial supervisory role. Where the National Executive is already acting within the framework of Chapter 13 of the MFMA, a structural interdict is, at this point in time, neither necessary nor appropriate. The Court should not impose a structural interdict sought in prayers 6 to 8 of the amended notice of motion.

19. While national intervention under section 139(7) may indeed become necessary—a possibility the National Executive has already anticipated—it

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remains premature and constitutionally inappropriate for this Court to order intervention through a structural interdict in the absence of clear evidence of failure by the National Executive and in particular the Minister of Finance. I submit that the National Executive must be allowed to exercise its responsibilities within the framework of cooperative governance.

20. It is therefore necessary to address, in proper context, the relief sought against the National Executive and the ninth respondent.

20.1. First, I will begin by outlining the constitutional and legislative framework governing local government and national intervention.

20.2. Second, without conceding that a structural interdict against the National Executive is warranted, I will demonstrate that the timelines proposed in prayers 6 to 8 of the amended notice of motion are inconsistent with the constitutional and statutory requirements for national intervention—and are, in any event, practically unworkable.

THE CONSTITUTIONAL AND LEGISLATIVE STRUCTURE FOR GOVERNANCE AND INTERVENTION

21. National and provincial interventions are regulated in terms of the provisions of section 139 of the Constitution, read together with Chapter 13 of the MFMA.

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22. Section 139 of the Constitution permits provincial government intervention in the municipal sphere. This is a limited and tightly constrained power. It may only be invoked temporarily, in exceptional circumstances and in compliance with strict procedures.

23. The applicable sections to national executive intervention in section 139 of the Constitution provide that:

> *"(1) When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including-*
>
> *a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations;*
> *b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to –*
> *i) maintain essential national standards or meet established minimum standards for the rendering of a service;*
> *ii) prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or*
> *iii) maintain economic unity; or*
>
> *c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.*
>
> *(2) if a provincial executive intervenes in a municipality in terms of subsection (1)(b)— (a) it must submit a written notice of the intervention to—*

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(i) the Cabinet member responsible for local government affairs; and

(ii) the relevant provincial legislature and the National Council of Provinces, within 14 days after the intervention began;

* * * *

(4) If a municipality cannot or does not fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the relevant provincial executive must intervene by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the Municipal Council and—

(a) appointing an administrator until a newly elected Municipal Council has been declared elected; and

(b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.

(5) If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the relevant provincial executive must-

(a) impose a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments, which-

(i) is to be prepared in accordance with national legislation; and

(ii) binds the municipality in the exercise of its legislative and executive authority, but only to the extent necessary to solve the crisis in its financial affairs; and

(b) dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan, and-

(i) appoint an administrator until a newly elected Municipal Council has been declared elected; and

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(ii) *approve a temporary budget or revenue-raising measures or any other measures giving effect to the recovery plan to provide for the continued functioning of the municipality; or*

(c) *if the Municipal Council is not dissolved in terms of paragraph (b), assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan.*

....

7) *If a provincial executive cannot or does not adequately exercise the powers or perform the functions referred to in subsection (4) or (5), the national executive must intervene in terms of section (4) or (5), in the stead of the relevant provincial executive.*

8) *National legislation may regulate the implementation of this section, including the processes established by this section."*

24. Regulation of the implementation of provincial intervention in local government is found in Chapter 13 of the MFMA. The following provisions of the MFMA are applicable in national intervention procedures.

25. Section 139 of the MFMA provides that:

139 Mandatory provincial interventions arising from financial crises

(1) If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the provincial executive must promptly-

(a) request the Municipal Financial Recovery Service-

(i) to determine the reasons for the crisis in its financial affairs

(ii) to assess the municipality's financial state;

(iii) to prepare an appropriate recovery plan for the municipality;

(iv) to recommend appropriate changes to the municipality's budget and revenue-raising measures that will give effect to the recovery plan; and

(v) to submit to the MEC for finance in the province-

(aa) the determination and assessment referred to in subparagraphs (i) and (ii) as a matter of urgency; and

(bb) the recovery plan and recommendations referred to in subparagraphs (iii) and (iv) within a period, not to exceed 90 days, determined by the MEC for finance; and

(b) consult the mayor of the municipality to obtain the municipality's co-operation in implementing the recovery plan, including the approval of a budget and legislative measures giving effect to the recovery plan.

(2) The MEC for finance in the province must submit a copy of any request in terms of subsection (1) (a) and of any determination and assessment received in terms of subsection (1) (a) (v) (aa) to-

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(a) the municipality;

(b) the Cabinet member responsible for local government; and

(c) the Minister.

(3) An intervention referred to in subsection (1) supersedes any discretionary provincial intervention referred to in section 137, provided that any financial recovery plan prepared for the discretionary intervention must continue until replaced by a recovery plan for the mandatory intervention.

26. Section 141 of the MFMA deals with the preparation of financial recovery plans and provides that:

141 Preparation of financial recovery plans

(1) Any suitably qualified person may, on request by the provincial executive, prepare a financial recovery plan for a discretionary provincial intervention referred to in section 137.

(2) Only the Municipal Financial Recovery Service may prepare a financial recovery plan for a mandatory provincial intervention referred to in section 139.

(3) When preparing a financial recovery plan, the person referred to in subsection (1) or the Municipal Financial Recovery Service must-

(a) consult-

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(i) the relevant municipality;

(ii) the municipality's principal suppliers and creditors, to the extent they can reasonably be contacted

(iii) the MEC for finance and the MEC for local government in the province; and

(iv) organised labour;

(b) take into account-

(i) any financial recovery plan that has previously been prepared for the municipality; and

(ii) any proposed financial recovery plan, or proposals for a financial recovery plan, that may be advanced by the municipality or any creditor of the municipality; and

(c) at least 14 days before finalising the plan-

(i) submit the plan for comment to-

(aa) the municipality;

(bb) the MEC for finance and the MEC for local government in the province

(cc) organised local government in the province;

(dd) organised labour; and

(ee) any supplier or creditor of the municipality, on request; and

(ii) publish a notice in a newspaper of general circulation in the municipality-

(aa) stating the place, including any website address, where copies of the plan will be available to the public free of charge or at a reasonable price; and

(bb) inviting the local community to submit written comments in respect of the plan.

(4) The person charged with preparing the financial recovery plan or the Municipal Financial Recovery Service must-

(a) consider any comments received pursuant to subsection (3) (c);

(b) finalise the financial recovery plan; and

(c) submit the final plan to the MEC for finance in the province for approval in terms of section 143.

27. Section 146 of the MFMA provides for the implementation of financial recovery plans in mandatory provincial interventions and requires that:

146 Implementation of financial recovery plans in mandatory provincial interventions

(1) If the recovery plan was prepared in a mandatory provincial intervention referred to in section 139-

(a) the municipality must implement the approved recovery plan;

(b) all revenue, expenditure and budget decisions must be taken within the framework of, and subject to the limitations of, the recovery plan; and

(c) the municipality must report monthly to the MEC for finance in the province on the implementation of the plan in such manner as the plan may determine.

(2) The financial recovery plan binds the municipality in the exercise of both its legislative and executive authority,

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including the approval of a budget and legislative measures giving effect to the budget, but only to the extent necessary to achieve the objectives of the recovery plan.

(3) The provincial executive must in terms of section 139 (5) (b) of the Constitution either-

(a) dissolve the council of the municipality, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan within the time frames specified in the plan and-

(i) appoint an administrator until a newly elected council has been declared elected; and

(ii) approve a temporary budget and revenue-raising measures, and other measures to give effect to the recovery plan and to provide for the continued functioning of the municipality; or

(b) assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not take executive measures to give effect to the recovery plan.

(4) Sections 34 (3) and (4) and 35 of the Municipal Structures Act apply when a provincial executive dissolves a municipal council in terms of section 139 (5) (b) (i) of the Constitution.

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28. Section 147 of the MFMA requires regular review of provincial interventions and provides that:

147 Regular review of provincial interventions

(1) The MEC for local government or the MEC for finance in a province must at least every three months-

(a) review any discretionary provincial intervention referred to in section 137 or any mandatory provincial intervention referred to in section 139, including-

(i) progress with resolving the municipality's financial problems and its financial recovery; and

(ii) the effectiveness of any financial recovery plan; and

(b) submit progress reports and a final report on the intervention to-

(i) the municipality;

(ii) the Minister;

(iii) the Cabinet member responsible for local government;

(iv) the provincial legislature; and

(v) organised local government in the province.

(2) The MEC for local government or the MEC for finance may request the person who prepared the recovery plan, or the Municipal Financial Recovery Service, to assist the MEC in complying with subsection (1).

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29. Section 150 of the MFMA provides for National Intervention in the following terms:

150 National interventions

(1) If the conditions for a provincial intervention in a municipality in terms of section 139 (4) or (5) of the Constitution are met and the provincial executive cannot or does not or does not adequately exercise the powers or perform the functions referred to in that section, the national executive must-

(a) consult the relevant provincial executive; and
(b) act or intervene in terms of that section in the stead of the provincial executive.

(2) If the national executive intervenes in a municipality in terms of subsection (1)-

(a) the national executive assumes for the purposes of the intervention the functions and powers of a provincial executive in terms of this Chapter;
(b) the Minister assumes for the purposes of the intervention the functions and powers of an MEC for finance in terms of this Chapter; and
(c) a reference in this Chapter-
(i) to a provincial executive must be read as a reference to the national executive;
(ii) to an MEC for finance must be read as a reference to the Minister; and

(iii) to a provincial intervention must be read as a reference to a national intervention.

30. The key principles to be drawn from the constitutional and legislative structure for section 139(7) national executive intervention are the following:

30.1. First, Section 139(7) of the Constitution provides that national intervention may only occur where a provincial executive cannot or does not adequately exercise its powers or perform its functions under section 139(4) or (5). In such cases, the national executive is obligated to intervene in the stead of the provincial executive. Section 150 of the MFMA confirms this framework, making clear that the national executive must consult the relevant provincial executive and then assume the responsibilities, powers, and functions of the provincial executive in terms of Chapter 13 of the MFMA.

30.2. Second, section 139(5) of the Constitution applies when a municipality is in financial crisis, either due to persistent failure to meet its obligations or acknowledgement of such failure. In these circumstances, Chapter 13 of the MFMA requires the provincial executive to impose a financial recovery plan ("**FRP**"). If the municipality fails to adopt the legislative measures needed to implement the FRP, the provincial executive may either assume responsibility for its implementation or dissolve the municipal council. Where the provincial executive fails to act, the national executive is constitutionally required to intervene. In terms of section 150 of the MFMA, references to a provincial executive, MEC for finance, or

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provincial intervention must be read as references to the national executive, the Minister of Finance, and national intervention, respectively

30.3. Third, chapter 13 of the MFMA details the process for provincial and national interventions. Sections 139 and 141 require the Municipal Financial Recovery Service ("**MFRS**") to prepare the recovery plan during a mandatory intervention. This preparation includes consulting with the municipality, creditors, MEC's for Finance and local government, organised labour, and the public. The draft plan must be published for public comment before it is finalised. Section 146 mandates that once approved, the plan binds the municipality's legislative and executive arms to the extent required to achieve its objectives.

31. The National Executive must adhere to the strict procedural requirements in Chapter 13 of the MFMA to implement an effective financial recovery plan. This process is complex, involves multiple stakeholders, and cannot be completed within an arbitrarily compressed timeframe, as the applicants suggest.

32. In what follows, I demonstrate the challenge with the relief sought by the applicants as it applies to the ninth respondent.

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THE PRACTICAL IMPLEMENTATION OF CHAPTER 13 OF THE MFMA IN TERMS OF THE RELIEF SOUGHT IN THIS APPLICATION

33. Implementing the FRP and determining the current state of Ditsobotla's financial affairs and basic services—particularly water and electricity—requires the following steps by the National Executive:

33.1. Upon the date of the Court order, the national cabinet must convene a meeting to resolve on the invocation of the national intervention consistent with the principle of the separation of powers.

33.2. The National Treasury, supporting the Minister of Finance alternatively the national Department of Co-operative Governance supporting the Minister of COGTA, must initiate the appointment of a national executive representative—along with sectoral experts covering financial management, service delivery, governance, and institutional management—to oversee implementation of the amended FRP.

33.3. The MFRS established as a unit in the National Treasury must:

33.3.1. prepare a roadmap for the mandatory or amended FRP based on a real-time assessment of Ditsobotla's challenges.

33.3.2. assess the status quo, identify root causes of service delivery failures, and structure the findings around the four pillars of

sustainability, being financial management, service delivery, governance and institutional management.

33.3.3. consult with municipal political and administrative leadership, creditors, to the extent they can reasonably be contacted, organised labour, and the MECs for Finance and Local Government.

33.3.4. analyse documents, conduct site inspections, and gather relevant data to identify core problems and craft realistic, implementable solutions that will enable the municipality to secure its ability to restore the provision of adequate basic services and resolve its financial crisis.

33.3.5. Submit its assessment to the Minister of Finance.

34. Completing the assessment, consultations, and analysis typically requires at least two months. Only after this will a viable FRP emerge, tailored to, amongst others, Ditsobotla's water and electricity service needs.

35. The MFRS must then submit the FRP to the Minister of Finance within 90 days of completing the status quo assessment, as required by section 139 of the MFMA.

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36. In considering the estimated time required to undertake the processes outlined above, it is important also to acknowledge the applicants' allegations regarding the serious and deteriorating state of affairs in Ditsobotla. According to the founding papers—and as corroborated in the 2023 MFRP,[1] —the situation has worsened, marked by a human resource crisis, including the absence of a municipal manager and other senior officials who would ordinarily assist the MFRS in gathering the necessary documentation.[2] The applicants further refer to strained relationships with creditors and service providers,[3] as well as the challenges faced by the Provincial Treasury in implementing the 2023 MFRP.[4]

37. While the ninth respondent does not address the merits of these allegations at this stage, it highlights the complexity of the circumstances on the ground. It is therefore evident that the recovery of Ditsobotla is not a task that can be completed within short or rigid timelines. The extent of dysfunction and institutional instability necessitates a carefully structured, compliant intervention process.

38. It remains to be considered if the level of maladministration and financial crisis at Ditsobotla, together with the high level of violence, will be conducive to expediting any of the processes referred to above. The Court needs to consider these issues when determining whether the timeframes sought to be imposed by the applications are feasible and achievable.

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1 Founding Affidavit paras 46-48.
2 Founding Affidavit para 54.
3 Founding Affidavit para 54.2.4.
4 Founding Affidavit paras 100 to 112.

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39. Any proposed timelines must realistically reflect the scale of the work required of the National Executive to ensure sustainable financial and service delivery recovery.

The ninth respondent's position on Prayer 6 of the Amended Notice of Motion

40. Prayer 6 of the amended notice of motion seeks:

> *"6. That it further be declared that there is an urgent need to restore the basic municipal services of water and electricity to the community of Ditsobotla, and further to paragraph 5, the National Executive is ordered and directed to prioritise such restoration and to assume responsibility therefor, and in this regard further:*
>
> *6.1 The National Executive is directed to report to this court within 10 days of this order setting out detailed measures that need to be taken to restore the provision of water and electricity supply to Ditsobotla;*
>
> *6.2 The National Executive shall forthwith, and as a matter of urgency, take all such steps as may be necessary to restore the aforesaid basic municipal services of water and electricity to Ditsobotla within 30 days of the date of this order;*
>
> *6.3 The National Executive shall ensure the provision of water and electricity supply to Ditsobotla for the duration of the National Intervention."*

41. It is neither feasible nor lawful for the National Executive to submit a report within 10 days of a court order or restore water and electricity within 30 days. These actions depend on detailed findings from the updated status quo assessment report and a duly approved FRP.

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42. Realistically, the National Executive would require a minimum of 120 days from the cabinet's resolution to provide a meaningful report on the measures to restore water and electricity, given the legal and procedural requirements that must first be met.

43. Without a completed status quo assessment and FRP, it is impossible to identify the underlying causes of service failures and interruptions or to determine the appropriate timeline for restoring basic services.

44. It is common cause that the provision of water and electricity falls under the constitutional competency of local government. Under the Constitution, municipalities derive these powers directly, establishing local government as a distinct and autonomous sphere. Sections 100 and 139 of the Constitution permit national or provincial intervention solely under defined and limited circumstances. The National Executive may only assume control and commence its intervention processes after formally invoking an intervention. Any obligation to report on actions to restore services must logically follow, rather than precede, the adoption of the FRP and related statutory processes.

45. While the currently imposed 2023 MFRP can serve as a baseline, it has been over two years since it was prepared, and there is a need to ensure that the FRP activities remain practical to effectively address the current state of affairs in the Ditsobotla municipality. In its founding affidavit, the applicant raises concerns about the focus of the 2023 MRFP, the failure of the relevant stakeholders to implement it, and the Council's refusal, among other issues, to adhere to it.

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Therefore, an FRP must be developed to address these and other concerns, thereby supporting national intervention.

The ninth respondent's position on Prayers 7 and 8 of the Amended Notice of Motion

46. Prayer 7 of the amended notice of motion seeks

> *"THAT the seventh to the tenth respondents, alternatively such respondent or respondents as the court deems appropriate, be ordered and directed to monitor and to report on: (i) the implementation of the MFRP, (ii) the restoration of and continuation of basic municipal services to the community of Ditsobotla, and (iii) Ditsobotla's financial affairs and the recovery of Ditsobotla (collectively "**the municipal affairs**"), and for such purpose is ordered and directed:*
>
> *7.1 To report to this court on affidavit, in detail, all relevant facts dealing with the municipal affairs, and all facts relevant to any challenges in respect of the municipal affairs together with a proposed solution thereto, such report to be served on the applicants and to be filed on the court file within 30 days of this order;*
>
> *7.2 Thereafter, to file an affidavit report, as contemplated in paragraph 7.1 at the end of each calendar month, such report to be served on the applicants and to be filed on the court file on or before the last day of each calendar month.*
>
> *8 That the seventh to the tenth respondents, alternatively such respondent or respondents as the court deems appropriate, be ordered and directed to, at least once every three months, meaningfully engage with the applicants and their representatives on the recovery of Ditsobotla and the issues underlying the financial crisis of the municipality."*

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47. Evidently, the same legal and practical challenges identified in response to the proposed remedy in prayer 6 of the amended notice of motion also affect prayer 7.1.

48. Additionally, two key issues arise from the timelines proposed in prayers 7 and 8 of the amended notice of motion. First, they do not align with the statutory reporting and procedural timelines prescribed under the MFMA. Second, they overlook the practical challenges involved in ensuring lawful and effective compliance within the compressed timeframes proposed.

49. Section 146(1)(c) of the MFMA requires monthly reporting to the provincial MEC for Finance on the FRP's implementation. Under a national intervention, the national executive's representative must report monthly to the Minister of Finance per section 146(3)(b). Monthly financial reconciliations and data processing typically occur only after month-end. Reports must reflect accurate and complete financial performance.

50. Practically, municipalities or representatives under intervention file monthly reports between the 10th and 15th of the following month. This aligns with sections 52(d) and 71 of the MFMA, which account for necessary timelines to close a financial month. Therefore, it is impractical and unlawful to require submission of progress reports on or before the last day of each month, as sought in Prayer 7.2.

51. Sections 147 and 150(2)(b) of the MFMA require the ninth respondent, in the stead of the MEC for Finance, to conduct quarterly reviews of the municipality's financial recovery. The Minister must submit these reviews to various stakeholders, including the Cabinet member responsible for local government, provincial legislature and organised local government, SALGA and the provincial legislature. The order prayed for in the applicant's amended notice of motion, as per paragraphs 9.1 and 9.2, is already provided for in section 148(2) of the MFMA. Given that this is already provided for in law, there is no need for this Court to issue an order in this regard.

52. In practice, the National Treasury MFRS prepares these reports using monthly data, site inspections, and other statutory sources. The National Treasury MFRS tables these reviews in a technical war room consisting of the National Treasury, COGTA, provincial counterparts, and municipal representatives. The war room typically convenes one month after quarter-end, ensuring proper quality assurance before the Minister receives the final report.

53. The applicants seek quarterly engagement with National Executive respondents on Ditsobotla's recovery. Section 141(3) of the MFMA already requires public participation, through invite, during the preparation of an FRP. The public—including the applicants—may submit written comments on the draft FRP before its submission and approval by the Minister. This provides the applicants a meaningful opportunity to shape the FRP and propose relevant solutions to speedily recover from its financial crisis and failures in the provision of basic services, including water and electricity.

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54. The FRP mandates that municipalities approve a stakeholder engagement strategy. The National Executive representative is responsible for implementing this strategy and ensuring periodic engagement with all stakeholders, not just the applicants. Therefore, given this standard practice, there is no need for a Court order for stakeholder engagement with the applicants, as this is standard practice with interventions.

55. A just and equitable remedy in the intervention and recovery of Ditsobotla must be practical, enforceable, and capable of lawful execution. Any order granted by this Court must be framed in terms that can be implemented per the aforementioned legal prescripts. While the ninth respondent abides by the Court's decision, the relief sought in prayers 6 to 8 of the amended notice of motion is neither feasible nor aligned with the statutory framework that governs national interventions. The National Executive can only lawfully and effectively act once an intervention has been invoked under section 139(7) of the Constitution.

56. I respectfully submit that any order granted by this Court should recognise and accommodate the statutory processes that must be followed. Should this Court be inclined to order timelines for implementation of the recovery plan, such timelines ought to be crafted in a manner that enables the National Executive to comply with its constitutional and statutory obligations without compromising the legality or effectiveness of the intervention.

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AD SERATIM RESPONSES

57. The ninth respondent has no knowledge of the facts underlying this application and cannot admit the allegations contained therein.

58. The ninth respondent has dealt thematically with the relief sought against him in prayers 6 to 8 of the amended notice of motion. To the extent that there are any further allegations pertaining to the Minister of Finance not dealt with above, those allegations are specifically denied.

CONCLUSION

59. In the circumstances, the relief sought against the Minister of Finance in prayers 6 to 8 of the amended notice of motion is opposed for the reasons set out above.

SHABEER KHAN

I certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and deposed before me at Pretoria on this the 24th day of June 2025, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972,

as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.

NATIONAL DEPARTMENT OF SOCIAL DEVELOPMENT: LEGAL SERVICES
EX OFFICIO COMMISIONER OF OATHS
134 PRETORIUS STREET
HSRC BUILDING, PRETORIA, 0001

I certify that the DEPONENT has acknowledged that he/she knows and understands the contents of this affidavit, that he/she does not have any objection to taking the oath, and that he/she considers it to be binding on his/her conscience, and which was sworn to and signed before me

at Pretoria on this the 24th day of 06 2025 and that the administering oath complied with the regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended.

NAME: AZHAFARUNI RAMATSHIMBILA
CAPACITY: SLAO
SIGNATURE:

COMMISSIONER OF OATHS

Full Names: AZWITAMELI RAMATSHIMBILA

Capacity: SCAO

Address: 134 PRETORIUS STREET
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